

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 23rd December, 2014

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W.P.(C) No.8201/2014

FIGHT FOR HUMAN RIGHTS

.... Petitioner

Through: Mr. K.R. Chitra, Adv.

Versus

UNION OF INDIA & ANR

.... Respondents

Through: Mr. Amit Mahajan, Adv. for R-1.
Mr. T. Singhdev with Mr. Manan
Khera, Advs. for R-2 MCI.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This petition under Article 226 of the Constitution of India seeks the following reliefs against the respondent no.1 Union of India and the respondent no.2 Medical Council of India:-

- “(a) Direct respondent no.1 to make available medical treatment to the general public at reasonable cost.*
- (b) Direct respondent no.1 to make easily available medicines by their generic names by opening Jan Aushodhi Stores on a large scale throughout the territory of India and give systematic, regular publicity regarding the low prices of unbranded medicines with correct and accurate location of*

the Jan Aushodhi Stores and ensure regularly that the stores are always functional.

- (c) Set up high powered enquiry committee consisting of persons of high integrity and knowledge to enquire into malpractices of hospitals for paying commissions to doctors for referring patients and for carrying out unnecessary procedures, to conduct detailed investigation into overcharging by hospitals and companies and overcharging of various medical devices and thereby looting patients and submit detailed report to this hon'ble court within a reasonable time.*
- (d) To setup regulatory authority to ensure that medical device companies do not overcharge patients, to bring medical devices like cardiac drug eluting stents, cochlear implant, bone cement orthopaedic implants, disposable syringes, ocular lens heart valves and other costly medical equipments under price control by the National Pharmaceutical Pricing Authority.*
- (e) Direct respondent no.1 to take immediate stringent action including cancellation of lease of hospital land etc., against hospitals for giving commissions to doctors for referring patients and for carrying out unnecessary procedures.*
- (f) Direct respondent no.2 stringent action against the doctors under Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 who do not prescribe medicines including life saving drugs by their generic names.*
- (g) Direct respondent no.2 to initiate immediate penal action against doctors who indulge in unethical and medical malpractices under India Medical*

Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

- (h) To setup permanent monitoring committee consisting persons of high integrity, knowledge to monitor regularly opening and functioning of Jan Aushodhi Stores throughout the territory of India and to monitor availability of good quality Generic Medicines in sufficient quantity and to ensure that all essential and life saving drugs are notified in the list of Price Control managed by National Pharmaceutical Pricing Authority.*
- (i) Any other order or relief as this Hon'ble Court deems fit and proper may also be passed in the interest of justice and equity."*

2. The petition came up before us on 26th November, 2014 when after hearing the counsel for the petitioner at length we reserved judgment.

3. Qua the first of the aforesaid reliefs, of issuing a direction to the Union of India to make available medical treatment to the general public at reasonable cost, we may notice that the Central Government as well as the Government of National Capital Territory of Delhi have already set up public hospitals for providing medical treatment at no cost or at reasonable cost. We are of the view that beyond the same, it is not in the domain of this Court to issue any such direction. The Supreme Court in ***State of Punjab Vs. Ram Lubhaya Bagga*** (1998) 4 SCC 117 held that no State or country can

have unlimited resources and provision of facilities cannot be unlimited and that the Courts would not interfere with any opinion formed by the Government. A Single Judge of this Court in *J.K. Sawhney Vs. Punjab National Bank* 169 (2010) DLT 743 held the retired employees of the bank to be not entitled to medical reimbursement when the bipartite settlement between the bank and its employees did not provide therefor. It was further held that those not covered by the CGHS could not be given benefit thereof and the question as to who should be entitled to benefit under the scheme is a matter of policy and in which the Courts cannot interfere. Intra Court Appeal being LPA No.437/2010 preferred against the said judgment was dismissed on 6th September, 2010. It was held that though it is the constitutional obligation of the State under Article 21 of the Constitution to safeguard the life of every person and such a right is a right to lead healthy life but no law mandates that every citizen is entitled to free medical treatment without any limitation on the amount that can be claimed as reimbursement.

4. Reference may also be made to the judgment of the Constitution Bench of the Supreme Court in *Confederation of Ex-Servicemen Associations Vs. Union of India* (2006) 8 SCC 399 in which the claim of

ex-defence personnel to full and free medical aid for themselves and their families as a fundamental right was for consideration; they were challenging the contribution demanded from them for the health care scheme introduced *inter alia* on the ground that since they were entitled to free and full medical aid while in service, they were entitled thereto post retirement also and on the ground that the members of the civil service were availing CGHS benefits during service as well post retirement. The Supreme Court negated the said challenge and held the classification between in-service and ex-service employees to be legal, valid and reasonable and further held that the extension of the benefits enjoyed while in service, post retirement cannot be claimed as a right.

5. Another Division Bench of this Court (of which one of us i.e. Rajiv Sahai Endlaw, J was a member) in *Union of India Vs. Sh. S. Srinivasa Rao* MANU/DE/7428/2011 was concerned with a claim by a retired employee of National Seeds Corporation Ltd. to the benefits of the CGHS. The said claim was dismissed. The Supreme Court thereafter in *State of Rajasthan Vs. Mahesh Kumar Sharma* (2011) 4 SCC 257 has also negated a claim by an employee of the District and Sessions Court of Rajasthan for reimbursement in entirety of the medical expenses incurred outside the State.

It was held that the Government having formulated necessary rules permitting the reimbursement of medical expenses in certain situations and up to a certain limit only, the Court could not give a direction for reimbursement in other situations / beyond that limit also.

6. The counsel for the petitioner referred us to *Paschim Banga Khet Mazdoor Samity Vs. State of W.B.* (1996) 4 SCC 37 which though observes that in a welfare State it is the primary duty of the Government to secure the welfare of the people and providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State but in the context of the Government hospitals run by the State and the medical officers employed therein failing to perform their duty.

7. Thus no general direction as sought in the first prayer can be given.

8. As far as the second of the aforesaid reliefs is concerned, it is the pleading of the petitioner, (i) that it has been reported in the newspapers that the doctors prescribe only branded drugs, though are required by the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (Code of Ethics Regulations) to, as far as possible, prescribe drugs with generic names; and, (ii) that though there exists Jan Aushodhi scheme

of the Government of India to provide quality generic medicines at affordable prices but the same is not being implemented effectively, with a large number of Jan Aushodhi stores in the States of Rajasthan, Andhra Pradesh and Tripura lying closed and the stores in some other States being non-functional.

9. We have perused the documents filed by the petitioner. The Department of Pharmaceuticals under the Ministry of Chemicals & Fertilizers, Government of India vide letter dated 24th June, 2014 to the petitioner has informed that as on 31st May, 2014, 164 Jan Aushodhi stores had been opened in different States and a large number of such stores had been opened in the premises of the Government hospitals and that such stores provide quality generic medicines. It is however further informed that certain stores in the States of Punjab, Haryana, Andhra Pradesh, West Bengal, Uttarakhand and in Himachal Pradesh were on that date non-functional due to administrative reasons. It is thus not as if the Government has not taken the steps in accordance with its Jan Aushodhi scheme. Again, it is a policy decision as to the need for how many stores and at what places has been assessed by the Government. This Court cannot encroach into the policy matters and cannot start interfering with the decisions taken by the

Government in this regard, particularly when except for making general averments, no specific allegation has been made. As far as the stores in the other States which are stated to be non-functional for administrative reasons, it is not as if that those are the only stores in those areas. Moreover we, exercising jurisdiction sitting in Delhi, do not deem it appropriate to issue any directions with respect to the stores in the other States which are non-functional. It would be appropriate for the concerned High Court to issue the directions if any required in this regard. This is more so when the petitioner has not even given any particulars as to what are the administrative reasons owing to which the said stores are stated to be non-functional. We can only direct the Central Government, if the closure of the said stores is attributable to the Central Government, to take the necessary steps to make the said Jan Aushodhi stores functional.

10. As far as the third of the aforesaid reliefs claimed, for setting up of a high powered inquiry committee to enquire into the malpractices in the field of medicine is concerned, the machinery therefor exists under the Indian Medical Council Act, 1956 and the Code of Ethics Regulations. The petitioner itself has impleaded the Medical Council of India as respondent no.2 to the petition. No ground for setting up another high powered

committee exists. If the petitioner or any other person has any complaint of malpractice against the hospitals or the doctors, they are entitled to file complaints in accordance with the procedure prescribed under the said Act.

11. The same is the position with respect to the relief claimed of overcharging by hospitals and medical equipment /devices suppliers. In our opinion sufficient regulatory mechanism exists therefor under the Essential Commodities Act, 1955 and under the Drugs and Cosmetics Act, 1940. We may inform the petitioner that besides the Drug Controller General of India, a Central Drugs Standard Control Organization exists under the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India and which organization also has a Medical Devices and Diagnostic Division. Import, manufacture, sale and distribution of medical devices in India is regulated under the provisions of the Drugs and Cosmetics Act and the Government of India has from time to time been notifying the medical devices thereunder. The petition itself refers to the National Pharmaceutical Pricing Authority, an organization of the Ministry of Chemicals & Fertilizers, Government of India established *inter alia* to fix / revise the prices of controlled bulk drugs and formulations and to enforce prices and availability of medicines in the country under Drugs (Prices

Control) Order issued from time to time. Attention in this regard is also drawn to the National List of Essential Medicines drawn up under the Prices Control Order. The petition does not state as to why the regulatory mechanisms so available are not sufficient and what is the basis for seeking a direction for constitution of a high powered committee and a regulatory authority.

12. As far as the relief claimed of cancellation of lease of hospital lands for giving commissions to doctors for referring patients and for carrying out unnecessary procedures is concerned, the leases of land are governed by the Government Grants Act, 1895 and the petition totally fails to satisfy as to how such a direction can be issued. The petitioner while filing the petition appears to have been swayed more by emotion than by law.

13. No direction as sought in the prayer paragraphs (f) & (g) can be issued to the Medical Council of India. The action to be meted out by the respondent no.2 Medical Council of India to the erring doctors has to be guided by the mandate of the Indian Medical Council Act and the rules & regulations framed thereunder.

14. The relief sought in the prayer paragraph (h) is relatable to what we have discussed hereinabove with respect to the Jan Aushodhi stores and need for issuing any such direction has not been satisfied.

15. We therefore do not find any merit in the petition and dismiss the same, save for the direction as aforesaid to the Central Government with respect to the non-functional Jan Aushodhi stores.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 23, 2014

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