

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.20498 OF 2019

Date:20.09.2019

Between:

Ch. Satyanarayana Reddy,
S/o.Ram Reddy, Aged 56 yrs,
Occu : Pharmacist Gr.II, PHC Mothkur,
Yadadri Bhuvanagiri Dist.

.. Petitioner

And

The Dist. Medical and Health Officer,
Yadadri Bhuvanagiri Dist., at
Bhuvanagiri and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.20498 OF 2019****ORDER:**

Heard learned counsel for the petitioner and learned Government Pleader for Medical and Health for the respondents.

2. Petitioner is working as Pharmacist Gr.II in Mothkur, Yadadri Bhuvangiri District. By order dated 07.09.2019, he was placed under suspension. On the same day, a Memo was also issued calling upon the petitioner to submit his explanation.

3. Learned counsel for the petitioner contends that suspension was wholly unwarranted and made at the instance of the Association of Doctors of Bhongiri District.

4. The allegation against the petitioner is that when a patient reported to the Primary Health Centre alleging snake bite, petitioner has informed the Doctors that the vial of Anti Snake venom was not available in the Pharmacy and since there is no venom of Anti Snake available, the patient was referred to the District Hospital, but his life could not be saved due to delay in administering vaccine.

5. According to learned counsel for the petitioner, the venom was available and it is evident from a reading of the Memo dated 07.09.2019 and that petitioner was never asked by the Doctors about the availability of the venom, whereas since patient died, the Doctors created a story against the petitioner. He would further submit that the certificate issued by the Medical Officer prior to the incident and after the incident would disclose that the

Anti Venom vaccine was available and therefore what was alleged against the petitioner is clearly erroneous and amounts to arbitrary exercise of power and non-application of mind. He further submits that the Doctors were actually responsible for not attending to the patient but they are not proceeded against and only petitioner was picked up even though show cause notice was already issued to the Doctors.

6. It is not in dispute that the DM & HO is the competent authority to place a Pharmacist Gr.II under suspension. A reading of the order would show that based on the material placed before him, he has come to a *prima facie* conclusion that petitioner was negligent in performing his duties in providing vial of Anti Snake Venom vaccine resulting in an unfortunate death of a person by a snake bite.

7. What is contended by learned counsel for the petitioner may be true with regard to the rules and responsibilities of the Doctors and Pharmacists, but *prima facie* reading of the order would show that the Doctors contended that petitioner did not inform the availability of the vials of Anti Snake Venom, while the petitioner contended that he was never asked about the availability of the vials. These are all matters for consideration by the competent authority. The Court cannot express any opinion on merits in a case against the order of suspension by the DM & HO.

8. Further, remedy of appeal is available to the petitioner and without exhausting the said remedy, this Writ Petition is filed. From a reading of the order of suspension, it cannot be said that there is no application of mind. As to whether the reasons

assigned are not valid cannot be gone into at this stage. Therefore, it is open to the petitioner to avail the remedy of appeal and persuade the appellate authority to take a different view on his appeal. It is needless to observe that if appeal is preferred by the petitioner, the same shall be considered and appropriate orders be passed within a period of six weeks from the date of receipt of a copy of the appeal.

9. There is merit in the contention of the learned counsel for the petitioner that the petitioner alone cannot be placed under suspension if Doctors are also responsible. If that is so, the DM & HO, Yadadri Bhuvangiri District, is directed to verify the record and if the Doctors are also responsible for the alleged incident, he should take appropriate action as warranted by law if he is competent or report to the competent authority. Otherwise, the action of placing the petitioner only under suspension would amount to arbitrary exercise of power and is contrary to the law declared by the Supreme Court in **K.Sukhendar Reddy Vs State of Andhra Pradesh and another**¹.

10. The Writ Petition is accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:20.09.2019

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¹ (1999) 6 SCC 257