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Court : Delhi

Decided On : Jul-13-2012

Judge : The Honourable Acting Chief Justice Mr. a.K. Sikri &Amp; Rajiv Sahai Endlaw

Appeal No. : W.P.(C) No. 3972 of 2011

Appellant : Davinder Bhasin

Respondent : Union of India and Another

Judgement :

A.K.SIKRI, ACTING CHIEF JUSTICE.

1. In this writ petition, which is in the nature of Public Interest Litigation (PIL), the petitioner seeks direction to the respondents for compulsory basic life support training to be given to all the personnel working in all the Hospitals in India and also to personnel of military, para military, fire fighting agencies, police etc. According to the petitioner the bitter experience he had, while is mother Mrs. Raj Kaushlaya Bhasin was getting treatment has come to fore, the necessity of such a training to each and every employee working in the hospitals. He has mentioned in the writ petition as to how the lack of training with hospital attendant who are deputed to take care of his mother led to her unfortunate death. The narration given by the petitioner in this behalf, in the writ petition is as under:-

“The petitioner’s mother aged 86 years, was admitted to Max Hospital, 1 Press Enclave Road, Saket, New Delhi for the treatment of pneumonia. She was put under the supervision of Dr. Mishra and Dr. Sanjeev Budhiraja. The doctors advised various tests for petitioner’s mother which were conducted on 8.1.2011 and 9.1.2011. The patient was kept under the supervision and care of the hospital and was not discharged. While in hospital, on 9.1.2011, the oxygen saturation rate of the petitioner’s mother had dropped and she was put on oxygen support after which her oxygen saturation rate improved to 95%. On 9.1.2011 while the patient was in a private room in the ward, in the evening, she wanted to pass urine and called for a hospital attendant for assisting her. The hospital attendant deputed at the ward came to her assistance but instead of giving her a bed pan (which is given to patients in serious health conditions) she decided to take her to the washroom without looking at the treatment chart of the patient. The attendant took off the oxygen mask of the patient and moved her to washroom on a wheel chair. Because of removal of the oxygen mask, the oxygen saturation level of the patient dropped drastically leading to hypoxia (low oxygen) and arrhythymia arrest. When the patient could not move to get out of the wheelchair, the attendant instead of calling the doctors started calling the family members of the patient. On realizing the gravity of the situation the family members of the patient raised an alarm to call for other attendants and doctors but valuable time had been lost by them and this proved to be fatal for the patient. The petitioner’s mother passed away due to the negligence of an ill-trained medical attendant.”

2. For this reason, the petitioner has drawn the attention of this Court towards the fact that the fate of critically ill patients lie in the hands of the staff members and medical attendants in hospital and personnel who are the “first responders” in critical situations and in the absence of such training, they are incapable of handling huge responsibility. He has thus submitted that basic life support training should not only be confined to staff nurses etc. but be given to each and every staff in the hospital so that valuable human life is not lost due to their negligence. The petitioner also provides another justification for this kind of training stating that it would increase the number of trained personnel in the society at large without even putting any substantial burden over the infrastructure both financial or otherwise. This could ensure availability of skilled and semi skilled hands which

could prove to be handy in cases of natural calamities ensuring that atleast immediate first aid is given to the patient while also ensuring that the correct message reaches the correct doctor at the shortest possible time so that time is not wasted in starting the treatment of the person needing immediate medical attention. The petitioner also mentioned that in the study conducted by Association of physicians in India entitled as „White Paper on Academic Emergency Medicine in India: Indo-US joint working Group (JWG) published in JAPI. Vol. 56 October, 2008, it is noted that at present in India there is no dedicated emergency medical faculty accredited by the Medical Council of India. It also mentions that there are no dedicated trauma surgeons in India and also that there are a very few dedicated trauma centres in India, but unlike India, in United States of America, Accredited Council for Graduate Medical Education (ACGME) and the Residency Review Committee (RRC) for emergency medicine govern training thereof which is predominantly three years in length and are designed to prepare physicians for every practice of emergency medicine. Further physicians are trained under qualified faculty to develop clinical maturity, judgment, technical skills and a knowledge base in fundamentals of Emergency Medicine, however, in a country like India which is a country of over a billion people and a hub of medical tourism, is found to be lacking. The petitioner has also referred to Article 47 of the Constitution of India which declares that it shall be the duty of the State to raise the level of care and improve the standard of public health requirements in the Hospital, which would reach a higher level if all employees of hospital are trained at least in giving basic first aid treatment to a patient in urgent need of medical help. He has also invoked the provisions of Article 21 of the Constitution which protects the Right to Life, which is fundamental right of every citizen and includes right to health and medical care. The petitioner has further mentioned that at present there is no Central law in India. Only the legislature of Gujarat in 2007 passed the Gujarat Emergency Medical Services Act, 2007 (hereinafter referred to as the „Gujarat Act?) to provide for regulation of emergency medical services. The preamble of the Gujarat Act reads as under:-

“An act to provide for emergency medical services in the state and for that purpose to establish Gujarat Medical Emergency Services Authority and City and District Emergency Services Councils in the state and for the matters connected therewith

and incidental thereto.”

3. Section 2 sub-Section 16 of the Gujarat Act defines a medical emergency which reads as under:-

“2(16). “Medical Emergency” means a situation-

(a) Where an individual needs such immediate medical attention and the absence of which would place his health in serious jeopardy, or

(b) Where the potential for such need is perceived by emergency staff.”

4. Section 14 of the Gujarat Act lays down the standards of training of the Emergency Medical Technicians. Further, it also ensures training programmes for Emergency Medical Services Technicians who are defined under Section 2 (13) of the Act is an individual who is trained in all aspects of the basic life supports according to the standard prescribed by the authority and further who holds a valid certificate issued by the authority.

5. In the counter affidavit filed on behalf of the Union of India it is stated that basic health support training is required for only those hospital employees who are involved in “direct patient care” and not all the employees of the hospital. As per the averments made in the counter affidavits, efforts have been made by the Central Government Hospitals for training on Basic Life Support for the Doctors, nurses and some paramedical staff and this is based on a curriculum developed individually by the individual hospitals. Other established organizations like Indian Red Cross Society (IRCS) and GVK Emergency Management and Research Institute (GVK EMRI, a pioneer in Emergency Management Services in India running as a non-profit-making professional organization operating in the Public Private Partnership (PPP mode) run Basic Life Support courses on payment basis. It is stated that there is a centrally sponsored Trauma Care Programme in which indentified district/state hospitals/Medical colleges in the country are being provided assistance to augment their capacity, both infrastructure and man powers, for handling trauma cases and 140 such centres are identified in the 11th five year plan and 160 more are proposed in the next five year plan. However, in

the 9th and 10th five year plan 103 District hospitals on National highways were upgraded with Emergency care facilities to treat the victims of Road Traffic Injuries and other emergencies. According to the respondent, endeavour of providing training to more number of persons in the society would require augmentation of infrastructure and finance in consultation with other departments of the Central Government like Ministry of Home Affairs, Ministry of Defence and other departments. The respondent states that Establishment of the Emergency Medical Services Authority at the national level and similar subsidiary authorities at the State and District level requires inputs from other Departments like Ministry of Home Affairs, Ministry of Defence etc. considering the following points:

“Whether such training already exists for the above mentioned personnel in the various departments.

The expected annual workload for such a body, if established.

Under which ministry, this body/authority will be established?”

It is beyond the mandate of the Ministry of Health to decide on an authority which will have an overall say over the basic life support training needs for the military, para-military, fire services etc. The State Governments and the concerned organisations of the military, para military may define their training needs, develop the standardized training programme and conduct the same to cater to their needs for capacity building in terms of First Aid and Basic Life Support. The State Governments, Military and para-military Organisations may utilize their existing training curriculum or develop their own referring to the curriculums of the Central Government Hospitals or that of the Indian Red Cross Society, GVK EMRI or other similar organizations. They may like to utilize the services of the organizations already doing this job as enumerated.

6. The Government of NCT of Delhi which has been arrayed as respondent no.2 has filed its own counter affidavit wherein it is mentioned that a meeting was held on 5.9.2011 to discuss the issues of providing basic life support training to all the staff working in the hospitals. The same was held under the Chairmanship of Special Secretary (Health), Department of Health and Family Welfare and was

attended by the Medical Superintendents of DDU Hospital, GB Pant Hospital and the Additional Medical Superintendent of the Lok Nayak Hospital. These hospitals represent three major hospitals under the GNCT of Delhi. It was informed to the Special Secretary that most hospitals under GNCT of Delhi are already providing training to the para medical staff. Further, time to time, training is also being provided for the officials of centralized Accident and Trauma Services (CATS) and even to the personnel of Delhi police.

"The meeting recommended formation of a committee to review the overall training programmes and to make it a regular/periodic feature. Hence a Committee was formed under the Chairmanship of Dean, Maulana Azad Medical College to find out the modalities and the standard operating procedure for training to para-medical and Group D employees working under the hospitals of NCT Delhi. A report of the said Committee is, as on date, awaited. However, Dean, MAMC has submitted vide his letter dated 7.11.2011 that “life support training centre has been established in MAMC, since 2005,and it has been providing training to medical personnel of all cadres including paramedics, nurses, group D employees and doctors from time to time. It has also created satellite training centres at DDU Hospital and Bhagwan Mahavir Hospital in Delhi where similar training is being imparted. The centre was also instrumental in the training of the healthcare personnel involved in Commonwealth Games, 2010. Till date, it has trained nearly 3000 personnel and continues to do so. However, there is no organized system of training and teaching life support except for the under and postgraduates admitted in MAMC for whom such training has been made compulsory for the past four years. MS, Deen Dayal Upadhyaya Hospital has also informed that their Hospital has given basic life support (BLS) training to about 100 doctors and 300 nurses/technicians/group C staff. Subsequently, a meeting was held under the Chairmanship of Principal Secretary (Health and Family Welfare) on 21.11.2011 which was attended to by MS, GB Pant Hospital, Addl.MS, Lok Nayak Hospital and Special Secretaries of Department of Health and Family Welfare, GNCT of Delhi wherein the contents of the writ petition and the requirement of basic life support training to the personnel in the GNCT of Delhi hospitals was further discussed. This issue was again taken up in the meeting of all the Medical Superintendents of GNCTD hospitals on 28.11.2011. Further, stand of the Delhi

Government that though there is a need for Continuing Medical Education (CME) and for providing refresher training courses insofar as nurses, Doctors and para medical staff is concerned and instructions are being issued to the Medical Superintendents to undertake the same. Insofar as other hospital staff such as security, sanitation, clerical, other Group C and D and various categories of paramedical staff, not directly involved or responsible for providing life support services within the hospital premises is concerned, do not require to be given training in basic life support services. What is emphasized is that instead of giving such a training, they need to be made aware of the standard operating procedures and protocols pertaining to the care of the patients. In case of any emergency, the said personnel are to alert the nurses and doctors on duty so that life support can be provided by the concerned responsible officers. However, even for the category of hospital personnel not directly responsible for providing life support services refresher courses and training programmes on need basis can be organized. Justification for this approach is that in a hospital the over all care of the patients including medical management and patient care is primarily under the supervision of Doctor/Nurses. The nurses are supposed to follow the directions of the doctor and as per need provide urgent emergency care as required. Nursing orderlies are not directly responsible for providing life support services to the patients. However, training of First-Aid is mandatory requirement for any personnel to be selected as nursing orderly. Nevertheless, Govt. of NCT of Delhi can impart training to nursing orderlies working in sensitive areas like ICU/Operation theaters and in casualties/emergency areas."

Insofar as other facilities provided by the Delhi Government is concerned, the averments in the affidavit go on to state that in Delhi the Centralized Accident Trauma Services (CATS) was set up on the year 1989 with the following aims and objectives:

“i. Reaching the site of accident as quickly as possible.

ii. To give first aid and emergency management at the site

iii. Quick and safe transportation of the patient to the hospital

iv. To give knowledge of first aid to public through awareness programmes, demonstrations and one day emergency first aid course

v. To involve, liaise with other organization such as Delhi Police, Delhi Fire Service, Disaster Management or any other government agencies of the benefit and the cadre of the accident victims."

CATS have on date employed 42 ambulances and 219 personnel. The Govt. is in the process of acquiring another 70 ambulances which will be operational under a suitable model. These ambulances are supplemented by a number of ambulances available with Govt. other non government hospitals. Patient transport in a pre-hospital emergency like road accident is also done by PCR Van. Each CATS ambulance is manned by two Asstt. Ambulance Officers who are Graduate trained in multi disciplinary skills of first aid and emergency management. Refresher course trainings are conducted for the Assistant Ambulance Officers from time to time . There is, therefore, an existing set up of organized response to pre-hospital emergency and the Govt. is also in the process of further enhancing and improving the said infrastructure.

7. The Max Hospital where the mother of the petitioner was admitted is also arrayed as respondent no.3. It has filed its counter affidavit highlighting the advance form of medical facilities available in MAX hospital.

8. Having regard to the averments made in the affidavit of respondent no.1 and 2, we are of the opinion that no mandamus can be issued to the government to provide basic life support training to each and every category of employee . The purpose is to provide first possible medical attendants to the patient who are admitted in such hospitals and the respondent are in a better position to know which categories of employees are to be given training in basic life support services and other categories of employees who are sought to be covered by the petitioner, may not require such extensive training. Instead, for them, different kind of training namely making them aware of standard operating procedures and protocols pertaining to the care of the patients is more important. Such staff does not come in contact with the patient. Insofar as medical attendant is concerned, their main job could be alert the nurses and Doctor on duty so that life support can

be provided by the concerned responsible officer. No doubt, what the petitioner points out could be the ideal situation. No doubt, State of Gujarat has legislated on this aspect and if that happens in other part of the country including in Delhi, that may go a long way in improving the medical care. At the same time, having regard to the nature of duties which other employees have to perform and medical care is not a part of their duty, it is difficult to issue a mandamus for providing such medical training related to life support system, to these category of staff as well. Financial burden is a valid consideration when the decision on such aspects is to be taken. The Government of Delhi has already taken up the issue with all seriousness for which meetings are held at the appropriate level and the matter is under consideration, we can only comment that in right quarters, the matter shall be discussed with all seriousness and sincerity which it requires and decision taken thereupon.

9. Writ petition stands disposed of with these observations.