



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19472 of 2014 (O&M)

Date of Order: 06.11.2024

Medicos Legal Action Group

.Petitioner

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S.Randhawa, Advocate and
Mr. P.S.Ahluwalia, Advocate
for the petitioner.

Mr. Amit Arora, Advocate,
for respondent no.1-Union of India

Mr. Saurav Khurana, Addl. Advocate General, Punjab.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

Dr. Payal Mehta, Advocate (through v.c) along with
Mr. Mohinder S. Nain, Advocate
for respondent no.4 & 7.

Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Viranjeet Singh Mahal, Advocate
Mr. Vishesh Bhatia, Advocate
for respondent no.10.

Mr. Ravi Sharma, Advocate, Standing counsel for
respondents no.8 and 11.

ANIL KSHETARPAL, JUDGE

1. This writ petition under Public Interest Litigation has been filed by a voluntary organization of doctors who are alleged to be agitating and fighting against malicious legal actions against the medical fraternity in the States of Punjab, Haryana and Union Territory, Chandigarh. In substance,



they pray for issuance of direction for implementation of the guidelines given by the Supreme Court in **Jacob Mathew vs. State of Punjab, AIR 2005 SC 3180** and **Martin F. D'Souza vs. Mohd. Ishfaq, AIR 2009 SC 2049.**

2. The Supreme Court while finally deciding the **Jacob Mathew's case (supra)**, issued the following directions:-

“Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor



proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”

3. At the time of hearing, the learned counsel representing the State of Haryana has disclosed that the instructions have already been issued on 03.03.2015. Similarly, the State of Punjab is stated to have issued instructions on 02.12.2014, whereas the Union Territory, Chandigarh has issued instructions in the year 2005. The MCI's counsel has stated that the recommendations in the year 2018 have already been made to the Central Government for taking appropriate steps.

4. From the order sheets of the various dates of hearing, it is evident that the hearing of the case has been repeatedly adjourned in order to give an opportunity to the Union of India to take appropriate steps to notify the statutory rules or executive instructions.

5. The learned counsel representing the parties do not dispute that the Union of India as per Entry-I of List-3 of Schedule-VII of the Constitution of India has the jurisdiction to take decision.

6. Today, once again the learned counsel representing the Union of India prays for an adjournment to file affidavit in terms of order dated 29.01.2019.

7. In view of the aforesaid position, keeping the writ petition pending does not serve any purpose. Sufficient opportunity has been granted to the Union of India during the last five years. It is not disputed that the ball is in the court of Union of India to take appropriate decision.

8. Hence, this court has no hesitation in issuing a writ of mandamus directing Union of India to comply with the directions issued in

Jacob Mathew's case (supra) positively within a period of six months from today.

- 9. With these observations, the writ petition is disposed of.
- 10. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

06th November, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No