Joby P. Varghese Vs Union of India

Writ Petition (Civil) No. 3376 of 2013

Court: Delhi High Court

Date of Decision: May 1, 2014

Citation: (2015) 213 DLT 92

Hon'ble Judges: G. Rohini, C.J; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Arpit Bhargava, Advocate for the Appellant; Himanshu Bajaj, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition, by way of a Public Interest Litigation, was filed in the wake of the strike by the respondent No. 3 Resident Doctors Association of

the respondent No. 2 Safdarjung Hospital on 9th May, 2013, claiming the following reliefs--

A. Issue a writ of mandamus or any other appropriate writ thereby directing respondent No. 1 and respondent No. 2 to take appropriate steps to

ensure that hospital services and medical treatments are not disrupted and patients turned back due to strike called out by the hospital staffs;

B. Pass appropriate orders/directions/guidelines in the nature of code of conduct for hospital staffs like doctors'' nurses, para-medicals, etc. of

respondent No. 2 Hospital for agitating their grievance without causing any disruption or prejudice to the smooth functioning of the respondent No.

2 Hospital;

C. Pass any other or further order which this Hon''ble Court deems fit in the interest of justice.

Notice of the petition was issued and accepted by the Counsel for the respondent Nos. 1 and 2 appearing oil advance notice. In spite of four

opportunities, the respondent No. 3 Resident Doctors Association remains unserved.

2. The respondent Nos. 1 and 2 have filed a counter affidavit, stating:

(i) that the Resident Doctors Association of the respondent No. 2 Safdarjung Hospital had vide their letter dated 2nd May, 2013 conveyed

certain demands and vide another letter dated 7th May, 2009 stated that they would proceed on mass leave with effect from 9th May, 2013

(0900 hrs.) till consideration of their demands; however the members of the respondent No. 3 Association went on a flash strike/mass leave with

effect from 8th May, 2013 (1800 hrs.) and temporarily called off their strike on 9th May, 2013, till 14th May, 2013;

(ii) that in the interregnum several meetings and discussions were held on all levels to resolve the issues and an action plan for smooth functioning of

the hospital without any disruption to patient care activated; leaves of all faculty members were immediately cancelled and they were deputed on

duties as per roster; further assistance was sought and received from senior doctors and which ensured a smooth running of emergency services;

immediate action was also initiated on demands of the members of the respondent No. 3 Association.

(iii) that though certain routine services of the respondent No. 2 Hospital like OPD were affected, however the emergency was functioning as

normal and there was no report of any suffering to anyone;

(iv) that the respondent No. 3 Association is not under the direct control of the respondent Nos. 1 and 2.

3. The petitioner has not filed any rejoinder in spite of opportunities.

4. Finding the petitioner to have not suggested as to what order/direction/guidelines can be passed, as sought in prayer paragraph No. B supra of

the writ petition, we have inquired from the petitioner appearing in person.

5. The petitioner states that direction for automatic invocation of the Essential Services Maintenance Act, 1968 (ESMA) and of declaring such

strike as illegal be issued. Reliance is placed on Devinder Negi Vs. State of H.P. and Others where directions were issued to the State authorities

to, as far as possible, take effective steps to prevent the interns or men in medical profession from resorting to strikes, without making it a

contentious issue and for immediate acceptance of their genuine demands and for formation of well thought dispute redressal mechanism and for

taking stern action against the erring persons, etc.

6. However, a perusal of the directions issued by the Division Bench of the High Court of Himachal Pradesh shows the same to be general in

nature.

7. We are of the opinion that no standing direction for automatic invocation of ESMA or of declaration of the strike as illegal can be issued without

it even being known whether the conditions for invocation of ESMA would exist and whether the strike would be illegal, on a future occasion. Not

only so, ESMA, 1968 to which reference is made in the judgment cited, ceased to have effect on expiry of three years from coming into force

thereof and ESMA, 1981 ceased to have effect on expiry of four years from commencement thereof and the ESM Ordinance, 1941 was replaced

by the ESM Ordinance Repeal Act, 2001. We are therefore unable to accede to the suggestions made today by the petitioner. Moreover, there is

nothing to show that the respondent Nos. 1 and 2 were found lacking in any manner whatsoever. The question of issuing a writ of mandamus

would arise only if the authorities concerned are found to be at fault or lacking in any more whatsoever and which is also not found to be so in the

present case. Reference in this regard can be made to State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, .

8. We are also disturbed by the failure of the petitioners in serving the respondent No. 3. Not only so, the petitioners, though have sought a

direction qua of the hospitals staff and which comprises not only Resident Doctors but all other doctors/teaching faculty/nurses/para-medical staff,

etc. but none of the other staff members other than the resident doctors have been impleaded as a party. In their absence, no such direction

regulating their conduct can be issued. Thus, while dismissing this petition, we grant liberty to the petitioners to approach the Court again on the

same aspect if so desire by impleading all parties concerned.