



IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. 337 of 2018

SIDDHARTH DALMIA & ANR.

... PETITIONERS

Versus

UNION OF INDIA & ORS.

... RESPONDENTS

J U D G E M E N TSURYA KANT, J.

1. The instant Writ Petition, under Article 32 of the Constitution, has been filed purportedly in public interest. The petitioners seek to restrain private hospitals from compelling the patients to purchase medicines/devices/implants/consumables from the hospital pharmacies only, where they allegedly charge exorbitant rates, as compared to the notified market prices of those items.

2. The aforesaid relief has been sought in the backdrop of an unfortunate personal experience. The mother of petitioner No.1, who was the wife of petitioner No. 2, was diagnosed with breast cancer in July 2017. She underwent surgery, followed by six chemotherapies, 20 sessions of radio therapy, and 17 adjuvant chemotherapies. This course of treatment was continuing when the instant petition was filed in 2018. During the hearing, we were informed that, Smt. Neelam Dalmia, the patient recovered and

fortunately, her condition has improved.

3. The petitioners claim to have realized during her treatment that there is an organized system adopted by the private hospitals, nursing homes, health care institutions, etc. to fleece patients by compelling them and their attendants to buy medicines only from the pharmacies run by such hospitals or with whom they have some form of collaboration. It is claimed that the medicines/treatments etc. are sold by these pharmacies at highly inflated artificial prices, as compared to the MRP notified by the Competent Authority.

4. The petitioners have further alleged that the Union of India and the States have failed to take regulatory and correctional measures as a result of which, the patients are being exploited throughout the country.

5. Moreover, it is the case of the petitioners that the private hospitals do not disclose the prices/MRP of medicines, medical devices/implants, consumables, etc. to their patients, and in the absence of any price controlling or monitoring of the consumables which do not fall within the definition of "drugs", under the Drugs and Cosmetics Act, 1940, the private hospitals, nursing homes, etc. take undue advantage of the fact that the patients or their attendants do not have much option but to purchase the items/medicines at inflated prices.

6. The petitioners, accordingly, seek a direction to the private hospitals not to compel the patients to buy the medicines, etc. from the pharmacies recommended by them. They further seek a direction that the Union of India or the State Governments should

formulate a policy to prevent this form of exploitation, which, if allowed to continue, would amount to the deprivation of their right to a healthy life guaranteed within the framework of Article 21 of the Constitution. It is the petitioners' case that the States are obligated, in terms of Articles 38, 39 and 47 of our Constitution, where the Directive Principles of State Policy expect them to come forward and introduce such regulatory measures as may be required to control this menace.

7. On 14.05.2018, notice was issued in the petition, and in response thereto, counter affidavits have been filed by the States/Union Territories of Chandigarh, Orissa, Chhattisgarh, Arunachal Pradesh, Manipur, Andaman and Nicobar Islands, Uttar Pradesh, Bihar, Tamil Nadu, Kerala, Uttarakhand, Punjab, Haryana, Rajasthan, Nagaland, Himachal Pradesh, Jammu and Kashmir, and Gujarat.

8. The Union of India, through the Ministry of Health and Family Welfare, has also filed a separate counter affidavit, *inter alia*, pointing out that the National Council for Clinical Establishments has issued minimum standards for the hospitals, including for pharmaceutical services, as per which, the availability of drugs, consumables, and medical services are ensured in hospitals. The Union of India has further taken a stand that there is no compulsion for the patients or their attendants to buy medicines from the hospital's own pharmacy.

9. The States and Union Territories, while questioning the locus of the petitioners have, *inter alia*, pointed out that Jan Aushadhi Kendras and Amrit Drug Stores have been set up in

Government hospitals, which are being run by public sector undertakings, where all medicines are provided at subsidized rates. They rely upon the Drug Price Control Order, 2013, issued by the Central Government under the Essential Commodities Act, 1955 whereunder the prices of the essential drugs are fixed to ensure their availability at a reasonable rate. Like the Union of India, most of the States have also referred to the National Pharmaceutical Pricing Authority (NPPA), under the Ministry of Chemicals and Fertilizers, which, according to them, has the mandate to fix/revise the prices of controlled bulk drugs and formulations to enforce prices and availability of the medicines in the country.

10. We may hasten to add that most of the States have also highlighted State-run-schemes, which are meant to ensure the availability of drugs, consumables, and medical services to the patients and their attendants at affordable prices. Some States have introduced cashless treatment schemes, especially to provide medical facilities to specially-abled persons, widows, and BPL card-holders.

11. We have heard learned counsel for the petitioners as well the counsels for the Union of India and other States.

12. The issues that fall for consideration are: (i) whether the affairs of the private hospitals, nursing homes, medical institutes, etc. with reference to the fixation of prices of drugs, equipment, or other accessories sold from the pharmacies run by them and/or with whom they have some commercial agreement, can be regulated through administrative or legislative measures? (ii) If

so, what can be the extent of such measures? and (iii) What is the mechanism to enforce such measures and to whom such task can be entrusted?

13. There can be no doubt that the provision of medical facilities to one and all is an essential component of the right to life guaranteed under Article 21 of the Constitution.¹ The States have, therefore, committed themselves to provide medical facilities to the people in furtherance of the duty and vision enshrined in Part IV of the Constitution. It is also a matter of record that in proportion to the population of this country, the States have not been able to develop the requisite medical infrastructure to cater to the needs of all kinds of patients. The States have, therefore, facilitated and promoted private entities to come forward in the medical field as a result of which, numerous renowned private hospitals, well-known for their specialties, and which are comparable to any other hospital around the globe, have been set up throughout the country. It, therefore, must be acknowledged that not only the people, even the States look towards these private entities to provide basic and specialized medical facilities to the public at large.

14. In this backdrop, would it be prudent for the Union of India or the States to introduce a policy which regulates each and every activity within the compound of these private hospitals? Will such a policy discourage persons to come forward and invest in the health industry throughout the country? Most importantly, why

¹ State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117; Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37; Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165.

should the States not adopt such economic policies whereunder they ensure dedicated apportionments towards the development of basic infrastructure, including institutions for health services; and till such time the States are able to do so, whether stringent measures which would stall private entities from coming forward, should be allowed to be introduced?

15. All these issues are undoubtedly of paramount public importance. It, however, seems to us that such issues primarily involve policy decisions, for which the policy-makers are the best equipped to take a holistic view and formulate the guidelines as may be required,² to safeguard the patients or their attendants from exploitation while simultaneously, ensuring that there is no discouragement and unreasonable restriction on private entities from entering the health sector.

16. It may be noticed that the subject of public health and sanitation, hospitals, and dispensaries falls under List-II - the State List - and, therefore, any such measure, as illustrated above, must be taken by the State Governments, keeping their local conditions in mind.

17. To sum up, it may not be advisable for this Court to issue mandatory directions which may hamper the growth of hospitals in the private sector; but parallelly, it is necessary to sensitize the State Governments re: the problem of unreasonable charges and exploitation of patients in private hospitals.

2 In Re : Section 6A of the Citizenship Act 1955, 2024 SCC OnLine SC 2880; Suman Kumar v. Union of India, 2023 SCC OnLine SC 1750; Transport & Dock Workers Union v. Mumbai Port Trust, (2011) 2 SCC 575; Govt. of A.P. v. N. Subbarayudu, (2008) 14 SCC 702.

18. Consequently, we dispose of this Writ Petition with a direction to all the State Governments to consider this issue and take appropriate policy decisions as they may deem fit.

19. It is clarified that we have not expressed any opinion on the merits of the case. We have only briefly explained the plight of the public at large, who comprise a huge class of consumers of health services, alongwith the constitutional framework within which such policy decisions are required to be taken to redress their grievances.

20. As a result, the pending interlocutory applications, if any, also stand disposed of.

.....J.
(SURYA KANT)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
MARCH 04, 2025.

