

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5641 of 2020

Shivani Kaushik, aged about 23 years (Female), Daughter of Thakur Manbottam Balwant Singh R/o Vill - Baignabad, P.S. Biharsharif, District-Nalanda.

... .. Petitioner/s

Versus

1. Union of India through its Principal Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The State of Bihar through its Chief Secretary.
3. The Principal Secretary, Department of Health, Government of Bihar, Old Secretariat, Patna.
4. The Principal Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna.
5. The Secretary, Department of Expenditure, Government of India.
6. The Principal Secretary, Urban Development Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shivani Kaushik, a law student (In Person)
For the Respondent/s	:	Mr. Lalit Kishore Advocate General
		Mr. Anjani Kumar, AAG-4
		Mr. Amit Kumar Jha, AC to AAG-4
		Mr. Alok Kumar Rahi, AC to AAG-4
		Dr. K.N. Singh, ASG
		Mr. Naresh Dixit, CGC
		Mr. Rakesh Roshan Singh, Advocate
		Mr. Sanjay Kumar Jha, Advocate
		Mr. Prashant Sinha, Advocate
		Mr. Abhinav Srivastava, Advocate
		Mr. Jagjit Roshan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-12-2020

Following issues of vital importance emerge for
consideration in the instant petition:-



- (i) Whether the doctors and the Para Medical Employees can refrain from discharging their duties and function as mandated under the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897, by resorting to the mechanism of abstinence and strike?
- (ii) Entitlement of proper equipment and payment of special emoluments/monetary incentives to Corona Warriors, notified under the said statute, whom we have termed as 'Guardian Angels';
- (iii) Adequate mechanism for disposal of all kinds of equipment used in dealing with the Corona Pandemic Covid-19.

2. A young Student pursuing her studies in a Law School at Patna approached this Court, highlighting the Task Force's plight to fight with the Pandemic (CORONA VIRUS) COVID-19. She placed on record material indicating that there have been instances where the members of the Task Force were attacked and physically assaulted by the patients/their relatives/general public in the State of Bihar. According to her, their lives need to be protected and given certain facilities, including monetary benefits, as an incentive to help build their capacities. She pleaded grant of financial benefits by way of risk and hardship plan to the persons engaged in fighting the current Pandemic Covid-19. She also highlighted a lack of protective tools and equipment such as PPE



kits, gloves, sanitizers, etc. In support thereof, she cited State of Haryana's examples granting monetary incentives to the workers engaged in fighting pandemic Corona Virus (Covid-19) and the unfortunate incident of the medical team undertaking such exercise being attacked in East Champaran, Bihar for want of proper supportive police machinery.

3. The State and the Central Government filed several affidavits indicating the steps taken in implementing various statutory provisions and the guidelines issued by the competent authority from time to time.

4. We decide to deal firstly with issues no. (ii) and (iii).

5. The Government of India issued a notification declaring the onset of Pandemic CORNOA VIRUS (COVID-19), and with effect from 24th March, 2020, put the entire nation in a state of lockdown. On 7th May 2020, we had, *inter alia*, passed the following order:

“14. According to us, in the times of prevalent disease, i.e. Pandemic CORONA VIRUS(COVID-19), these members of the task force constituted under the Management Act are nothing but Angels of God, can easily be termed as ‘Guardian Angels’. They are the ones who bravely step out of their homes ensuring safety and security of people residing in Bihar. Yes, this they are legally duty bound to do so, but at least in Bihar, as we are now informed, none of them have expressed any reservation or hesitation in coming forward, discharging their duties diligently. In fact, with a greater vigour and spirit, they have volunteered to do so. No doubt in these



testing times, these ‘Guardian Angels’ have to show perseverance and resilience and work with KARUNA (compassion), but then, even they also need to be protected and their dignity maintained. Their response to the call of duty needs to be acknowledged, appreciated and perhaps incentivized in every respect. Protection of their lives is also duty of the State.”

6. The Central Government, as also the State Government, issued notifications and instructions under the provisions of the Epidemic Diseases Act, 1897 (hereinafter referred to as “the Diseases Act”) and the Disaster Management Act, 2005 (hereinafter referred to as ‘the Management Act’).

The Diseases Act.

7. By virtue of Section 2, the appropriate Government is empowered to take such measures as may be necessary to prevent the outbreak of any disease or spread thereof, as also determine the manner and by whom, the expenses incurred shall be defrayed.

8. The action taken in a good faith, by any person, for anything done pursuant to and under the provisions of the said Act is legally protected under Section 4.

The Management Act

9. Section 2 the Management Act defines what is ‘Disaster’[sub-section (d)] and ‘Disaster Management’ [sub-section (e)] which read as under:-

(d) “disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising



from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

(e) “disaster management” means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for—

- (i) prevention of danger or threat of any disaster;*
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;*
- (iii) capacity-building;*
- (iv) preparedness to deal with any disaster;*
- (v) prompt response to any threatening disaster situation or disaster;*
- (vi) assessing the severity or magnitude of effects of any disaster;*
- (vii) evacuation, rescue and relief;*
- (viii) rehabilitation and reconstruction”*

10. Section 23 of the Management Act enables and empowers the State Government to prepare a State Disaster Plan, defined in subsection (t) of Section 2. Sub-Section (4) of Section 23 mandates that the State Plan shall include the measures to be adopted inter alia to prevent and mitigate disasters; capacity building and preparedness measures. Section 23 of the Management Act reads as under:-

“23. State Plan.—*(1) There shall be a plan for disaster management for every State to be called the State Disaster Management Plan.*

(2) The State Plan shall be prepared by the State Executive Committee having regard to the guidelines laid down by the National Authority and after such consultation with local authorities, district authorities



and the people's representatives as the State Executive Committee may deem fit.

(3) The State Plan prepared by the State Executive Committee under sub-section (2) shall be approved by the State Authority.

(4) The State Plan shall include,—

(a) the vulnerability of different parts of the State to different forms of disasters;

(b) the measures to be adopted for prevention and mitigation of disasters;

(c) the manner in which the mitigation measures shall be integrated with the development plans and projects;

(d) the capacity-building and preparedness measures to be taken;

(e) the roles and responsibilities of each Department of the Government of the State in relation to the measures specified in clauses (b), (c) and (d) above;

(f) the roles and responsibilities of different departments of the Government of the State in responding to any threatening disaster situation or disaster.

(5) The State Plan shall be reviewed and updated annually.

(6) Appropriate provisions shall be made by the State Government for financing for the measures to be carried out under the State Plan.

(7) Copies of the State Plan referred to in sub-sections (2) and (5) shall be made available to the Departments of the Government of the State and such Departments shall draw up their own plans in accordance with the State Plan.”

11. Under Section 24 of the Management Act the State Level Committee termed as the State Executive Committee is required to be constituted.

12. Section 25 of the Management Act enables the State to constitute the Disaster Management Authority at the State level.



The said Committee is to be headed by a Chairperson, empowered to undertake specific measures in Sections 26 and 30 of the Act.

13. We notice that under Chapter V of the Management Act (Sections 35 to 40), the Central Government is also empowered to take specific measures.

14. Section 44 of the Management Act itself enables the Central Government and the State Government to constitute a force in such manner and on such conditions that may prescribe. Section 44 of the Management Act reads as under:-

44. National Disaster Response Force.—(1)
There shall be constituted a National Disaster Response Force for the purpose of specialist response to a threatening disaster situation or disaster.

(2) Subject to the provisions of this Act, the Force shall be constituted in such manner and, the conditions of service of the members of the Force, including disciplinary provisions therefore, be such as may be prescribed.”

15. The State filed its affidavit stating that Bihar was the first State to set up the State Disaster Response Force, envisaged under Section 44 of the Disaster Management Act, 2005. Way back in the year 2010, 612 persons were identified and deputed as part of such Force.

16. The Health Department staff and the State Government employees deputed to deal with the current Pandemic



Covid-19 were granted incentive of the insurance cover in terms of the Central Government Communication dated 7th April 2020 termed as “Insurance Scheme for Health Workers Fighting Covid-19’. Further, though a special incentive was required to be given to the police force deployed to fight the Pandemic Covid-19, they may avail compensatory leave under the Bihar Police Manual, 1978.

17. For additional grant, State pleaded lack of resources since in the month of April 2020, total revenue generated was Rs.450.21 crores as against a sum of Rs.2542.23 crores generated in the corresponding month of the previous year. The shortfall is by more than 90%. In this view of the matter, the Court observed that the State could not deny such benefits by simply pleading financial hardship or bankruptcy, for it was not a case of a declared financial emergency under India's Constitution. In any event, the Court directed the Central Government to consider granting a specific economic package to the State considering the peculiar circumstances in which the State is pushed into, given the highest population density and the massive influx of the persons returning home.

18. With time, the issue of payment of extra money stands settled down.



19. In support of police personnel and health workers' adequate deployment, the grievances stand redressed over time.

20. Also, the State took adequate measures of providing safety kits in the shape of PPE kits, gloves and sanitizers, etc.

21. Health Department, in its counter affidavit, has stated that it is taking all pro-active, pre-emptive and possible measures to contain and check the pandemic in the State, and efforts are to ramp up testing in the State. The test, track and treat strategy is being proactively implemented, and the aggressive testing has facilitated the early identification of positive COVID cases, which has begun to show improvement. The recovery rate in Bihar has improved up to 89.72 %, which is above than national recovery rate of 77.77 %. The death rate in Bihar is one of the lowest in the country. The number of tests conducted per million populations in Bihar has exceeded the national average. Eighty-nine thousand eight hundred seventy-one rapid antigen tests were done, and Eleven thousand four hundred RT PCR tests were done.

22. Initiatives to create awareness amongst the general public on hand hygiene, respiratory hygiene and environmental hygiene as a major preventive strategy has been taken through print media, electronic media and social media. One hundred four call centres/helplines have been put in use to guide the community.



In containment zones, extensive contract tracing, house to house survey for identifying symptomatic persons is being carried out by dedicated teams, and 100% of the test are being conducted in these containment zones. Fines are being imposed and realized for the non-wearing mask in public.

23. The Central Government took up the issue of disposal of equipment. Also, the Central Pollution Control Board issued guidelines dated 14th April, 2020, termed as “Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/Quarantine of Covid-19 patents- Rev.2.”

24. There is nothing on record to show that such guidelines are not being implemented in their letter and spirit.

25. As such, this issue is closed, more so, in light of the earlier notification dated 28th March, 2016 issued by the Ministry of Environment, Forest and Climate Change, specific to Bio-Medical Waste Management's issuance Rules, 2016.

26. Any other issue arising out of non-implementation of the guidelines/ Rules is left open to be considered in an appropriate case.

27. Hence both the issues are dealt with together and answered accordingly.



28. We now decide on the first issue, whether the doctors and the Para Medical Employees can refrain from discharging their duties and function as mandated under the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897, by resorting to the mechanism of a strike.

29. During the present petition's pendency, the learned Advocate General invited this Court's attention to the doctors' call as also the medical staff for suspending the work and going on strike, for getting undue advantages and further creating unnecessary fear in the mind of the general public.

30. We notice that on 24th October, 2020, a news item was published in the *Danik Jagaran* that the doctors and the Para Medical Staff have given a call for a general strike for an indefinite period.

31. In our order dated 24th August, 2020, we observed that *“In our considered view, during the time of current situation and circumstances prevalent as a result of Pandemic Covid-19, none of the functionaries empowered and authorized under the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 can refrain from discharging their duties and functions, more so by resorting to the mechanism of strike which perhaps may be illegal. The doctors and the para medical staff(s) are*



constitutionally duty bound, even so on humanitarian grounds, to protect and preserve human life. Perhaps, they may have some genuine grievance, but then for redressal thereof, proper mechanism has to be resorted to, but State cannot be put to ransom by resorting to an illegal method of protest, i.e. going on indefinite strike.”

32. Article 21 imposes an obligation not only on the State but also on its functionaries to safeguard and protect every individual's life as the Hon'ble Apex Court has already held preservation of human life is of paramount importance. The Medical Officers and the Para Medical Staff(s) employed in the Government Hospitals are duty-bound to extend medical assistance for preserving human life. Failure to provide timely medical treatment in need of hour results in violation of the right to life. Consistently, every Court of the land, more so this Court, has already highlighted the need and struck down the employees' action, similar in issue.

33. In **Kameshwar Prasad and others v. State of Bihar and another, AIR 1962 SC 1166**, the Apex Court held as under:-

“The rule in so far as it prohibits a strike cannot be struck down since there is no fundamental right to resort to a strike.”



34. 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 a violation of his right to life guaranteed under Article 21. [**Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37]**

35. There cannot be any doubt that the people's fundamental rights as a whole cannot be subservient to the claim of the fundamental right of an individual or only a section of the people. There cannot be any right to call or enforce a "Bandh" that interferes with the exercise of other citizens' fundamental freedoms, in addition to causing a national loss in many ways. [**Communist Party of India (M) v. Bharat Kumar, (1998) 1 SCC 201]**]

36. The Hon'ble Apex Court in **T.K. Rangarajan v. Govt. of T.N., (2003) 6 SCC 581** held as under:

"19. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total



maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike.”

37. In Ashoka Kumar Thakur v. Union of India, (2011)

12 SCC 787, the Hon’ble Apex Court held as under:-

“5. As was noted by this Court in Paschim Banga Khet Mazdoor Samity v. State of W.B. (1996) 4 SCC 37, a person's right to get treated is inseparable from Article 21 of the Constitution of India. Keeping that aspect in view, we had required the persons who were on strike, demonstration, etc. to call them off to avoid inconvenience to the patients. The damage done to a patient is sometimes irretrievable, but the grievances of the persons who are resorting to strikes, etc., can be remedied in appropriate proceedings and the issues are being examined by this Court.

6. In that background, making the position clear that if any action is taken by the Government in respect of the impugned policy, the same shall be subject to the outcome of the present proceedings and/or any proceeding which may be filed relating to the issues, we direct that all protests, strikes and demonstrations or any such form of dissent relating to the issues being examined and/or connected and/or incidental and/or relatable thereto shall be called off forthwith. The medical services shall be restored forthwith. The doctors cannot be insensitive to the plight of patients.”



38. In **Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, at page 241**, the Hon'ble Apex Court held as under:

“In the evolution of its jurisprudence on the constitutional right to life under Article 21, this Court has consistently held that the right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right to health.²⁴⁵ The right to health is understood to be indispensable to a life of dignity and wellbeing, and includes, for instance, the right to emergency medical care and the right to the maintenance and improvement of public health.”

39. Preservation of human life is of paramount importance. That is so since once life is lost, the status quo ante cannot be restored as resurrection is beyond man's capacity. For any patient, innocent or a criminal, liable to be punished under society's laws, it is the obligation of those in charge of the community's health to preserve life so that the innocent may be protected and may punish the guilty. Social laws do not contemplate death by negligence to tantamount to legal punishment. Therefore, a doctor at the Government hospital positioned to meet the State obligation is duty-bound to extend medical assistance for preserving life. Whether at a Government hospital or otherwise, every doctor has the professional responsibility 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, whether in statutes or otherwise, which would interfere with this obligation's discharge, cannot be sustained and must, therefore, give way. Every doctor should be reminded of his total obligation and be assured 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. [**Pt. Paramanand Katara v. Union of India & Ors., [1989 (4) SCC 286].**]

40. The Hon'ble Apex Court in **Union of India Versus Mool Chand Kharaiti Ram Trust, (2018) 8 SCC 321**, reiterated the constitutional duty to develop "humanism" as envisaged under Article 51-A(h) applicable to the medical profession.

41. The Constitution Bench of the Hon'ble Apex Court in **Common Cause (A Registered Society) Versus Union of India and another, (2018) 5 SCC 1**, reiterated that when it comes to interpretation of fundamental rights, the Court has to adopt a liberal, dynamic, extensive and interpretative approach and needless to add the right to life has to be with dignity and settled principles of law.

42. We have already discussed the law hereinabove.



43. Given the same, there is no doubt in our mind that such action was illegal, if not motivated.

44. It is a matter of record that on account of this Court's intervention, they gave up call/strike, and everyone resumed their work.

45. The issue stands answered accordingly.

46. All said and done, this Court believes that we are still dealing with the COVID-19 pandemic. Since Bihar is a highly populated State wherein nearly 1/10th (approximately) of India lives with the highest population density and various directions issued, policies framed and programmes propagated by the Central Government and the State Government need to be highlighted popularized. People sensitized, both in the urban and rural areas.

47. Service to humanity is service to the Lord Almighty. It is a pious act. Much has been done, and a lot more needs to be done.

48. Before we part with this judgment, we find it necessary to compliment the officials, who have wholeheartedly and dedicatedly devoted themselves to this battle against the coronavirus. We expect these officers and all Covid-19 warriors in their respective teams to continue to serve humanity with their



devotion and dedication. We also find it appropriate to compliment the Medical and Para-medical staff of various Government Hospitals/Dispensaries in the State. The private medical practitioners and private hospitals, who have devoted their wards for covid-19 treatment, also deserve compliments.

49. We highly appreciate the efforts and assistance of Ms. Shivani Kaushik, a young law student we find very promising, with a request to continue doing the good work by taking up public interest and doing “Pro Bono” Work.

50. Given the above, the present petition is disposed of.

51. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sunil/Amrendra/

AFR/NAFR	AFR
CAV DATE	
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