HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) D.B. Civil Writ Petition No. 11294/2017

Suo Moto

----Petitioner

Versus

State of Rajasthan & Ors.

----Respondents

Connected With

(2) D.B. Civil Writ Petition No. 2297/2016

Sanyam Lodha

----Petitioner

Versus

State of Rajasthan And Ors.

----Respondents

For Petitioner(s)	:	Mr. Rajvendra Saraswat, *Amicus Curiae* Mr. Ravi Bhansali, Sr. Adv. assisted by Mr. Vipul Dharnia
For Respondent(s)	:	Mr. Pankaj Sharma, AAG Mr. Rishi Soni

HON'BLE THE CHIEF JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE DINESH MEHTA

Order

12/07/2019

This *suo-motu* proceeding in public interest was initiated on account of reports published in the Press on 2.9.2017 with respect to the death of 90 infants in the M.G. Government Hospital at Banswara. Thereafter, a series of orders- the most significant being orders dated 7.9.2017, 24.4.2018 and 22.4.2019 were made issuing a series of directions. The record also discloses that the Court had appointed *amicus curiae*, who was requested to visit

the concerned hospitals/medical facilities and prepare reports. The orders of this Court dated 15.2.2019, 21.2.2019, 12.3.2019 and 9.4.2019 show that high level officials of the Department of Medical and Health, Government of Rajasthan were required to be present in Court.

The written submissions filed by the *amicus* listed some of the major reasons for the failure to provide timely and adequate medical relief, which resulted in the death of over 90 infants at Banswara including woeful lack of doctors and other medical staff, lack of adequate and proper infrastructure, improper discharge of duties, lack of medical and nutritional facilities and low level of public awareness etc. The *amicus* also drew attention to the newspaper report in *Rajasthan Patrika* dated 31.1.2019 again reporting that there were 5 infant deaths in Udaipur district each day. Another report (dated 10.2.2019) published by *Dainik Bhaskar* mentioned about a sting operation which was continuously carried out for 28 days in 13 districts and 92 labour rooms in places such as Ajmer, Jaipur, Bhilwara, Rajsamand, Udaipur, Dungarpur, Banswara, Pratapgarh, Chittorgarh, Dausa, Karoli, Sawaimadhopur and Tonk, highlighting serious lack of medical facilities and even practices such as deliveries conducted by cleaning/labour staff, (in the absence of doctors and nurses) and in some instances, failure of nurses to discharge duties, lack of medical and staff facilities etc.

Pursuant to an order, the *amicus* carried out surprise inspection, one such being in Banswara on 28.6.2019; the *amicus* was accompanied by the Secretary, Legal Services Authority, Banswwra and the Chief Judicial Magistrate. The *amicus'* report highlights *inter-alia* that Banswara is a Tribal Sub Plan area populated by Tribals and SC/ST category individuals and that one

major cause of deaths and high infant mortality rate is lack of education and awareness among the general public.

The *Amicus* suggests that awareness drive should be pro-actively and progressively pursued for which programmes like "*Pukar*" to encourage institutional pregnancy should be carried out. It is highlighted that appropriate human resource was not available in the PHCs/CHCs etc. especially in regard to child birth and that Electricians, Plumbers and Sweepers, were engaged on contractual duties, whose work was completely unsatisfactory. The *amicus* also highlighted the woeful nutritional inadequacy of infants who at the time of birth were on an average 700-800 gms, which indicated mal-nutrition of pregnant women. Grave inadequacy in infrastructure such as utter lack of hygiene and cleanliness, lack of water- some time even electricity and inadequate medication or absence of bare essential medication and medical equipment were other aspects highlighted by the report. The report observes that the SNCU units were being operated on three radiant warmers in each of which two infants were found by the team, which showed grave inadequacy of such infrastructure which exposed the PHCs concerned to the risk of infant mortality constantly on account of a real threat of infection.

This Court, after hearing counsel for the parties including the State, directed the respondents to indicate the availability of staff, especially doctors of the grade of Medical Officers (MOs) who have to head the PHCs. The State produced a tabular statement which reflects the details of sanctioned strength, working strength and vacancy positions in different cadres of doctors (including Dentist and Specialist). The said tabular statement is reproduced as below:-

"DETAILS OF SANCTION, WORKING AND VACANT POSITION OF DIFFERENT CADRES OF DOCTORS (PHYSICAL STATUS AS ON 08.07.2019)

S. No.	*POST*	*SAN*	*WORK*	*VACANT*	*GRADE PAY*	*ACTUAL WORKING IN GRADE PAY*
1	*Director*	*4*	*3*	*1*	*10000*	*3*
2	*Ad.Director*	*4*	*4*	*0*	*8700*	*1139*
3	*S.L.O.*	*1*	*1*	*0*		
4	*Joint Director*	*21*	*21*	*0*		
5	*Dy.Director & Equal*	*94*	*94*	*0*	*7600*	*1251*
6	*Senior Specialist*	*382*	*287*	*95*		
7	*Junior Specialist*	*3147*	*2110*	*1037*	*6600*	*2209*
8	*SMO & Equal*	*1140*	*795*	*345*		
9	*DY.CMHO*	*52*	*52*	*0*		
10	*S.M.O.(Dental)*	*12*	*12*	*0*		
11	*Medical Officer*	*6219*	*4870*	*1349*	*5400*	*4240*
12	*M.O.(Dental)*	*399*	*318*	*81*		
	SUB TOTAL	*11475*	*8567*	*2908*		*8842*
13	*Under E.S.I.*	*354*	*274*	*80*		
	GRAND TOTAL	*11829*	*8841*	*2988*		

Physically Not Working

1	*EXTRA*	*416*
2	*PG*	*1263*
3	*ABSENT*	*149*
4	*SR DEMO*	*75*
5	*ASST PROF*	*133*
6	*SR RESIDENT*	*70*
7	*SUSPEND*	*55*
8	*APO*	*23*
9	*DEPUTATION*	*24*
10	*DPC*	*17*
	TOTAL	***2225***

GRAND TOTAL 11829 (8842+2225= 11067 762"

During the course of hearing the State also produced a detailed list of district wise position of such vacancies. It was further submitted that as against the sanctioned strength of 6219 vacancies in the cadre of Medical Officers (which is the primary

position and who man PHCs), 4870 are in position and that in that respect as far as 1349 vacancies go, 1263 officials (in the cadre of MO and other grades) are unavailable on account of their pursuing post graduate studies. Counsel submitted that sanction has been obtained for creation of about 762 additional posts, who would cater to the exigencies such as leave vacancies, casual vacancies etc. It was also submitted that as a purely temporary measure, the Department of Health would be very shortly taking steps to engage 737 medical officers on urgent temporary basis (for contract period ranging from six months to one year or till the posts are filled by regular process, whichever is earlier). It was also submitted that a Committee has been constituted to examine and urgently report on rationalization of man power as well as rationalization of equipment given that the inventory of equipment available at various locals exists centrally.

The submissions of the parties and figures provided by the State reveal that the public health care physical infrastructure includes 14407 sub-centres (which are manned by nurses etc.), 2090 PHCs each of which would have atleast one MO, 606 Community Health Centres (CHCs) and 57 Satellite Hospitals. These Hospitals are over and above the General Hospitals to which Colleges are attached. The figures provided by the State show that there is awful inadequacy and manpower requirement in the cadre of Medical Officer (1349 vacancies) and Junior Specialist (1037 vacancies). Though the figure on the official record (with regard to filling of vacancies) appears to be less because many doctors are holding positions or discharging duties which do not pertain to their cadre, yet the working strength, i.e of MOs is short to the extent of about 22%. The *amicus* report suggests that the most

vulnerable areas, i.e. the TSP areas appear to be the worst hit, as there are staffing and grave infrastructural inadequacies.

Right to public health care is an intrinsic and essential component of the right to life. The Directive Principle of State Policy contained in Article 47 considers it the primary duty of the state to improve public health, securing of justice, humane condition of works, as well as extension of sickness, old age, disablement and maternity benefits. Several judgments of the Supreme Court explained the content of the right to life, and held that it included the right to live with human dignity including the right to good health. (*Bandhua Mukti Morcha v Union of India* AIR 1984 SC 812). In *Consumer Education and Research Center v Union of India* (AIR 1995 SC 636) the Supreme Court declared that the right to health was an integral factor of a meaningful right to life. The court held that the right to health and medical care is a fundamental right under Article 21. The Supreme Court in *State of Punjab v Ram Lubhaya Bagga,* (1998) 4 SCC 177 observed that the right of one person is connected with a duty cast upon another individual, employer, government or authority. Consequently, citizens' right to life under Art 21 casts obligations on the State. This obligation is underlined by Article 47. The State has an obligation to secure health to its citizens. The government strives to fulfil this obligation by setting up public healthcare facilities, government hospitals and health centers. They must be within the reach of its people, if they are to be effective.

Later, in *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37 it was held that

" It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused

this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State has to be kept in view."

The Court made certain additional direction in respect of serious medical cases:

"(a) Adequate facilities be provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
(b) Hospitals at the district and sub divisional level should be up-graded so that serious cases be treated there.
(c) Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.
(d) To ensure availability of bed in any emergency at State level hospitals, there should be a centralized 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.
(e) Proper arrangement of ambulance should be made for transport of a patient from the public health center to the State hospital.
(f) Ambulance should be adequately provided with necessary equipment and medical personnel."

In the circumstances, the following directions are issued to the State:

(1) to resort to urgent temporary basis appointment, especially in the MO cadre and wherever there is critical staff deficiency- as it was doing previously, purely to tide over the present crisis. The Court is of the opinion that the issue involves a larger public interest- inasmuch as the inadequacy of Medical Officers, who are backbone of the very functioning of the PHCs, has resulted in a grave emergency, which justifies such temporary and urgent measures. In these circumstances, the State should assess the need for its requirement for ensuring that posts of Medical Officer in all PHCs especially in vulnerable and tribal areas are filled at the earliest, preferably within four weeks from today.

(2) The State is also directed to ensure that its appropriate and competent officials carry out inspection of all PHCs

and CHCs in remote and tribal areas, especially TSP areas and based on the needs and the deficiencies noted, take immediate remedial steps towards augmenting equipment, medicines, surgical or other equipment, refrigeration of essential and critical care medication, facilities towards water and also ensuring general cleanliness to eliminate possibility of infection.

(3) The above steps should be completed on an overall assessment made based upon a team, if need be many teams constituted by the State for this purpose. The assessment of every PHC's needs and deficiencies and remedial measures should be listed out and compiled in a report within four weeks. The remedial steps towards ensuring that the deficiencies are removed shall be taken within eight weeks from today.

(4) Apart from the above, the Court also directs that the State should constitute Division wise teams comprising of a senior medical professional; one local Collector or some other senior official from the administration and an independent individual (connected with the health-such as doctor or some one from NGO) to inspect, in each division and prepare reports with respect to the following:-

a. Levels of hygiene.

b. Availability of water

c. Availability of refrigeration facility for essential medication;

d. Availability of sufficient and continuous electricity supply

e. Cleaning of toilets.

f. Nature of equipment available including medicines and the deficiencies, if any.

(5) After receipt of the reports, a comprehensive action plan shall be prepared aiming at: rationalizing the issues of staffing; recruitment and deployment of personnel; optimum utilization of available equipment; allocation of resources; specific consideration of ensuring effective measures for maintaining cleanliness and proper water supply in PHCs, CHCs etc. including examining award of district-wise cleaning contracts rather than locally. The Government should aim at creating a permanent monitoring mechanism to ensure that such shortages are eliminated or minimized and wherever there is a likely vacancy or deficiency, swift and timely action is taken, to prevent tragedies in the future.

An Action taken report in the form of affidavit shall be filed with respect to the issue of immediate staffing and also the urgent measures taken by the State, in the PHCs/CHCs and other medical facilities in the TSP areas, within eight weeks.

List after eight weeks.

(DINESH MEHTA),J **(S. RAVINDRA BHAT),CJ**

Parmar/-