

CASE OF STRIKE BY JUNIOR DOCTORS

This proceeding was initiated suo motu in the wake of the then on going strike of junior doctors of Patna Medical College Hospital and Darbhanga Medical College Hospital in the last week of August 2009, on 31.8.2009. Among other things the government of Bihar was directed to resolve the impasse. Principal Secretary, Department of Health was directed to submit response by 4.9.2009. The Principal Secretary vide his letter no. 695(1) dated 4.9.2009 informed the Commission that junior doctors had resorted to strike even though the proposal for a substantial increase in their stipend was under consideration and an assurance had been given to them in this regard. As per the report 52 patients had died in PMCH between 27.8.2009 and 31.8.2009. In DMCH number of patients dying during the said period was said to be 6. The report curiously stated that "most of the deaths that occurred in both the hospitals were because of the fact that they were suffering from serious illness". The report finally stated that the impasse was resolved and the junior doctors had resumed their duties in the night of 31.8.2009/ 1.9.2009 after calling off the strike.

The said report was considered by the Commission. The Commission took the view that notwithstanding the fact that strike had been called off, as the patients had apparently died due to negligence (occasioned by the strike of the junior doctors), the matter may not be allowed to rest. Vide decision dated 7.9.2009 the Commission called upon Principal Secretary to furnish the names of persons who died during the strike period in PMCH/ DMCH along with other details such as their ailments, parentages, addresses etc. These details were sought in view of the stand of the Department that most of the patients died because they were suffering from serious illness. Surely, for minor ailments a person would not go to PMCH/DMCH or be admitted there. Be that as it may, whether the persons were really suffering from "serious" illness could be ascertained only on getting information from the family members of the deceased.

Copy of the letter of the Deputy Secretary, Department of Health, dated 5.10.2009 addressed to Superintendent PMCH/DMCH has been received directing them to furnish the details to the Commission "directly". We are unable to appreciate the attempt to shirk the responsibility. Report was called from the Health Department and Health Department is supposed to send it, of course, after getting requisite information from the concerned hospitals. The government in the Health Department cannot shrug its responsibility by directing the Superintendent of the hospitals to send the details directly to the Commission.

While the matter thus remained pending it was distressing to find that the junior doctors have again gone on strike. If we go by newspaper reports, as many

as forty persons have died in the PMCH during the last few days because they could not get proper care and treatment on account of the strike by junior doctors. It appears that the main issue is stipend in respect of which, as indicated at the outset, an assurance had been given to the doctors. If the government had given the assurances for substantial increase in the amount of stipend in the month of August itself, it is not understandable as to why final decision has not been taken. We do not wish to express any opinion as to which side is at fault or fasten or apportion the blame. However, it is unassailable that it is the duty of the Government to create a situation in which strikes are avoided. If the demand(s) of junior doctors is reasonable the Government should accept them without any delay. Even if they are unreasonable the government must hold its grip of the situation and take such action as may be necessary with a firm hand. But in any case the interest of the patient must be safeguarded. It is shocking that in a civilized society, patients should die in such large numbers because the doctors would go on strike and the government would be mere spectator.

We are prima facie of the view that the action of the doctors in taking recourse to strike precipitating the deaths of the patients admitted in the hospital and supposedly under their care amounts to isolation of human rights for which the family should be compensated by the concerned doctors

We are also of the view that act of resorting to strike resulting in death of the patients under their care is highly unprofessional for which their names are liable to be struck off from the State Medical Register as well as the Indian Medical Register.

For the present, we direct Principal Secretary, Department of Health to take immediate steps to get the strike called off and in the meantime take alternative measures so that the patients do receive proper treatment and care. Secondly, he shall also collect details of patients dying along with, particulars of ailments, addresses etc so that the matter can be pursued further, as indicated above.

Meanwhile, considering the urgency of the matter we direct the Principal Secretary, Department of Health to appear before the Commission on 16.11.2009.

Justice S.N. Jha
Chairperson

Justice Rajendra Prasad
Member

R.R. Prasad
Member

Pursuant to our direction, Principal Secretary, Department of Health, personally appeared. After discussions we find that the proposal for increase in the amount of stipend which is the major issue leading to the ongoing strike, is in the final stage. As observed in our earlier order dated 12.11.2009, the Government having given assurance to senior doctors in this regard it should have taken the decision during the intervening period. Be that as it may, since the final decision is likely to be taken in very near future we would like the striking doctors to call off their strike immediately in the interest of the suffering public and the humanity at large, and appear before the Commission for discussions on the related issues tomorrow i.e. 17.11.2009 at 11:30 AM.

This order may be communicated to the representatives of the junior doctors by special messenger.

Justice S.N. Jha
Chairperson

Justice Rajendra Prasad
Member

R.R. Prasad
Member

Pursuant to our yesterday's order the representatives of the striking junior doctors appeared before the Commission. They made their submissions. The Commission impressed upon them the desirability of immediately calling off the strike and gave them an assurance that the Commission would intercede with the State Government and get their reasonable demands redressed within the shortest possible time. They stated that they need to discuss the matter in the General Body meeting.

Put up a day-after tomorrow i.e. on 19.11.2009.

Justice S.N. Jha
Chairperson

Justice Rajendra Prasad
Member

R.R. Prasad
Member

The representations of the striking junior doctors were heard on 17.11.2009. In course of hearing they gave an unmistakable impression that the strike would be called off. However, as according to them they needed to discuss the matter in the general meeting, the matter was postponed for today. We regret to note that despite our appeal to call off the strike for the sake of suffering people, they decided to continue with the same. From the media report it appears that they have stuck to their stand that unless and until notification regarding increase in the amount of stipend is issued they would not call off the strike regardless of the miseries caused to the patients. Such a stubborn and inflexible attitude must be deprecated. Curiously, they have decided to run parallel OPD inside the hospital campus professedly "out of respect" to this Commission which is nothing but an eye wash. Their attitude has left us with no option but to recommend to the State Government taking coercive action such as instituting criminal cases under the relevant sections of the Penal Code and cancellation of registration. Let the Government officials initiate action forthwith.

In our order dated 12.11.2009 we had also observed that by taking recourse to the strike the concerned doctors have precipitated the deaths of patients admitted in the hospital and deprived others of medicare which amounts to violation of the human rights for which the families of the deceased patients should be compensated. We are conscious of the fact that there has been delay in taking final decision in the matter of increase of stipend in the light of assurance given to the doctors when they had gone on strike in the month of August 2009, and in our order dated 12.11.2009 we had made adverse comments in this regard. But all said and done, the doctors cannot be allowed to create a situation in which the common man is denied the facility and opportunity of treatment and care in the government hospitals. While the Government may thus have their share of blame and amount of compensation may have to be apportioned, for the present, we are of the view that notice may be issued to the next of kin of the deceased patients as per list supplied by the Government so that issue and quantum of compensation may be determined in appropriate cases on case to case basis.

Let accordingly notice issue to the next of kin of the deceased patients. Notice is made returnable within four weeks.

Principal Secretary, Department of Health to submit status report after one week.

R.R. Prasad
Member

Justice Rajendra Prasad
Member

Justice S.N. Jha
Chairperson