

(1983) 01 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 119 of 1982

Vitthalrao Natthuji Mahale

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 31-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) JLJ 241 : (1984) MPLJ 251

Hon'ble Judges : K.N. Shukla, J;C.P. Sen, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; M.V. Tamaskar for State, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

This is a petition under Article 226 of the Constitution by petitioner Vitthal Rao Mahale claiming himself to be the Secretary of the Laghu Swasthya Kendra Samiti (Mini Primary Health Centre), Rangarithoka, tahsil Sausar, for a writ of mandamus directing the State of M.P. not to shift the mini primary health centre from that place and also to make it a permanent centre.

The petition has been filed in a representative capacity on behalf of the residents of Rangarithoka saying that it is a village having population of 2100 with scanty medical facilities although there is a Janpad Ayurvedic Dispensary in the village hut the nearest Civil Dispensary is at Lodhikheda, 5 Kms. away, separated by two rivers. Rangarisafar is the adjacent village about 1 Km. away. Due to constant efforts of the villagers, mini primary health centre was established in 1979 by the State which is being run in the said Ayurvedic Dispensary in a skeleton form catering the need of Rangarithoka and the adjacent villages. The present Minister of State for Health of the State of M.P. i.e. respondent No. 3 Shri Reonath Choure is elected to the M.P. Vidhan Sabha from Sausar constituency.

He was also a sitting M.L.A. of this constituency before the present election. However, due to political rivalry, he carries ill-feelings against the villagers of Rangarithoka and there has been persistent attempts at his instance to deprive the village of the facilities of a health centre. On the eve of last election to the Vidhan Sabha, a number of villagers approached Shri Choure expressing their fear and apprehension that the health centre will be shifted from the village. On 8-12-1979 Shri Choure wrote to them that final decision regarding health centre will be taken in their presence. After the Vidhan Sabha election in early 1980, Shri Choure became Minister of State for Health, a deputation of villagers met him on 8-11-1980 and he asked them to raise money and donate land within 8 days in between two villages of Rangarithoka and Rangarisafar so that primary health centre will be established. Acting on his assurance, the villagers collected a sum of Rs. 5,000/- and purchased 0.50 acre out of khasra No. 305 by registered sale-deed dated 18-11-1980 in village Rangarithoka on the border towards Rangarisafar on the main road. Immediately an application was sent to Shri Choure with the sale-deed annexed for fulfilling his promise. In spite of this, there is a definite attempt on the part of Shri Choure to dislodge the health centre from Rangarithoka and establish a health centre at Rangarisafar.

The contentions of the petitioner are (i) under the Constitution the State is obliged to make provisions for welfare of the citizens including facilities for health, the political rivalries cannot be utilised to deprive the health facilities they have been enjoying so far and the proposed action is against the guarantee conferred on the citizens by the Constitution of India, (ii) Shri Choure having represented to the villagers to donate land for establishment of a primary health centre and the villagers having acted on that representation incurred financial liability, purchased land and donated the same to the State Government, there is no justification whatsoever to close the health centre at Rangarithoka and instead establish one at Rangarisafar. The villagers have no objection if another primary health centre is established at Rangarisafar; (iii) the action of the respondents to shift primary health centre from Rangarithoka to Rangarisafar is mala fide and due to ill-will and political rivalry which Shri Choure carries against the villagers of Rangarithoka.

In their return, the respondents submitted that Rangarithoka and Rangarisafar are not two separate villages but are two parts or Tola of village Rangari. In the revenue record also, Rangari is recorded as the village. With a view to implement "Minimum Needs Programme" of the Government of India, the State Government by its order dated 27-9-1978 sanctioned opening of 200 Mini Primary Health Centres all over the State, one such centre was proposed to be opened at village Rangari. On 31-1-1979 the State Government passed order for opening of 62 such centres in implementation of the first phase of the programme. However, the residents of the two Tolas on learning about the establishment of Mini Primary Health Centre at Rangari made approaches to open mini dispensary in their area. On their representation, the matter was examined and the District Advisory Committee recommended establishment of the Mini Primary Health

Centre at Rangarisafar. This was approved by the Director of Public Health and also by the Department and the then Minister of State for Health Shri Parsuram Sahu on 6-8-1979. The matter was then placed before the Cabinet Minister for Health Shri Shitla Sahay. In the meanwhile, he had received a representation against the aforesaid decision through Shri Vibhash Banerjee, the then Education Minister and Shri Sahay ordered re-examination of the whole matter and the decision to open Mini Primary Health Centre was Kept in abeyance. The matter was re-examined and the earlier recommendation by the District Advisory Committee and by the Department was maintained. The recommendations were accepted by Shri Sahay who approved opening of Mini Primary Health Centre at Rangarisafar on 16-1-1980. Again the Minister received fresh representation and he ordered further examination of the matter. On further examination, it was again found that the location of the Mini Primary Health Centre at Rangarisafar is proper. However, before it could be approved, the Janata Government was removed and President Rule was imposed. After the election, Congress party formed Ministry and on re-examination of the matter Shri Choure recommended establishment of Mini Primary Health Centre at Rangarisafar. This was approved by the Minister for Health Shri Jhumukial Bhediya, Necessary orders were thereafter issued to post staff and construct necessary building. The building is now nearing completion. Thereafter, the villagers of Rangarithoka met Shri Choure on 8-11-1980 and pleaded for establishment of a permanent Mini Primary Health Centre at Rangarithoka but no commitment was made by Shri Choure nor he asked the villagers to raise fund and donate land for that purpose. The Government has got enough land for establishing a Mini Primary Health Centre. The allegations have been made mala fide and motivated by political rivalries. Shri Choure carries no ill-feeling nor he has any political rivalry with the villagers of Rangarithoka nor he made any attempt to deprive the village of the facilities of health centre. In fact, the State Government felt that because of the growing needs of the area and the non-availability of the facilities, it would be proper to establish an additional primary health centre in place of Mini Primary Health Centre and so additional Primary Health Centre has started functioning at Rangarisafar which is a place more convenient to all the adjoining villages. There was no decision to establish Mini Primary Health Centre at Rangarithoka and no such centre has ever started working at that place. The decision to establish Mini Primary Health Centre at Rangarisafar was taken by the Janata Government and not by the present Government. The decision was on merits and on overall consideration of the relevant circumstances. The present Government has approved the same. The petitioner has no legally enforceable right to file this petition.

A rejoinder has been filed by the petitioner disputing that Rangarithoka and Rangarisafar are not two separate villages and part of the same village Rangari, documents have been filed including 1971 census report separately showing population of the two villages Rangarithoka and Rangarisafar. In the 1971 election the villagers of Rangarithoka made efforts for getting Congress-I ticket

to the petitioner but instead Shri Choure was given the ticket and was elected. This caused a sense of rivalry on Shri Choure against the villagers. Shri Choure treats the villagers of Rangarithoka as his adversaries and villagers of Rangarisafar as his supporters and that is why he has been making constant efforts to shift Mini Primary Health Centre from Rangarithoka to Rangarisafar. Even if additional Primary Health Centre has been established at Rangarisafar, that could not deprive the villagers of Rangarithoka of the facilities of a Mini Primary Health Centre there. In support, 11 affidavits have been filed in order to show that Shri Choure did ask the villagers to collect money and donate land for establishing a Permanent Mini Primary Health Centre at Rangarithoka and acting on his promise, land was purchased by collecting donations. In the additional return, the respondents have reiterated the stand taken by them in the return and denied the allegations made in the rejoinder. It is submitted that the State alone can decide as to in which place Primary Health Centre should be established. The High Court will not be in a position to probe into the matter and decide as to in which place primary health centre should be established. It is the pious aim of the State Government to provide basic health facilities to the people and no health centre should be farther than a distance of 8 Kms. from any point but it is difficult to achieve due to financial constraints even the latest goal is to establish a health centre so that the facilities are available to the people within a radius of 20 Kms. Since Additional Primary Health Centre has started functioning at Rangarisafar, hardly a kilometer away from Rangarithoka, the villagers of the latter village can have no grievance particularly when they are already having a Janpad Ayurvedic Dispensary there. The adjoining Gram Panchayats have also endorsed the opening of the health centre at Rangarisafar. In any case, the State Government never told the villagers to purchase the land for establishing a permanent Mini Primary Health Centre at Rangarithoka nor any assurance was given by any Minister either during the Janata regime or in the Congress regime. Affidavit of Shri Choure has also been filed whereby he has denied each and every adverse allegation against him and submitted that the same have been made by his opponent, the present petitioner, with a view to cause embarrassment to him in public and to gain political advantage. As a publicman, he has been meeting a large number of citizens almost every day and hearing their grievances. No written record is, however, maintained of the deliberations in such meetings. Whenever any representation is made to him, the same is forwarded to the State Government for necessary action. He never made any promise at any time as alleged by the petitioner on 8-11-1980.

Part IV of the Constitution contains directive principles of State policy. Article 47 enjoins that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. But Article 37 provides that the provisions contained in this part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. From the return

filed, it is evident that the State is making endeavour to provide minimum basic medical facilities available to the citizens and for that purpose "Minimum Needs Programme" has been drawn up. The State Government has decided to open 200 Mini Primary Health Centres all over the State and in the first phase 62 such Centres have been opened. Though it is the pious hope of the State to provide such centres available to the citizens within a radius of 8 Kms. but the same is not feasible under the present circumstances due to lack of funds and other difficulties. So at present it has been decided to establish health centres so that the facilities may be available within a distance of 20 Kms. Though the respondents have denied that there was any decision to establish a Mini Primary Health Centre at Rangarithoka but it appears from the documents produced that such a centre in a skeleton form has been functioning in the Janpad Ayurvedic Dispensary in that village, but obviously this was done till a final decision could be taken after fully examining the matter regarding the suitability of the place for establishing such a centre. After due examination and consultation, the District Advisory Committee and the Department suggested that Rangarisafar is more suitable for location of the Primary Health Centre there. Accordingly, this has been done. In the Annexure-A filed along with the petition it is mentioned that the distance between the two villages Rangarithoka and Rangarisafar is about 5 furlongs, so the villagers of Rangarithoka cannot make a grievance that they are being deprived of the medical facilities by shifting the centre to another place. In fact, from their own showing the villagers of Rangarithoka had agreed for shifting of the Mini Primary Health Centre from the present location to some other place, that is why they had purchased land for a suitable site. Instead of a Mini Primary Health Centre, now the villagers have got a Primary Health Centre with more extensive facilities by upgrading of the centre, from mini to additional primary health centre. There is already Janpad Ayurvedic Dispensary at Rangarithoka and the villagers have no right to insist that the primary health centre should also be located there. The Government on consideration of the convenience of all the adjoining villages and the suitability-have located the primary centre at Rangarisafar. The decision was of the Janata Government which has merely been endorsed by the Congress Government. So it cannot be said that shifting of the primary centre is politically motivated. In the petition as originally filed, it was not made clear as to why Shri Choure, the present Minister of State for Health, carried ill-feelings against the villagers of Rangarithoka though in the rejoinder they tried to make out that the villagers had supported the candidature of the petitioner and that enraged Shri Choure. If that was so, Shri Choure would not have been approached by the villagers for location of the permanent Primary Health Centre in their village. It is difficult to believe that Shri Choure had assured the villagers that on a land being donated a permanent primary health centre would be located there. Since the decision had already been taken by the Government for location of the primary health centre at Rangarisafar, there could have been no occasion for Shri Choure to give such an assurance. He has also denied the allegations on affidavit. We do not find any reason for not accepting his affidavit. He has pointed out that he was instrumental in providing water

supply to the villagers of Rangarithoka and if he was working against the interest of the villagers there he would not have done so. Besides, there cannot be any promissory estoppel against the State Government even assuming the allegations of the petitioner to be true. Even if Shri Choure had given any assurance the State which is the final authority was not bound by such an assurance. The Supreme Court in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, has held that the principle of estoppel was not available against the Government in exercise of legislative, sovereign or executive power. There can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority.

Therefore, the petition fails and it is dismissed. There shall be no order as to costs.