

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5641 of 2020

Shivani Kaushik

... .. Petitioner/s

Versus

Union of India

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7135 of 2020

Dinesh Kumar Singh

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7207 of 2020

Aditi Hansaria

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7208 of 2020

Ashish Sinha

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7209 of 2020

Kishore Kunal

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s



with

Civil Writ Jurisdiction Case No. 7212 of 2020

Abhinay Priyadarshi

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5641 of 2020)

For the Petitioner/s : Mr. Shivani Kaushik (In Person)

For the Respondent/s : Mr. Anjani Kumar (AAG4)

(In Civil Writ Jurisdiction Case No. 7135 of 2020)

For the Petitioner/s : Ms. Ritika Rani

For the Respondent/s : Mr. Lalit Kishore, Advocate General

(In Civil Writ Jurisdiction Case No. 7207 of 2020)

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General

(In Civil Writ Jurisdiction Case No. 7208 of 2020)

For the Petitioner/s : Mr. Saket Tiwary, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General

(In Civil Writ Jurisdiction Case No. 7209 of 2020)

For the Petitioner/s : Mr. Kishore Kunal (In Person)

For the Respondent/s : Mr. Lalit Kishore, Advocate General

(In Civil Writ Jurisdiction Case No. 7212 of 2020)

For the Petitioner/s : Mr. Ritesh Kumar, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

12 24-08-2020 During the course of hearing of these petitions, learned Advocate General invites our attention to a vital issue of importance effecting public health. It is pointed out that one Association of Para Medical Employees has already resorted to strike. Following suite, the doctors have also threatened to go on strike.



In this regard, our attention is invited to the new reports published in the daily newspapers, Dainik Bhaskar dated 24.08.2020 and Dainik Jagaran dated 24.08.2020 which reads as under:-

“एनएचएम कर्मी हड़ताल पर कोरोना डाटा इंट्री प्रभावित

पटना: राष्ट्रीय स्वास्थ्य मिशन (एनएचएम) के संविदाकर्मी रविवार से अनिश्चितकालीन हड़ताल पर चले गए। इस कारण कोरोना डेटा इंट्री का काम प्रभावित हो गया है। राज्य स्वास्थ्य समिति के कार्यपालक निदेशक द्वारा 22 अगस्त तक मांगें पूरी करने की दिशा में कोई कार्यवाही नहीं होने पर कर्मियों ने हड़ताल का निर्णय लिया है। सिविल सर्जन डॉ. राजकिशोर चौधरी ने कहा कि इससे कोरोना संबंधी आंकड़ों को अपलोड करने में कुछ परेशानी होगी। संविदाकर्मी 20 जुलाई को भी हड़ताल पर गए थे। एनएचएम कर्मी संघ, विभाग के कार्यपालक निदेशक व विभागीय मंत्री के बीच वार्ता हुई थी। इसमें एक माह में मांगें पूरी करने का आश्वासन दिया गया था।”

“नेशनल हेल्थ मिशन के कर्मी हड़ताल पर गए

पटना। राज्य के स्वास्थ्य केंद्रों में संविदा पर तैनात नेशनल हेल्थ मिशन के कर्मी रविवार से अनिश्चितकालीन हड़ताल पर चले गए हैं। इनमें हेल्थ मैनेजर, डाटा ऑपरेटर, डिस्ट्रिक्ट प्रोग्राम मैनेजर, एकाउंटेंट, ब्लॉक कम्युनिटी मोबलाइजर, मॉनिटरिंग एंड इवैल्युएशन आफिसर, फैमिली प्लानिंग काउंसिलर आदि शामिल हैं। इनकी तैनाती हेल्थ सब सेंटर से लेकर राज्य स्वास्थ्य समिति तक है। बिहार राज्य स्वास्थ्य संविदा कर्मी संघ के अध्यक्ष मोहम्मद अफरोज अनवर ने कहा कि अपनी मांगों के समर्थन में एक महीना पहले भी हड़ताल पर गए थे। उस दौरान आश्वासन मिला था कि कमेटी गठित कर एक महीना के अंदर मांगों की पूर्ति कर दी जाएगी। लेकिन अभी तक उन मांगों की पूर्ति नहीं हुई।”

In our considered view, during the time of current situation and circumstances prevalent as a result of Pandemic Covid-19, none of the functionaries empowered and authorized under the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 can refrain from discharging their duties and functions, more so by resorting to the



mechanism of strike which perhaps may be illegal. The doctors and the para medical staff(s) are constitutionally duty bound, even so on humanitarian grounds, to protect and preserve human life. Perhaps, they may have some genuine grievance, but then for redressal thereof, proper mechanism has to be resorted to, but State cannot be put to ransom by resorting to an illegal method of protest, i.e. going on indefinite strike.

Article 21 imposes an obligation not only on the State, but also on its functionaries to safeguard and protect the life of every individual as the Hon'ble Apex Court has already held preservation of human life is of paramount importance. The Medical Officers and the Para Medical Staff(s) employed in the Government Hospitals are duty bound to extend medical assistance for preserving human life. Failure on their part to provide timely medical treatment in the need of hour results in violation of right to life. This is what Hon'ble Apex Court held long ago. Consistently thereafter, every Court of the land, more so this Court in its earlier decisions has already highlighted the need and struck down such an action of the employees.

In Kameshwar Prasad and others v. State of Bihar and another, AIR 1962 SC 1166, the Apex Court held as under:-

“The rule in so far as it prohibits a strike cannot be struck down since there is no



fundamental right to resort to a strike.”

Article 21 imposes an obligation on the State 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 and the medical officers employed therein 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. [*Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37*]

There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a “Bandh” which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. [*Communist Party of India (M) v. Bharat Kumar, (1998) 1 SCC 201*]

The Hon’ble Apex Court in *T.K. Rangarajan v. Govt. of*



T.N., (2003) 6 SCC 581:

“19. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike.”

In Ashoka Kumar Thakur v. Union of India, (2011) 12

SCC 787, the Hon’ble Apex Court held as under:-

“5. As was noted by this Court in *Paschim Banga Khet Mazdoor Samity v. State of W.B. (1996) 4 SCC 37* a person’s right to get treated is inseparable from Article 21 of the Constitution of India. Keeping that aspect in view, we had required the persons who were on strike, demonstration, etc. to call them off to avoid inconvenience to the patients. The



damage done to a patient is sometimes irretrievable, but the grievances of the persons who are resorting to strikes, etc. can be remedied in appropriate proceedings and the issues are being examined by this Court.

6. In that background, making the position clear that if any action is taken by the Government in respect of the impugned policy, the same shall be subject to the outcome of the present proceedings and/or any proceeding which may be filed relating to the issues, we direct that all protests, strikes and demonstrations or any such form of dissent relating to the issues being examined and/or connected and/or incidental and/or relatable thereto shall be called off forthwith. The medical services shall be restored forthwith. The doctors cannot be insensitive to the plight of patients.”

In Navtej Singh Johar v. Union of India, (2018) 10

SCC 1, at page 241, the Hon’ble Apex Court held as under:

“In the evolution of its jurisprudence on the constitutional right to life under Article 21, this Court has consistently held that the right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right to health.²⁴⁵ The right to health is understood to be indispensable to a life of dignity and well-being, and includes, for instance, the right to emergency medical care and the right to the maintenance and improvement of public health.”

Preservation of human life is of paramount importance.

That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the



capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are incharge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment. A doctor at the Government hospital positioned to meet the State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. Every doctor should be reminded of his total obligation and be assured of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him either by himself or being carried by others. [**Pt. Paramanand Katara v. Union of India & Ors.,**



AIR 1989 SC 2039].

We are duty bound, more so by virtue of Article 144 of the Constitution to enforce the orders passed by Hon'ble the Apex Court.

As such we issue notice to the Bihar State Contractual Health Employees Federation and Junior Doctors Association.

Notice be effected through the Director, Health Department, Government of Bihar, Patna.

We also direct the Association and each one of the members of these Associations also other persons discharging duty as Para Medical workers and doctors to immediately call off their strike and discharge their respective duties.

Violation would only tantamount to aggravation of contempt.

List day-after-tomorrow, i.e. 26.08.2020.

(Sanjay Karol, CJ)

(S. Kumar, J)

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