

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. /2024


Parth Sharma

----Petitioner

Versus

State Of Rajasthan

----Respondent

 For Petitioner(s) : Mr. Suresh Kumar Sahini, Amicus Curaie
Mr. S.S. Hora, Amicus Curaie, through VC.
Mr. Kapil Gupta, Amicus Curaie
Mr. Ajay Shukla, Court Commissioner
Mr. Shobit Tiwari, Court Commissioner

For Respondent(s) : Mr. G.S. Gill, AAG
Mr. Vigyan Shah, AAG with Mr. Yash Joshi, Mr. Archit Bohra, AGC, Mr. Pulkit Bhardwaj, Addl. G.C.
Mr. Rajesh Choudhary GA-cum-AAG with
Mr. Manvendra Singh Shekhawat with Mr. Rishi Raj Singh Rathore, PP
Ms. Gayatri Rathore, Principal Secretary, through VC
Mr. Iqbal Khan, Commissioner Medical Education
Mr. Amrish Kumar, Secretary Medical Education along with other Officers
Dr. Manohar Siyal, Dr. Saket Dhadhich for JARD
Mr. Sudhir Upadhyay, SHO, SMS Hospital

HON'BLE MR. JUSTICE SAMEER JAIN

Order

21/10/2024

"7,000 Resident Doctors s on strike, medical services crippled in Rajasthan, 100 surgeries postponed at Jaipur Hospital"
The Indian Express, 22.10.2024

1. At the outset, learned counsel Mr. Sharma by way of this oral



petition has drawn the attention of this Court qua the dismaying situation that the general public is facing due to the ongoing strike by the Doctors and allied staff of the medical therapeutics. In support of the said averment learned counsel has relied upon the articles and news published by various news-papers, for instance, the Indian Express, Danik Bhaskar and Rajasthan Patrika (22.10.2024 and 23.10.2024).

2. It is further submitted that the condition of the patients and general public is poignant moreover, as per the news-paper publication the said strike is ongoing since 19.10.2024, due to which a number of operations, regular consultations, and OPD consultations are being affected. The same not only constitutes violation of the fundamental rights of the individuals as enshrined under Article 14 and 21 of the Constitution of India, but also hinders the smooth functioning of the State and compliance of the Directive Principles of the State Policy. Moreover, at the present time, due to change in weather, umpteen number of patients are approaching the hospitals to avail their healthcare needs qua various epidemic diseases like malaria, dengue and frequent viral fever etc. Nonetheless, a noble profession like medical/healthcare staff (*Jaipur Association Of Resident Doctors - JARD*) at this crucial point turning their backs and going on strike for their own reasons, is against the medical ethics, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Essential Services Maintenance Act, 1981 and the Rajasthan Essential Services Maintenance Act, 1970.

3. Learned counsel Shri Parth Sharma has submitted that this



Court under Section 528 of B.N.S.S. is custodian of the constitutional guarantees spelled out under the Constitution of India. It is further submitted that provisions of Section 125 of the Bhartiya Nayaya Sanhita (BNS), 2023 categorically states that any act that endangers the life or personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two thousand five hundred rupees, or with both. For the sake of convenience the said provisions is reproduced herein below:

"Section 125 Act Endangering life or personal safety of others - Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two thousand five hundred rupees, or with both, but-

(a) where hurt is caused, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b) where grievous hurt is caused, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both."

4. Considering the submissions made by the learned counsel, perusing the newspaper publications (taken on record), and taking special note of the woebegone situation, Shri Kapil Gupta, Shri Suresh Kumar Sahani and Shri S.S. Hora came forward as *amicus curiae* to represent the instant issue.

5. Additionally, notices are issued upon the State of Rajasthan,



Shri Rajesh Choudhary – learned GA cum AAG, Principal/Supervising authority at SMS Hospital, Secretary Medical Education, Rajasthan, Principal Secretary, Medical & Health and Family Welfare Department, Rajasthan, Jaipur and the President/Secretary of JARD.

6. Considering the aforementioned facts and observations this Court listed the matter at 2.00 P.M. with the consent of the concerned counsel for the afore-stated officers to mark presence in the Court or appear via VC to apprise the matter.

7. In the second round of hearing, the learned counsel and the afore-stated officers/authorities marked presence/appeared via V.C. before this Court. Learned counsel Mr. Sharma relied upon the ratio encapsulated in **T.K. Rangarajan vs. Government of Tamil Nadu & ors.** reported in **(2003) 6 SCC 581**, **Human Rights Association vs. State (Medical and Health) & ors.** registered as **D.B. PIL Petition No. 5287/2012**, **Dr. Jayant Sharma and Ors. vs. State of Rajasthan (Medical and Health)** registered as **S.B. Civil Writ Petition No. 9319/2012**, **People For Better Treatment (Pbt) vs. State of West Bengal Medical Council (Wbme)** registered as **W.P. 246/2019** and **Rajeev Mishra vs. Union of India** registered as **Civil Misc. 3928/2019**, and has averred that a doctor is he, who is mastered and practiced all the scriptures on health, who is well-behaved to all and who is endowed with the noble qualities of honesty, simplicity and purity. It goes without saying that strike by Doctors involves violation of Article 21 of the Constitution of India. It is such a noble provision and considering the fact that



they are life savers and considering the importance of their services which may be required at any moment.

8. It is apparent that even employees have no right to go on strike. The professionals like doctors and lawyers also have no right to go on strike. Their responsibilities are manifold. There is no legal /statutory right to go on strike. There is no equitable justification to go on strike.

9. Considering the submissions made insofar and scanning the judgments cited at the Bar this Court expects that the doctors and lawyers should not resort to strike. Moreover, the same is even provided in the Code of Ethics for Doctors prescribed in Regulations of 2002, it also provides duties and responsibilities of the transmission in general and to their patients. The patients must not be neglected; duties of doctors and the para-medical staff; unethical acts; human rights misconduct etc. reading of ethics also makes it clear that the strike cannot be resorted to by the members of such a noble profession. This Court further believes that it is the moral, social, professional duty of the Doctors who are under oath (Hippocratic Oath), to not make any innocent suffer.

10. In light of the aforementioned, and considering the dismaying issue and the averments by Mr. Sharma, this Court directs the Registry to register the instant oral petition as a Criminal Petition. The same is allowed by this Court, exercising its inherent jurisdiction under Section 528 of B.N.S.S.; appointed Shri Shobit Tiwari and Shri Ajay Shukla as the Court Commissioner(s) and accordingly interacted with the concerned parties and stake-





holders.

11. The Court Commissioners (appointed after the first round of hearing) visited the affected area/locality (S.M.S. Hospital, Jaipur) and have apprised the Court with the melancholy at the hospital due to the ongoing strike. Moreover, it is submitted that the OPD section of the hospital is facing severe hardships and the operations scheduled are postponed, however, keeping in mind the criticalness of certain patients.

12. Thereafter, the following interactions occurred:

WITH DR. SAKET DADHICH AND DR. MANOHAR SIYAL
(REPRESENTING JARD – JAIPUR ASSOCIATION OF RESIDENT DOCTORS S)

13. Dr(s). have submitted that they have a limited grievance, for which they have time and again approached the appropriate authorities nevertheless, considering the blind eye turned upon them by the higher medical authorities, they were forced to use the said strike as the last resort. They have categorized their grievances as follows:

13.1 Qua the safety and protection of the doctors especially the female doctors. Wherein, at several instances the doctors are subjected to violent attacks by the family members/relatives of the patient. Additionally, appointment of staff/personnel for safety of female doctors and helping staff.

13.2 Qua the allowance and miniscule stipend. Wherein, even after categorical guidelines of the NMC, the Resident Doctors are made to reside in the accommodation/hostel. Further, qua the said issue doctors have reported ample of times, before the



appropriate authorities, however, no satisfactory audience is granted.

13.3 Other miscellaneous issues pertaining to several policy issues.

However, Doctors have averred their willingness to terminate the strike and get back to their work, and render requisite services.

WITH SECRETARY, MEDICAL EDUCATION (MR. AMRISH KUMAR)

14. Mr. Kumar along with other medical officers have apprised the Court with the fact that prior to commencement of the instant strike, certain mediation and negotiation proceedings were initiated among the Resident Doctors and the appropriate higher authorities, wherein, due audience was granted to the issues in-between the groups. Nonetheless, even after granting assurance to the authorities following their general 'GPM' method, the Resident Doctors initiated and aggravated the strike.

15. Moreover, the said submission of Mr. Sharma qua the difficulties faced by the general public and the writ large effect of the instant strike is nowhere dis-agreed by the higher medical authorities. Nonetheless, the medical authorities have already considered the instant strike as a hammer on the medical department and have taken appropriate civil/criminal measures against the concerned Resident Doctors /Doctors participating in the said strike.

16. The medical authorities have acknowledged the issues and grievances of the Junior Doctors however; the same cannot be



resolved within a night, as a number of inter-departmental affirmations/sanctions are required to resolve the same.

17. Notwithstanding, anything above, Mr. Kumar have urged to upkeep their sympathetic approach qua the instant strike and have kept-forward a suggestion to formulate an internal committee to address the grievances of the Resident Doctors. It is assured that the said committee after granting due audience to the affected doctors, taking note of their grievances and considering the resources and infrastructure requisites, make every endeavor to settle the instant dispute/conflict.

18. Additionally, other officers (appeared via V.C.) have vehemently condemned the instant strike and have contended that a strike cannot be taken as a sword, to attain the said grievances being resolved. Withal, the instant act of the Resident Doctors is not affecting the patients' life but also creating a pressure upon the manpower working in place of the Resident Doctors.

19. This Court after considering the aforementioned has foremost urged the Resident Doctors to call-off their strike and request their fellow doctors to rejoin their duties. The same is accepted by the doctors representing JARD.

20. The Secretary, Medical Education has assured that the afore-stated committee shall be formulated without further ado, and the same shall have appropriate representation of the aggrieved Resident Doctors. Moreover, the primary motive of the said committee shall be to tender appropriate and lawful audience to the aggrieved and resolve their hitches. For the straight-forward



and untroubled execution of the same, the following members are suggested to be the member of the internal committee:

- (i) Secretary, Medical Education (as Chair-person)
- (ii) Director (Public Health)
- (iii) Principal, S.M.S. Medical College, Jaipur
- (iv) Two Senior most professors of medical field – Nominated by the State Government
- (v) Three members from JARD
 - (a) Dr. Manohar Siyal (President)
 - (b) Dr. Saket Dadhich (Media and legal advisor)
 - (c) Dr. Kavita Singhal

21. At the behest of this Court, learned AAG Shri G.S. Gill has proffered to be an integral part of the Board of the said committee. The same is appreciated by the Court.

22. The formation of the aforementioned committee is affirmed and valued by this Court. It is expected that the first meeting of the said committee shall be on 26.10.2024 at a place of discretion of the members of the Board. Subsequently, other meetings ought to be scheduled as per the requisite time-line framed by the Chair-person of the said committee. It is expected that the said committee shall culminate its discussions within a span of 21 days from its first sitting. The minutes of the meeting(s) and the outcome shall be furnished before this Court, on the next date of hearing.

23. It is believed that once the outcome of the said committee meeting is released the same shall be kept before the Principal Secretary, Medical and Health, for affirmation and to carry out the



inter departmental requisites.

24. In light of the above, the following interim directions are passed:

24.1 Secretary as a Chairman of the committee will be at liberty to pass any interim decision, considering the writ large effect and interest of the general public. Additionally, while passing the said, the grievances and plea of the Resident Doctors shall also be considered.

24.2 Any notices/communication/action so made till now against the concerned Resident Doctors shall be at abeyance and no coercive action shall be taken against them, till the next date of hearing.

25. List the matter on 21.11.2024, for further consideration.

(SAMEER JAIN),J

ANIL SHARMA