



संजय गॉंधी स्नातकोत्तर आयुर्विज्ञान संस्थान, लखनऊ।

Sanjay Gandhi Post Graduate Institute Of Medical Sciences

RAEBARELI ROAD, LUCKNOW-226014 (INDIA)

Phone (0522)-2668700, 2668800, 2668900 Fax-(0522)- 2668017, 2668129

पत्र सं०-पीजीआई/जे०डी०ए० कैम्प/ 273/2016
पत्रावली आरएसडी सं०-2573/16

दिनांक : 21 मार्च, 2016

कार्यालय-ज्ञाप

मा० उच्च न्यायालय, इलाहाबाद, लखनऊ खण्डपीठ, लखनऊ द्वारा रिट याचिका सं०-5362(एम/बी) ऑफ 2016 हिमांशु हेमन्त गुप्ता बनाम स्टेट ऑफ यू०पी० व अन्य का निस्तारण करते हुए दिनांक 14.03.2016 को आदेश पारित किये गये हैं। इस आदेश का प्रभावी अंश अधोलिखित है:-

"At the same time, we issue a Writ of Mandamus directing the respondent No.2/Sanjay Gandhi Post Graduate Institute of Medical Services to consider adopting same regulation or rule on the pattern of decision of the Delhi High Court judgment so that a redressal mechanism as provided for in the event any such impasse is created. We expect that such exercise shall be done preferably within a period of three months or even before as may be convenient to the institute so that the respondent No. 3-Association may also have a platform for raising their grievances and get the same redressed."

मा० उच्च न्यायालय के उक्त आदेश के अनुपालन हेतु संस्थान में प्रचलित एसोसिएशन/यूनियन/संगठन/संघ/फोरम का प्रतिनिधित्व प्रस्तावित समिति (permanent negotiating machinery) में सुनिश्चित किये जाने के आशय से इस संस्थान में प्रचलित एसोसिएशन/यूनियन/संगठन/संघ/फोरम के अध्यक्ष/महामंत्री से यह अपेक्षा की जाती है कि वे अधोलिखित बिन्दुओं पर अभिलेखों सहित सूचना इस कार्यालय-ज्ञाप के निर्गमन की तिथि से 7 दिनों के अन्दर अधोहस्ताक्षरी को उपलब्ध कराने का कष्ट करें।

1. एसोसिएशन/यूनियन/संगठन के नियम/नियमावली (Byelaws) की प्रति।
2. एसोसिएशन/यूनियन/संगठन का पंजीकरण प्रमाण-पत्र की प्रति।
3. एसोसिएशन/यूनियन/संगठन के अध्यक्ष/महामंत्री व अन्य पदाधिकारियों के नाम, पते एवं मोबाईल नं०।
4. एसोसिएशन/यूनियन/संगठन के समस्त सदस्यों के नाम, पते एवं मोबाईल नं०।

सुलभ संदर्भ हेतु मा० उच्च न्यायालय के उपर्युक्त संदर्भित आदेश दिनांक 14.03.2016 एवं मा० उच्च न्यायालय, दिल्ली द्वारा पारित आदेश दिनांक 20.05.2002 की छायाप्रतियों संलग्न की जा रही हैं।

यह आदेश निदेशक के अनुमोदनोपरान्त निर्गत किया जा रहा है।

संलग्नक: यथोक्त

प्र० उत्तम सिंह
संयुक्त निदेशक (प्रशासन)

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. निदेशक, संजय गॉंधी पी०जी०आई०, लखनऊ।
2. अपर निदेशक, संजय गॉंधी पी०जी०आई०, लखनऊ।
3. अधिशासी कुलसचिव, संजय गॉंधी पी०जी०आई०, लखनऊ।
4. मुख्य चिकित्सा अधीक्षक, संजय गॉंधी पी०जी०आई०, लखनऊ।
5. चिकित्सा अधीक्षक, संजय गॉंधी पी०जी०आई०, लखनऊ।
6. वरिष्ठ प्रशासनिक अधिकारी/प्रभारी, विधि प्रकोष्ठ, संजय गॉंधी पी०जी०आई०, लखनऊ।
7. संस्थान की वेबसाइट में अपलोड करने हेतु।
8. समस्त नोटिस बोर्ड।
9. समस्त एसोसिएशन/यूनियन/संगठन/संघ/फोरम के अध्यक्ष/महामंत्री को वेबसाइट/नोटिस बोर्ड के माध्यम से सूचनार्थ एवं अपेक्षित कार्यवाही हेतु प्रेषित।

प्र० उत्तम सिंह
संयुक्त निदेशक (प्रशासन)



MR. RAVINDRA AGARWAL

26 MAR 2016

Court No. - 1

Case :- MISC. BENCH No. - 5362 of 2016

Petitioner :- Himanshu Hemant Gupta

Respondent :- State Of U.P.Thru Prin.Secy.Medical Edu.Lko.And Ors.

Counsel for Petitioner :- Sudeep Seth

Counsel for Respondent :- C.S.C.,Vinayak Saxena

Hon'ble Amreshwar Pratap Sahi,J.

Hon'ble Attau Rahman Masoodi,J.

Heard Sri Sudeep Seth, learned Counsel for the petitioner, learned Additional Advocate General for the respondent No.1, Sri Sanjay Bhasin, learned Counsel for the respondent No.2 and Sri Asit Chaturvedi, learned Senior Counsel assisted by Sri Dharmendra Kumar Dixit, learned counsel for the respondent No.3.

We had adjourned the matter after hearing the learned counsel for the petitioner by the following order on 11.03.2016:-

"Heard Sri Sudeep Seth learned counsel for the petitioner, learned Standing Counsel for respondent no. 1 and Sri Sanjay Bhasin for respondent no. 2.

Issue notice to respondent no. 3 forthwith. The notices would be dispatched immediately. As the respondent no. 2 is already represented before this Court our order shall also be served on respondent no. 3 Association informing them that matter will be taken up on 14.3.2016 as a fresh matter keeping in view the urgency of the situation.

The respondent no. 3 shall specifically respond to the legal issues categorically raised in this writ petition in order to assess as to why appropriate directions be not issued by this Court in order to ensure that the medical attendance of patients inside the institute are not hampered in any manner whatsoever.

The main contention of the petitioner is that such strike would be in violation of Section 5-A of the U.P. Government Servants Conduct Rules, 1956 and would violate the fundamental rights guaranteed under Article 21 of the Constitution of India.

The State Government would further respond immediately with regard to the allegations contained in paragraph no. 11 of the writ petition and specific instructions shall be made available about the extension or otherwise of the notification under the Uttar Pradesh Essential Services Maintenance Act, 1966.

Put up on 14.3.2016 as fresh.

Copy of the order today."

Today, in the morning session, we were informed that negotiations and talks were going on in respect of the demands of the respondent No.3-Association at three levels after passing of the aforesaid order - one by the All India Government Nurses Federation at New Delhi, the other before the Deputy Labour Commissioner, Lucknow and the third with the State Government, where it was informed that the grievances of the petitioner have been sent to the Principal Secretary, Medical Education by the Chief Minister's office.

We had postponed the matter after lunch in order to know the response of the respondent No.3 keeping in view the orders passed as also the aforesaid negotiations that had been informed to us that were underway.

Sri Chaturvedi, learned Senior Counsel for the respondent No.3 has stated that 10 members of the All India Government Nurses Association, New Delhi have had a talk with the officials of the concerned Ministry of the Government of India and keeping in view the talks that have been advanced, the Federation has for the time being called off the strike and has postponed it till any further decision is taken.

He further states that before the Deputy Labour Commissioner, the proposals were put forward and Shri Bhasin has produced a copy of the proceedings where it is recorded that the next negotiations will take place on 21.03.2016.

The State Government would also be taking up the matter accordingly.

On a specific query raised by the Court in relation to the notice of strike, given by the respondent No.3 w.e.f. tomorrow. i.e., 15.03.2016, Sri Chaturvedi has categorically stated that the strike has been called off and postponed and that the work would continue normally by the members of the respondent No.3-Association.

Sri Sudeep Seth, learned counsel for the petitioner has urged that for such essential services, there should be a Code of Conduct on the same pattern as suggested by the Delhi High Court in the judgment dated 20.05.2002, copy whereof has been filed as Annexure - 7 to the writ petition. He further submits that such impending strikes or threat of strikes should not be permitted keeping in view the essential nature of the services.

Learned Standing Counsel has informed that the State Government has issued the notification on 11.03.2016 extending the application of ESMA for a further period of six months.

In the aforesaid background, we find that the interest of the patients

as projected by the petitioner at the moment stands appropriately protected insofar as the strike has been warded off in the circumstances indicated here-in-above.

We therefore, at this stage, dispose of this writ petition with liberty to any public spirited person or any other affected person in the event such services are impeded violating of law.

At the same time, we issue a Writ of Mandamus directing the respondent No.2/Sanjay Gandhi Post Graduate Institute of Medical Services to consider adopting same regulation or rule on the pattern of the decision of the Delhi High Court judgment so that a redressal mechanism as provided for in the event any such impasse is created. We expect that such exercise shall be done preferably within a period of three months or even before as may be convenient to the institute so that the respondent No.3-Association may also have a platform for raising their grievances and get the same redressed.

With the aforesaid directions, the writ petition stands disposed off.

Let a copy of this order order be supplied to the parties' counsel today.

Order Date :- 14.3.2016

lakshman

[Attau Rahman Masoodi, J.] [Amreshwar Pratap Sahi, J.]

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH LUCKNOW

W.P. NO. OF 2018 CM (B) P.C.
Jitendra Kumar Hemant Kumar VERSUS State of UP. & others.
ANNEXURE NO. 7

Court On Its Own Motion vs All India Institute Of Medical ... on 20 May, 2002

Delhi High Court

Court On Its Own Motion vs All India Institute Of Medical ... on 20 May, 2002

Equivalent citations: 2002 (64) DRJ 418, 2002 (94) FLR 408, (2002) IILLJ 424 Del

Author: D Gupta

Bench: D Gupta, S Mukerjee

JUDGMENT Devinder Gupta, J.

1. This matter arose pursuant to suo motu notice taken by us in relation to the then on going strike by the Residents Doctors Association of AIIMS in the month of August, 2001.
2. Taking note of the observations of the Apex Court in Surjeet Singh v. State of Punjab and Ors. 1996(2) Supreme 11, it was felt that the right to life enshrined under Article 21 of the Constitution of India, would include the right against denial of treatment or even from being presented from availing the services of any doctor or any other member of the staff from attending to patients and rendering medical assistance to them. In doing so, we also relied upon the judgment in Vincent v. Union of India ; Consumer Education and Research Centre and Ors. v. Union of India and Ors. 1995 SCC (3) 42 ; and Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr. . Learned Additional Solicitor General Sh. R.N. Trivedi was also requested to assist the Court in this matter being one of social importance and relevance.
3. On 29.8.2001, we were informed that the strike in AIIMS had been called off, but that the grievances of staff remained, and therefore certain permanent measures were required to tackle the problem.
4. We directed the management of AIIMS to indicate the progress in the enquiry stated to have been initiated and also to indicate the measures which can be taken for expeditiously looking into and resolving the grievances of the employees and the doctors working in the hospital, in order to avoid frequent-resort by the aggrieved staff to strikes. Thereafter the matter was adjourned from time to time, and on 1.2.2002 we were informed that certain suggestions of the learned Addl. Solicitor General were being considered by the General Body of the AIIMS.
5. Lately an affidavit dated May 2002 has also been filed in this Court. We have heard the submissions of learned counsel for the parties, including learned-Additional Solicitor General assisting this Court, and we consider it appropriate to dispose of this matter, with the consent of all parties by making the following observations and directions:-
 - (i). A permanent negotiating machinery (PNM) be set up by the AIIMS as per their affidavit dated 6.5.2002, subject to the modification which we are indicating hereunder:-
 - (a) That the Dean AIIMS shall be the Chairman;
 - (b) The Dy. Director (Admn.) will be the Member Secretary;
 - (c) The Medical Superintendent, AIIMS will be a member;

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(d) The Chief of the Centre in question or the available next senior-most Professor of that Centre shall be a member; and

(e) One representative of the employees will be a Member.

Provided that the Director of the Institute may, in the interests of having a more broad-based representation, co-opt any two more members from amongst the categories mentioned in Annexure R-1 to the affidavit dated 6.5.2002, wherever the same be deemed by him to be required in the exigencies of the situation.

(ii). The said Committee will stand duly authorised to resolve any sudden incident which either disrupts or has the potential of disrupting the smooth functioning of the AIIMS.

(iii) The above said Committee will take a decision one way or the other, in any matter brought to its knowledge or coming before it in any manner whatsoever, within a maximum period of fifteen days of the matter coming up before it or coming to its knowledge. This period of thirty days is the outer limit indicted by us and within the said period of fifteen days also, the Committee shall always remain cognizant of relative urgency of each matter, and the exigency of each situation and the matter will be processed most expeditiously and if required on day to day basis.

(iv) Unless the period of thirty days is extended with the consent of all the parties, or a substantial number of them (in the meaningful sense of the term 'substantial' used by us in the previous phrase), those disputes which are not resolved by the PNM within fifteen days, would be referred to the adjudication of an Arbitration Tribunal comprising of the Health Secretary (Central Government), Director General of Health Services, Director AIIMS and Additional Secretary Labour or any other officer of equal rank from the Ministry deputed for the said purposes by the Labour Secretary, Government of India. This will however be subject to the condition that in the event of the dispute being one concerning any class of employees or any subject matter which is also subject to the jurisdiction of a statutory Tribunal under any Act of Parliament or under Government Rules, then unless they consent to decision by the Arbitration Tribunal, the party/parties will be entitled to avail the benefit of the statutory remedies.

It is however clarified that PNM/Arbitral Tribunal would not be empowered to entertain, decide or adjudicate any issue relating to policy matters, including those involving recruitment, promotion, pay scales and service conditions etc. of all employees/doctors and others working in the Institute.

(v). In case any party or parties are not prepared to submit themselves to the jurisdiction of the Arbitral Tribunal and opt/elect for other statutory remedies, they shall be subject to the condition that they will ventilate their grievances only by way of in those proceedings, and not by way of any direct action against the Institution or any other employee or category of employees, or any other person or persons.

(vi) The Arbitral Tribunal shall take a decision one way or the other in the matter within a period of three months which period shall only be extended with the consent of the parties. In case any of the

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parties does not cooperate, the Arbitral Tribunal will be entitled to proceed to decide the matter on the available records within the stipulated period.

(vii) The AIIMS will modify its Service Rules and terms and conditions to incorporate the above directions within the said Rules, and shall take all steps necessary to make the same applicable and binding upon all categories of employees.

There shall be the following Code of Conduct applicable to all employees of AIIMS:-

- (i) No employee of staff of faculty member will cease work for any reason whatsoever or disrupt the work, or aid, or abet such disruption or cessation;
- (ii) No use of loud speakers or shouting of slogans, demonstrations, Dharna within the campus.
- (iii) No gate meetings or protest meetings of any kind whatsoever are to be held within the radius of 500 Mtrs. from the boundary of the Institute;
- (iv) No interference in any official work.
- (v) No resort to any disruptive activity.
- (vi) All Trade Union activities will be carried outside the campus;
- (vii) Any violation will result into disciplinary and other actions;

6. We are conscious of the fact that employees ordinarily also have a right to agitate their grievances by way of peaceful action including collective bargaining and collective action. However, considering the special circumstances of the AIIMS as an Institution and particularly the sensitive nature of such a super-speciality referral hospital requiring the uninterrupted and smooth functioning of each and every sphere of activity as also the space and locational constraints such as ICU/Emergency/Trauma Centre being all located close to the entrance and exist areas, and also Blood Bank facilities, life-saving medicines and devices being required at short notice, as well as unimpeded movement of medical and para-medical personnel having to be ensured at all times, it would be appropriate and in the interest of justice and also in public interest, that there should be no activity in the nature of strike, dharna or demonstration or gherao at, or in, or around the AIIMS at all.

7. The impact of a strike in a hospital is totally different from that in the case of a factory or trading establishment. Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as required constant and incessant attending and care and therefore unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking staff. Unlike financial losses, the loss of life or limb cannot be recouped. Reference may be made to the judgment of Single Judge of Bombay High Court in Baratiya Arogya Nidhi Sheth Kantilal C. Parikh General Hospital v. Bombay Labour Union 2001

LLR 587 (Bom HC).

8. Hospitals are also public utility service within the meaning of Industrial Disputes Act. It was also the intention of Parliament, as is envisaged by the 1982 amendment to the definition of 'industry' under the Industrial Disputes Act, that hospitals have been excluded from the scope of definition of industry and from the purview of the Industrial Disputes Act, 1947. Even though the said amendment has not been brought into force but it does reinforce the position that "hospitals" have to be treated as a class apart from "industry".

9. We also draw upon the ratio of the Apex Court decision reported as Communist Party of India(M) v. Bharat Kumar and Ors. taking note of the heightened applicability in the case of a hospital. We may also note that though learned counsel for Respondent No. 4 at one stage did not try to make certain submissions regarding the right to resort to what he described to be milder forms of protest such as "go slow" etc, but on our pointing out that even such type of protest is an anathema to activities involving matter of life and death such as administering of oxygen or transfusion of blood or reviving the heart etc, thereupon learned counsel did not press further that contention.

10. We however direct that any authority be it Police or the Labour Department or Civil or Delhi Administration or Health or Ministry of Health, to which any representation, or complaint or request for taking action for resolving any dispute, is referred or brought to their notice, or otherwise comes to their notice in a manner warranting action, then keeping in view the special circumstances of an Institution such as AIIMS, and our present orders, the necessary action by all the authorities referred to above and any other departments before whom such matters come up, shall be always dealt with and carried on utmost priority basis, and if possible out-of-turn, and at all times will be so conducted so as to give no occasion for any dispute or any disruption or prejudice to the smooth functioning of the hospital.