PT. PARMANAND KATARA

v.

UNION OF INDIA & ORS.

AUGUST 28, 1989

[RANGANATH MISRA AND G.L. OZA, JJ.]

Constitution of India, 1950: Article 21—Obligation on the State to preserve life—Every doctor has professional obligation to extend services to protect life—All Government hospitals/Medical institutions to provide immediate medical aid in all cases.

Indian Medical Council Act, 1860: Section 33—Indian Medical Council/Code of Medical Ethics—Clauses 10 and 13—Obligation to sick—Patient not to be neglected—Court emphasized necessity to provide immediate medical aid.

Practice and Procedure: Medical professional—Law courts will not summon unless evidence is necessary—Should not be made to wait and waste time unnecessarily.

The petitioner, who claims himself to be a human right activist, filed this writ petition in public interest on the basis of a newspaper report concerning the death of a scooterist who was knocked down by a speeding car. The report further states that the injured person was taken to the nearest hospital but the doctors there refused to attend on him; that they told that he be taken to another hospital, located some 20 kilometers away, which was authorised to handle *medico-legal* cases; and that the victim succumbed to his injuries before he could be taken to the other hospital. The petitioner has prayed the directions be issued to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death, and in the event of breach of such direction, apart from any action that may be taken for negligence, appropriate compensation should be admissible.

The Secretary, Ministry of Health & Family Welfare of the Union of India, the Medical Council of India, and the Indian Medical Association were later impleaded as respondents.

Documents relating to the steps taken from time to time in this

A regard were produced by the respondents. Reference was made to the Code of Medical Ethics drawn up by the Medical Council of India, wherein the need to attend to the injured/serious persons immediately without waiting for the police report or completion of police formalities was recognised and the Government of India was requested to take necessary and immediate steps to amend various provisions of law B which come in the way of government doctors as well as other doctors in private hospitals or public hospitals in this regard. The proceedings of the meeting held on 29.5.1986 in which the Director General of Health Services acted as Chairman were also referred to. This Committee had formulated some guidelines. On behalf of the Union of India it was stated that there was no provision in the Indian Penal Code, Criminal Procedure Code, or the Motor Vehicles Act, etc. which prevented C doctors from promptly attending seriously injured persons and accident cases before the arrival of police.

Disposing of the Writ Petition, this Court,

D HELD: (1) Article 21 of the Constitution casts the obligation on the State to preserve life. [1005G]

(2) There can be no second opinion that 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 E beyond the capacity of man. [1005F]

(3) The patient whether he be an innocent person or 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. F Social laws do not contemplate death by negligence to tantamount to legal punishment. [1005F]

(4) Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. [1006A]

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(5) 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 statute or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, there- H fore, give way. [1006B]

(6) The Court gave directions for giving adequate publicity to the decision in this case by the national media, the Doordarshan and the all India Radio, as well as through the High Courts and the Sessions Judges. [1006E-F]

Per G.L. Oza, J. (concurring)

(1) The Code of Medical Ethics framed by the Medical Council was approved on 23rd October, 1970. This only reveals an unfortunate state of affairs where the decisions are taken at the highest level good intentioned and for public good but unfortunately do not reach the common man and it only remains a text good to read and attractive to quote. [1007D-E]

(2) It is clear that there is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. There is also no doubt that the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. [1008F]

(3) The members of the legal profession, our law courts and everyone concerned will also keep in mind that a man in the medical profession should not be unnecessarily harassed for purposes of interrogation or for any other formality and should not be dragged during investigations at the police station and it should be avoided as far as possible. [1009C]

(4) Law courts will not summon a medical professional to give evidence unless the evidence is necessary and even if he is summoned, attempt should be made to see that the men in this profession are not made to wait and waste time unnecessarily. [1009D]

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 270 of 1988.

(Under Article 32 of the Constitution of India).

Pt. Parmanand Katara-in-person.

A.D. Singh, U.R. Lalit (N.P.). R.B. Misra, Ms. A. Subhashini, B.R. Agarwala, Ms. Sushma Manchanda, Ms. Suman Rastogi and Ms.

A Indu Malhotra (N.P.) for the Respondents.

The following Judgments of the Court were delivered

RANGANATH MISRA, J. The petitioner who claims himself to be a 'small human right activist and fighting for the good causes for the
B general public interest' filed this application under Article 32 of the Constitution asking for a direction to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death and in the event of breach of such direction, apart from any action that may
C be taken for negligence, appropriate compensation should be admissible. He appended to the writ petition a report entitled 'Law helps the injured to die' published in the Hindustan Times. In the said publication it was alleged that a scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital. The
D doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 kilometers away authorised to handle *medico-legal* cases. The samaritan carried the victim, lost no time to approach the other hospital but before he could reach, the victim succumbed to his injuries.

E The Secretary, Ministry of Health & Family Welfare of the Union of India, the Medical Council of India and the Indian Medical Association were later impleaded as respondents and return to the rule has been made by each of them. On behalf of the Union of India, the Under Secretary in the Ministry of Health & Family Welfare filed an affidavit appending the proceedings of the meeting held on 29.5.1986
F in which the Director-General of Health Services acted as Chairman. Along with the affidavit, decisions of papers relating to the steps taken from time to time in matters relating to matters relevant to the application but confined to the Union Territory of Delhi were filed. A report in May, 1983, submitted by the Sub-Committee set up by the Home Department of the Delhi Administration on *Medico-Legal*
G Centres and *Medico-Legal* Services has also been produced. The Secretary of the Medical Council of India in his affidavit referred to clauses 10 and 13 of the Code of Medical Ethics drawn up with the approval of the Central Government under s. 33 of the Act by the Council, wherein it had been said:

H "10. *Obligations to the sick*:

Though a physician is not bound to treat each and every one asking his services except in emergencies for the sake of humanity and the noble traditions of the profession, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he incurs in the discharge of his ministrations, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients.

13. *The patient must not be neglected*:

A physician is fee to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving notice to the patient, his relatives or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendant. No provisionally or fully registered medical practitioner shall wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care."

The affidavit has further stated:

"The Medical Council of India therefore expects that all medical practitioners must attend to sick and injured immediately and it is the duty of the medical practitioners to make immediate and timely medical care available to every injured person whether he is injured in accident or otherwise. It is also submitted that the formalities under the Criminal Procedure Code or any other local laws should not stand in the way of the medical practitioners attending an injured person. It should be the duty of a doctor in each and every casualty department of the hospital to attend such person first and thereafter take care of the formalities under the Criminal Procedure Code. The life of a person is far more important than the legal formalities. In view of this, the deponent feels that it is in

A the interest of general human life and welfare that the Government should immediately make such provisions in law and amendments in the existing laws, if required, so that immediate medical relief and care to injured persons and/or serious patients are available without any delay and without waiting for legal formalities to be completed in the B presence of the police officers. The doctor attending such patients should be indemnified under law from any action by the Government/police authorities/any person for not waiting for legal formalities before giving relief as a doctor would be doing his professional duty; for which he has taken oath as medical practitioner.

C It is further submitted that it is for the Government of India to take necessary and immediate steps to amend various provisions of law which come in the way of Government Doctors as well as other doctors in private hospitals or public hospitals to attend the injured/serious persons D immediately without waiting for the police report or completion of police formalities. They should be free from fear that they would be unnecessarily harassed or prosecuted for doing his duty without first complying with the police formalities ..... It is further submitted that a doctor should not feel himself handicapped in extending E immediate help in such cases fearing that he would be harassed by the Police or dragged to Court in such a case. It is submitted that Evidence Act should also be so amended as to provide that the Doctor's diary maintained in regular course by him in respect of the accident cases would be accepted by the courts in evidence without insisting the F doctors being present to prove the same or subject himself to cross-examination/harassment for long period of time."

The Indian Medical Association which is a society registered under Act 21 of 1860 through its Secretary has stated in the affidavit that the number of deaths occurring on account of road accidents is on the G increase due to lack of timely medical attention. In the affidavit it has further stated:

"The second reason is on account of the prevailing police rules and Criminal Procedure Code, which necessitate the fulfilment of several legal formalities before a victim can be H rendered medical aid. The rationale behind this com-

plicated procedure is to keep all evidence intact. However, time given to the fulfilment of these legal technicalities sometimes takes away the life of a person seriously injured. Members of public escorting the injured to the nearest hospital are reluctant to disclose their name or identity as he is detained for eliciting information and may be required to be called for evidence to Courts in future. Similarly, the private practising doctors are harassed by the police and are, therefore, reluctant to accept the roadside casualty.

It is submitted that human life is more valuable and must be preserved at all costs and that every member of the medical profession, may, every human being, is under an obligation to provide such aid to another as may be necessary to help him survive from near-fatal accidents."

The Committee under the Chairmanship of the Director-General of Health Services referred to above had taken the following decisions:

"1. Whenever any *medico-legal* case attends the hospital, the medical officer on duty should inform the Duty Constable, name, age, sex of the patient and place and time of occurrence of the incident, and should start the required treatment of the patient. It will be the duty of the Constable on duty to inform the concerned Police Station or higher police functionaries for further action.

Full medical report should be prepared and given to the Police, as soon as examination and treatment of the patient is over. *The treatment of the patient would not wait for the arrival of the Police or completing the legal formalities.*

2. Zonalisation as has been worked out for the hospitals to deal with *medico-legal* cases will only apply to those cases brought by the Police. The *medico-legal* cases coming to hospital of their own (even if the incident has occurred in the zone of other hospital) will not be denied the treatment by the hospital where the case reports, nor the case will be referred to other hospital because the incident has occurred in the area which belongs to the zone of any other hospital. The same police formalities as given in para 1 above will be followed in these cases.

A *All Government Hospitals, Medical Institutes should be asked to provide the immediate medical aid to all the cases irrespective of the fact whether they are medico-legal cases or otherwise.* The practice of certain Government institutions to refuse even the primary medical aid to the patient and referring them to other hospitals simply B because they are *medico-legal* cases *is not desirable.* However, after providing the primary medical aid to the patient, patient can be referred to the hospital if the expertise facilities required for the treatment are not available in that Institution."

(underlining are ours)

C To the said affidavit of the Union of India also, the minutes of the 10th Meeting of the Standing Committee on Forensic Medicine (a Committee set up by the Ministry of Home Affairs of the Government of India) held on 27.4.1985 have been appended. These minutes show that the Committee was a high-powered one consisting of the Director-D General, the Joint Secretary of the Ministry of Health of the Government of India, a Professor from the All Indian Institute of Medical Sciences, the Professor of Forensic Medicine from Maulana Azad Medical College, New Delhi, the Director & Professor of Forensic Medicine, Bhopal, the Deputy Director, Central Forensic Science Laboratory, Calcutta and certain officers of the Ministry. The pro-E ceedings indicate that the Director-Generals of Police, Tamil Nadu and Uttar Pradesh were also members of the Committee. From the proceedings it appears that the question of providing *medico-legal* facilities, at the upgraded primary health centres throughout the country was under consideration but the Committee was of the opinion that time was not ripe to think of providing such facilities at the F upgraded primary health centres. One of the documents which forms part of the Union of India's affidavit is the copy of a letter dated 9th of May, 1978 which indicates that a report on some aspects of *Medico-Legal* Practice in India had been prepared and a copy of such report was furnished to the Health Secretaries of all the States and Union Territories more than eleven years back.

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From these documents appended to the affidavit of the Union of India, it is clear that the matter has been engaging the attention of the Central Government as also of the Governments of the States and the Union Territories for over a decade. No improvement of the situation, however, is perceptible and the problem which led to the filing of this H petition seems to exist in hospitals and private nursing homes and clinics throughout the country.

In course of the hearing, we directed the petitioner to place on record for the consideraton of the Court and the respondents a draft guideline which could be prescribed to ease the situation keeping the professional ethics in view. When the same was filed, copies thereof were circulated to the respondents and all parties have been heard on the basis of the guidelines submitted on behalf of the petitioner.

The Medical Council of India has placed on record a copy of the Code of Medical Ethics and counsel has made a statement that there is no prohibition in law justifying the attitude of the doctors as complained. On the other hand, he stated that it is a part of the professional ethics to start treating the patient as soon as he is brought before the doctor for medical attention inasmuch as it is the paramount obligation of the doctor to save human life and bring the patient out of the risk zone at the earliest with a view to preserving life. In the affidavit filed on behalf of the Union of India on 3rd August, 1989, it has been said:

> "There are no provisions in the Indian Penal Code, Criminal Procedure Code, Motor Vehicles Act etc. which prevent Doctors from promptly attending seriously injured persons and accident case before the arrival of Police and their taking into cognisance of such cases, preparation of F.I.R. and other formalities by the Police. However, the deponent most humbly submits that the respondent shall always abide by the directions and guidelines given by the Hon'ble Court in the present case."

There can be no second opinion that 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 in-charge 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.

Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to

A 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 B whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. On this basis, we have not issued notices to the States and Union Territories for affording them an opportunity of being heard before we accepted the statement made in the affidavit of the Union of India that there is no impediment in the law. The matter is extremely urgent and in our view, brooks no delay to remind every doctor of his total obliga- C tion and assure him 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. We must make it clear that zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of D the fact whether under instructions or rules, the victim has to be sent elsewhere or how the police shall be contacted, the guideline indicated in the 1985 decision of the Committee, as extracted above, is to become operative. We order accordingly.

We are of the view that every doctor wherever he be within the E territory of India should forthwith be aware of this position and, therefore, we direct that this decision of ours shall be published in all journals reporting decisions of this Court and adequate poblicity highlighting these aspects should be given by the national media as also through the Doordarshan and the All India Radio. The Registry shall forward adequate number of copies of this judgment to every High F Court so that without delay the respective High Courts can forward them to every Sessions Judge within their respective jurisdictions and the Sessions Judges in their turn shall give due publicity to the same within their jurisdictions. The Medical Council of India shall forward copies of this judgment to every medical college affiliated to it. Copies of the judgment shall be forwarded to every State Government with a G direction that wide publicity should be given about the relevant aspects so that every practising doctor would soon become aware of the position.

In case the State Governments and the Union Territories which have not been heard file any representation against the direction, they H shall have liberty to appear before this Court and ask for appropriate

direction within three months from now. Applications filed after that date shall not be entertained by the Registry of this Court. Until altered, this judgment shall be followed. A

Before we part with the case, we place on record our appreciation of the services rendered by the petitioner by inviting the attention of the Court to the problem raised in this case. We must also place on record our appreciation of the cooperation and understanding exhibited by the Union of India in the relevant Ministry, the Medical Council of India and the Indian Medical Association. B

No order for costs.

OZA, J. I entirely agree with what has been observed by my learned brother and also agree with the directions indicated in the Order made by Hon'ble Shri Justice R.N. Misra but I would like to add: C

As has been quoted by my learned brother, a high power committee by the Government of India was appointed at a high level and this was long before and the proceedings of 29th May, 1986 have been filed and have also been quoted. The Medical Council of Indiia alongwith their affidavit have filed Code of Medical Ethics which everyone in the medical profession is expected to follow but still the news item which is the starting point of this petition is of 1988. The Code of Medical Ethics framed by the Medical Council was approved on 23rd October, 1970. This only reveals an unfortunate state of affairs where the decisions are taken at the higher level good intentioned and for public good but unfortunately do not reach the common man and it only remains a text good to read and attractive to quote. D E

It could not be forgotten that seeing an injured man in a miserable condition the human instinct of every citizen moves him to rush for help and do all that can be done to save the life. It could not be disputed that inspite of development economical, political and cultural still citizens are human beings and all the more when a man in such a miserable state hanging between life and death reaches the medical practitioner either in a hospital (run or managed by the State) public authority or a private person or a medical professional doing only private practice he is always called upon to rush to help such an injured person and to do all that is within his power to save life. So far as this duty of a medical professional is concerned its duty coupled with human instinct, it needs no decision nor any code of ethics nor any rule or law. Still in the Code of Medical Ethics framed by the Medical Council of India Item 13 specifically provides for it. Item 13 reads as under: F G H

"13. The patient must not be neglected.

A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving notice to the patient, his relatives or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendant. No provisionally or fully registered medical practitioner shall wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care."

Medical profession is a very respectable profession. Doctor is looked upon by comman man as the only hope when a person is hanging between life and death but they avoid their duty to help a person when he is facing death when they know that it is a *medico-legal* case. To know the response of the medical profession the Medical Council of India and also the All India Medical Association were noticed and were requested to put up their cases.

Some apprehensions were expressed because of some misunderstanding about the law of procedure and the police regulations and the priorities in such situations. On the basis of the affidavit filed by the Union of India and considering the matter it is clear that there is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. There is also no doubt that the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. But on behalf of the medical profession there is one more apprehension which sometimes prevents a medical professional in spite of his desire to help the person, as he apprehends that he will be witness and may have to face the police interrogation which sometimes may need going to the police station repeatedly and waiting and also to be a witness in a court of law where also he apprehends that he may have to go on number of days and may have to wait for a long time and may have to face sometimes long unnecessary cross-examination which sometimes may even be humiliating for a man in the medical profession and in our opinion it is this apprehension which prevents a medi-

cal professional who is not entrusted with the duty of handling medico-legal cases to do the needful, he always tries to avoid and even if approached directs the person concerned to go to a State hospital and particularly to the person who is in charge of the medico-legal cases. We therefore have no hesitation in assuring the persons in the medical profession that these apprehensions, even if have some foundation, should not prevent them from discharing their duty as a medical professional to save a human life and to do all that is necessary but at the same time. We hope and trust that with this expectation from the members of the medical profession, the policy, the members of the legal profession, our law courts and everyone concerned will also keep in mind that a man in the medical profession should not be unnecessarily harassed for purposes of interrogation or for any other formality and should not be dragged during investigations at the police station and it should be avoided as far as possible. We also hope and trust that our law courts will not summon a medical professional to give evidence unless the evidence is necessary and even if he is summoned, attempt should be made to see that the men in this profession are not made to wait and waste time unnecessarily and it is known that our law courts always have respect for the men in the medical profession and they are called to give evidence when necessary and attempts are made so that they may not have to wait for long. We have no hesitation in saying that it is expected of the members of the legal profession which is the other honourable profession to honour the persons in the medical profession and see that they are not called to give evidence so long as it is not necessary. It is also expected that where the facts are so clear it is expected that necessary harassment of the members of the medical profession either by way of requests for adjournments or by cross examination should be avoided so that the apprehension that the men in the medical profession have which prevents them from discharging their duty to a suffering person who needs their assistance utmost, is removed and a citizen needing the assistance of a man in the medical profession receives it.

We would also like to mention that whenever on such occasions a man of the medical profession is approached and if he finds that whatever assistance he could give is not sufficient really to save the life of the person but some better assistance is necessary it is also the duty of the man in the medical profession so approached to render all the help which he could and also see that the person reaches the proper expert as early as possible.

R.S.S. Petition disposed of.