PETITIONER:
PASCHIM BANGA KHET MAZDOORSAMITY OF ORS.

Vs.

RESPONDENT:
STATE OF WEST BENGAL & ANR.

DATE OF JUDGMENT: 06/05/1996

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
NANAVATI G.T. (J)

CITATION:
1996 SCC (4) 37 JT 1996 (6) 43
1996 SCALE (4)282

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL. J.

In Pt. Paramanand Katara vs. Union of India & Ors., 1989 (4) SCC 286. this Court in the context of medico-legal cases. has emphasized the need for rendering immediate medical aid to injured persons to preserve life and the obligations of the State as well as doctors in that regard. This petition filed under Article 32 of the Constitution raises this issue in the context of availability of facilities in Government-hospitals for treatment of persons sustaining serious injuries.

Hakim Seikh [petitioner No. 2] who is a member of Paschim Banga Khet Mazdoor Samity [petitioner No. 1], an organization of agricultural labourers, fell off a train at Mathurapur Station in West Bengal at about 7.45 P.M. on July 8, 1992. As a result of the said fall Hakim Seikh suffered serious head injuries and brain haemorrhage. He was taken to the Primary Health Centre at Mathurapur. Since necessary facilities for treatment were not available at the Primary Health Centre, the medical officer in charge of the Centre referred him to the Diamond Harbour Sub-Divisional Hospital or any other State hospital for better treatment. Hakim Seikh was taken to N.R.S. Medical College Hospital near Sealdah Railway Station, Calcutta at about 11.45 P.M. on July 8, 1992. The Emergency Medical Officer in the said Hospital, after examining him and after taking two X-ray prints of his skull recommended immediate admission for further treatment. But Hakim Seikh could not be admitted in the said hospital as no vacant bed was available in the Surgical Emergency ward and the regular Surgery Ward was also full. He was thereafter taken to Calcutta Medical College Hospital at about 12.20 A.M. on July 9, 1992 but there also he was not admitted on the ground that no vacant bed was available. He was then taken to Shambhu Nath Pandit Hospital at about 1.00 A.M. on July 9, 1992. He was not

admitted in that hospital and referred to a teaching hospital in the ENT, Neuro Surgeon Department on the ground that the hospital has no ENT Emergency or Neuro Emergency Department. At about 2.00 A.M. on July 9, 1992 he was taken to the Calcutta National Medical College Hospital but there also he was not admitted on account of non-availability of bed. At about 8.00 A.M. on July 9, 1992 he was taken to the Bangur Institute of Neurology but on seeing the CT Scan (which was got done at a private hospital on payment of Rs. 1310/-) it was found that there was haemorrhage condition in the frontal region of the head and that it was an emergency case which could not be handled in the said Institute. At about 10.00 A.m. on July 9, 1992 he was taken to SSKM Hospital but there also he was not admitted on the ground that the hospital has no facility of neuro surgery. Ultimately he was admitted in Calcutta Medical Research Institute, a private hospital, where he received treatment as an indoor patient from July 9, 1992 to July 22, 1992 and he had incurred an expenditure of approximately Rs. 17,000/- in his treatment.

Feeling aggrieved by the indifferent and callous attitude on the part of the medical authorities at the various State run hospitals in Calcutta in providing treatment for the serious injuries sustained by Hakim Seikh the petitioners have filed this writ petition.

In the writ petition the petitioners have also assailed the decision of the National Consumer Disputes Redressal Commission dated December 15, 1989 in Consumer Unity & Trust Society. Jaipur vs. State of Rajasthan & Ors and it has been submitted that the expression 'consumer' as defined in section 2(1)(d)(ii) of the Consumer Protection Act, 1986 includes persons getting or eligible for medical treatment in Government hospitals and that the expression 'services' as defined in section 2(1)(o) of the Act includes services provided in the Government hospitals also. The said question has been considered in the recent decision of this Court in Indian Medical Association vs. V.P.Shantha, 1995 (6) SCC 651. In view of the said decision the only question which needs to be considered is whether the non-availability of facilities for treatment of the serious injuries sustained by Hakim Seikh in the various Government hospitals in Calcutta has resulted in denial of his fundamental right guaranteed under Article 21 of the Constitution.

There is not much dispute on facts. In the affidavit of Ms. Lina Chakraborti, filed on behalf of the State of West Bengal, respondent No. 1, it is stated that the rural areas of the State are served by the Block Health Centres and by the Subsidiary Health Centres since redesignated as "Primary Health Centres" where primary and general treatment is provided but no specialist treatment is available. Hakim Seikh was examined by the medical officer at the Block Health Centre at Mathurapur and after giving him first-aid the Medical Officer referred him to the Diamond Harbour Sub-Divisional Hospital or any State hospital for better treatment. It is also admitted that Hakim Seikh was brought to Neel Ratan Sircar Medical College Hospital at 11.45 P.M. on July 8, 1992 and there he was examined and two skull X-rays were also taken. The medical officer who attended him at that hospital recommended immediate admission for further treatment but he could not be admitted in the particular Department, i.e., Surgery Department having neurosurgery facilities as at the material point of time there was no vacant bed in the Surgical Emergency Ward and the regular surgery ward was also full. It is also admitted that Hakim Seikh was thereafter taken to the Calcutta Medical College

Hospital, Calcutta National Medical College Hospital and Bangur Institute of Neurology in the early morning of July 9, 1992 but he could not be admitted in any of these hospitals because of non-availability of bed. It was stated that Hakim Seikh could Not be admitted in all the hospitals having facility of neuro surgery as all such beds were fully occupied on the date/dates and that such a patient cannot be given proper treatment if he is kept on the floor of a hospital or a trolley because such arrangement of treatment is fraught with grave risks of cross infection and lack of facility of proper post-operative care. In the said affidavit it is also stated that total number of beds maintained by the State Government all over the State is 57,875, out of which 90% are free beds for treatment of poor and indigent patients and all the beds in the concerned wings in the Government hospitals in Calcutta where Hakim Seikh reported for treatment were occupied on the relevant date/dates.

During the pendency of this writ petition in this Court the State Government decided to make a complete and thorough investigation of the incident and take suitable departmental action against the persons responsible for the same and to take suitable remedial measures in order to prevent recurrence of similar incidents. The State Government appointed an Enquiry Committee headed by Shri Justice Lilamoy Ghose, a retired Judge of the Calcutta High Court. The terms and reference of the said Committee were :

"A. Enquiry into the circumstances under which the said Shri Hakim Seikh was denied admission to the State Government hospitals.

B. Fixing responsibilities for dereliction of duties if any, on the part of any Government official in this respect.

C. Recommendations on actions against the Government officials who have found wanting in the discharge of their official duties in this respect.

D. Recommendations on actions that should be taken by the State Government to rule out the recurrence of such incident in future and to ensure immediate medical attention and treatment to patients in real need."

The Committee submitted its report dated March 21, 1995. In the said report, the Committee, after examining the relevant record at the various hospitals, has found :

i) The Primary Health Centre at Mathurapur was not very much equipped to deal with such types of serious patients and the nurses at the Centre attended on Hakim Seikh and gave some treatment.

ii) At the N.R.S. Medical College Hospital Hakim Seikh was registered, Registration No. 63649, but no time was mentioned. The admission register of the said hospital shows that one patient was admitted at 12.15 A.M. on July 9, 1992 and another patient was admitted at 4.20 A.M. on July 9, 1992. There could not have been any discharge during the odd hours i.e. between the time when Hakim Seikh was taken to the said hospital and 4.20 A.M. on July 9, 1992. If two other patients were admitted after Hakim Seikh was taken there and it was not

understandable why Hakim Seikh was not admitted since it is not disputed that the condition of Hakim Seikh was grave. Even in excess of the sanctioned beds some patients were kept on the trolley beds in the morning and that even if it was dangerous to keep a patient with head injuries on trolley bed he could very well be kept for the time being on the floor and could be transferred to the cold ward, as the situation demanded, temporarily. The Emergency Medical Officer concerned should have taken some measure to admit Hakim Seikh and he is, therefore, responsible for his non-admission in the said Hospital. The Superintendent of the hospital should have taken some measures to give guidelines to the respective medical officers so that a patient is not refused admission although his condition is grave and the Superintendent of the N.R.S. Medical College is also, to some extent, responsible in a general way.

(iii) Hakim Seikh should not have been refused admission in the Medical College Hospital, Calcutta when the condition was so grave. In not accommodating Hakim Seikh the Emergency medical Officer of the said Hospital is responsible. He should have contacted the superior authority over the telephone if there was any stringency as to the beds available and admit the patient inspite of total sanctioned beds not having been available. The Superintendent should have given guidelines to the respective medical officers for admitting serious cases under any circumstances and thus in a way the Superintendent was responsible for this general administration.

(iv) At the National Medical College Hospital, Calcutta the relevant admission register was missing and in the absence of the same the responsibility could not be fixed on the Emergency Medical Officer concerned. The then Superintendent of the Hospital must be held responsible for this general state of affairs that no provision was made for admitting any patient even if his condition was serious.

(v) The hospital authorities have submitted that Hakim Seikh did not attend the Shambhu Nath Pandit Hospital at all. From the out-door patient ticket it cannot be definitely Said that Hakim Seikh was taken to the said Hospital.

(vi) No responsibility could be fixed on any officer of the Bangur Institute of Neurology because the said Institute does not deal with neuro-surgery emergency cases and it is meant for cold cases only.

(vii) At SSKM Hospital, no record is maintained as to the condition of the patient and the steps taken with regard to his treatment. It is necessary that such record is maintained. Even though the patients inside the ward were in excess of the limit of the sanctioned beds but still some arrangements could be made and admission should not have been refused when the condition was so grave. The Emergency Medical Officer who attended Hakim Seikh should be held responsible for not admitting the patient in the said Hospital and that the Surgeon Superintendent is also in a general way responsible for this unhappy state of

affairs and he should have given specific guidelines in that regard.

The Committee has suggested remedial measures to rule out recurrence of such incidents in future and to ensure immediate medical attention and treatment to patients in real need. We will advert to it later. We will first examine whether the failure to provide medical treatment to Hakim Seikh by the Government hospitals in Calcutta has resulted in violation of his rights and, if so, to what relief he is entitled.

The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. In the present case there was breach of the said right of Hakim Seikh guaranteed under Article 21 when he was denied treatment at the various Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Hakim Seikh guaranteed under Article 21 was by officers of the State in hospitals run by the State the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Seikh. In respect of deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution. [See : Rudal Sah v. State of Bihar, 1983 (3) SCR 508 Nilabati Behara v. State of Orissa. 1993 (2) SCC 746: Consumer Education and Research Centre v. Union of India, 1995 (3) SCC 42]. Hakim Seikh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution. Having regard to the facts and circumstances of the case, we fix the amount of such compensation at Rs. 25,000/-. A sum of Rs. 15,000/- was directed to be paid to Hakim Seikh as interim compensation under the orders of this Court dated April 22, 1994. The balance amount should be paid by respondent No. 1 to Hakim Seikh within one month.

We may now come to the remedial measures to rule out recurrence of such incidents in future and to ensure immediate medical attention and treatment to persons in real need. The Committee has made the following recommendations in this regard :

(i) The Primary Health Centres should attend the patient and give proper medical aid, if equipped.

(ii) At the hospitals the emergency Medical Officer, in consultation with the Specialist concerned on duty in the Emergency Department, should admit a patient whose condition is moribund/serious. If necessary the patient concerned may be kept on the

floor or on the trolley beds and then loan can be taken from the cold ward. Subsequent necessary adjustment should be made by the hospital authorities by way of transfer/discharge.

(iii) A Central Bed Bureau should be set up which should be equipped with wireless or other communication facilities to find out where a particular emergency patient can be accommodated when a particular hospital finds itself absolutely helpless to admit a patient because of physical limitations. In such cases the hospital concerned should contact immediately the Central Bed Bureau which will communicate with the other hospitals and decide in which hospital an emergency moribund/serious patient is to be admitted.

(iv) Some casualty hospitals or Traumatology Units should be set up at some points on regional basis.

(v) The intermediate group of hospitals, viz., the district, the sub-division and the State General Hospitals should be upgraded so that a patient in a serious condition may get treatment locally.

The recommendations of the Committee have been accepted by the State Government and memorandum dated August 22, 1995 has been issued wherein the following directions have been given for dealing with patients approaching health centres/OPD/Emergency Departments of hospitals :

(1) Proper medical aid within the scope of the equipments and facilities available at Health Centres and Hospitals should be provided to such patients and proper records of such aid provided should be preserved in office. The guiding principle should be to see that no emergency patient is denied medical care. All possibilities should be explored to accommodate emergency patients in serious condition.

(2) Emergency Medical Officers will get in touch with Superintendent/Deputy Superintendent/ Specialist Medical Officer for taking beds on loans from cold wards for accommodating such patients as Extra-temporary measures.

(3) Superintendents of hospitals will issue regulatory guidelines for admitting such patients on internal adjustments amongst various wards and different kinds of beds including cold beds and Will hold regular weekly meetings for monitoring and reviewing the situation. A model of such guidelines is enclosed with this memorandum which may be suitably amended before issue according to local arrangements prevailing in various establishments.

(4) If feasible, such patients should be accommodated in trolley-beds and, even, on the floor when it is absolutely necessary during

the exercise towards internal adjustments as referred to at (3) above.

Having regard to the drawbacks in the system of maintenance of admission registers of patients in the hospitals it has been directed that the Superintendents and Medical Officers of the hospitals should take the following actions to regularize the system with a view to avoiding confusion in respect of Admission/Emergency Attendance Registers :

" (a) Clear recording of the name, age, sex, address, disease of the patient by the attending medical officers;

b) Clear recording of date and time of attendance/examination/admission of the patient;

(c) Clear indication whether and where the patient has been admitted, transferred, referred:

(d) Safe custody of the Registers;

(e) Periodical inspection of the arrangement by the Superintendent;

(f) Fixing of responsibility of maintenance and safe custody of the Registers."

With regard to identifying the individual medical officers attending to the individual patient approaching Out Patients' Department/Emergency Department of a hospital on the basis of consulting the hospital records, it has been directed that the following procedure should be followed in future :

"A. A copy of the Duty Roaster of Medical Officers should be preserved in the office of the Superintendent incorporating the modifications done for unavoidable circumstances;

B. Each Department shall maintain a register for recording the signature of attending medical officers denoting their arrival and departure time;

C. The attending medical officer shall write his full name clearly and put his signature in the treatment document;

D. The Superintendent of the hospital shall keep all such records in safe custody;

E. A copy of the ticket issued to the patient should be maintained or the relevant data in this regard should be noted in an appropriate record for future guidance.

It is appreciated that Hospital Superintendent/Medical Officers-in-charge may have difficulty in implementing these guidelines due to various constraints at the ground level and, as such, feed back is vital to enable Government to refine and modify the order as will ensure a valid working plan to regulate

admission on a just basis. Detailed comments and, therefore, requested with constructive suggestions."

Shri Muralidhar, the learned counsel appearing for the petitioners, and Shri Rajeev Dhavan, the learned senior counsel appearing for the intervenors, in the course of their submissions, have, however, made certain further suggestions in this regard. Shri Dhavan has submitted that in order to have proper and adequate emergency health services and to create infra-structure for that purpose it is necessary to bear in mind the high risk occasions such as festivals and high risk seasons when there is a greater need for such services. It has also been submitted that the medical facilities available at the Primary Health Centres should be upgraded and the hospitals at the district level should be suitably provided to deal with serious cases and that the number of beds in the hospitals should be increased to meet the growing needs of the population. Shri Dhavan has also suggested that a centralized ambulance service may be created for all the hospitals and that the ambulance should have all the facilities necessary for giving primary medical aid and treatment to the patient. Shri Dhavan has submitted that the emergency units at the hospital should be fully equipped to manage all the emergency cases and the medical officer should be available there round the clock. Shri Dhavan has urged that the denial of treatment to a patient should be specifically made a cognizable Offence and further it should also be made actionable as a tort. In this context Shri Dhavan has invited our attention to the recent developments that have taken place in this field in the United States. There it was found that private hospitals were turning away uninsured indigent persons in need of urgent medical care and these patients were often transferred to, or dumped on public hospitals and the resulting delay or denial of treatment had sometimes disastrous consequences. To meet this situation the U.S.Congress has enacted the Consolidated Omnibus Budget Reconciliation Act of 1986 [for short 'COBRA'] to prevent this practice of dumping of patients by private hospitals. By the said Act all hospitals that receive medicare benefits and maintain emergency rooms are required to perform two tasks before they may transfer or discharge any individual; (i) the hospital must perform a medical screening examination of all prospective patients, regardless of their ability to pay; (ii) if the hospital determines that a patient suffers from an emergency condition. the law requires the hospital to stabilized that condition and the hospital cannot transfer or discharge an unstabilized patient unless the transfer or discharge an appropriate as defined by the statute. Provision is made for imposing penalties against hospitals or physicians that negligently violate COBRA. In addition the individual who suffers personal harm as a direct result of a participating hospital's violation can bring a civil suit for damages against that hospital. According to Shri Dhavan the standard of care in emergency cases implies three obligations, viz. (i) screening the patient (ii) stabilizing the patient's condition and (iii) transfer or discharge of the patient for better treatment. The submission of Shri Dhavan is that emergency health services in our country must be provided keeping An view these three requirements.

We have considered the aforesaid submissions urged by Shri Dhavan. A part from the recommendations made by the Committee in that regard and action taken by the State Government in the memorandum dated August 22, 1995 on the

basis of the recommendations of the Committee, we are of the view that in order that proper medical facilities are available for dealing with emergency cases it must be that :

1. Adequate facilities are available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stabilize his condition;

2. Hospitals at the district level and Sub-Division level are upgraded so that serious case can be treated there;

3. Facilities for giving specialist treatment are increased and are available at the hospitals at District level and Sub-Division level having regard to the growing needs.

4. In order to ensure availability of bed in an emergency at State level hospitals there is 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.

5. Proper arrangement of ambulance is made for transport of a patient from the Primary Health Centre to the District hospital or Sub-Division hospital and from the District hospital or Sub Division hospital to the State hospital.

6. The ambulance is adequately provided with necessary equipment and medical personnel.

7. The Health Centres and the hospitals and the medical personnel attached to these Centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.

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. [See : Khatri (II) v. State of Bihar, 1981 (1) SCC 627 at p. 631]. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated August 22, 1995 and the further directions given herein.

The Union of India is a party to these proceedings. Since it is the joint obligation of the Centre as well as the States to provide medical services it is expected that the Union of India would render the necessary assistance in the improvement of the medical services in the country on these lines.

As regards the medical officers who have been found to be responsible for the lapse resulting in denial of

immediate medical aid to Hakim Seikh it is expected that the State Government will take appropriate administrative action against those officers.

A copy of this judgment be sent for taking necessary action to the Secretary Medical and Health Department of the States.

The writ petition is disposed of with these directions. No order as to costs.