

LEGALFOXES LAW TIMES

CASE COMMENT: SHASHANKDEOSUDHI V. UNION OF INDIA AND OTHERS

Writ Petition (Civil) Diary No-10816/2020

Case Details:

Supreme Court of India

ShashankDeoSudhiv.Union of India and Others

Date- 13/04/2020 the petition was called on for hearing today.

Petitioner- Petitioner-in-person

Respondent- Mr. Tushar Mehta SG.,MukulRohatgi

Coram- HON'BLE Justice Ashok Bhushan, HON'BLE Justice RavindraBhat

1. INTRODUCTION

When the advisory came of ICMR for fixed the charge rupees 4500 for test of COVID-19.Mr.ShanshankDeoSudhi takes a visionary decision and filed a writ petition under Article 32of the Constitution of India which had far-reaching effects. In a democracy, it is a primary duty of government to protect his citizens from any threat.Article 21 gave guaranteed rights to the citizens for the protection of life and liberty. A total of more than fourteen human rights come under the scope of Article 21, medical and health being one of them.Article 47 of the

Constitution i.e. Directive Principles of State Policy imposed a duty on the state to raise the level of nutrition and improve public health.¹

India is a welfare state; welfare state concepts are based on the principles of equal opportunity, equitable distribution of wealth and public responsibility for those unable to avail themselves of the minimal provision of a good life.²

In India, where 2/3rd of the people live under poverty, where per capita net national income estimated 1,42,719 Rupees³ (approximately 1,863 U.S. Dollar) and the per capita income of U.S. being 65,112 U.S. Dollar, government must provide the medical facility to the people who cannot afford the costly treatment in private hospitals, that too in this situation when the whole industry is lockdown and there is no source of income.

2. FACTUAL BACKGROUND:

On 30th January, the first case was reported of COVID-19 and post fortnight of March whole India came under the threat of this pandemic and the work started to stop. In this situation, the poor people who are worked on daily pay wages or workers of factories are temporarily unemployed. It is an insightful decision taken by the Shashank Deo Sudhi to file a petition under Article 32 for providing medical security to those people who are unable to afford the treatment of this pandemic, and for ensuring free medical test of COVID-19. Petitioner challenged the decision of the Indian Council of Medical Research Department who fixed a charge of ₹4,500 for conducting tests of COVID-19 and also requested that all tests are carried out in those labs which are authorized by WHO and ICMR. Firstly the court gave its verdict on 8th April and later prayer for modification was filed of the order on 8th April where Mukul Rohatgi, senior counsel, appeared on behalf of laboratories, and the final verdict was on 13th April 2020.

3. ISSUE:

¹<https://www.ijme.in/articles/the-fundamental-right-to-health-care/?gallery=html#five>.

²<https://www.britannica.com/topic/welfare-state>.

³<https://www.statistictimes.com/economy/gdp-capita-of-india.php>.

The question of law was in front of the court was that whether the free test facility shall be provided to all the people and the fee of medical test prescribed by ICMR to conduct COVID-19 tests is reasonable or not?

4. JUDGEMENT:

In this case, there are two judgments, first, the court gave the verdict on 8th April and later, the prayer of modification was filed and the court gave the final verdict on 13th April 2020.

Hon'ble Court by keeping in mind the importance of private labs in this campaign against the COVID-19 gave the verdict on 8th April-

1. the test of COVID-19 regardless of it being done in a government laboratory or private laboratory shall be free of cost.
2. and all the tests will be done in NABL recognized labs or any agencies approved by WHO and ICMR.⁴

After the application of intervention was allowed, the applicant has prayed for modification of order and another Intervention application filed by the Bijon Mishra strives for free treatment of patients of COVID-19.

Mukul Rohatgi who appeared on the behalf of the laboratories, argued that the person who is covered in the Ayushman Bharat Yojana, laboratories conduct a free test of him but it is not possible to conduct a free test for all because of limited resources and expenses, as the testing kit itself is expensive.

Solicitor General of India submitted an affidavit on behalf of ICMR, and ensures that the government takes all necessary steps for conducting COVID-19 test. In this affidavit, he described the established labs for conducting a test of COVID-19 and submits that the decision taken by ICMR related to the fee of the test is taken after bringing in mind all pertinent factors.

After these arguments, Hon'ble Supreme Court gave its final verdict on 13th April-

⁴<https://www.manupatrafast.in.uulrc.remotex.in/pers/Personalised.aspx>.

1. the person who is covered under the Ayushman Bharat Yojna and the economically weaker person, free testing shall be available for these people.
2. Laboratories are allowed to take charge of test to those persons who can afford or are able to make payment of test.
3. the Central government issued necessary guidelines related to the cost of free testing.
4. The other weaker section, which are apart from Ayushman Bharat Yojna and workers belonging to low-income groups are also permitted for free testing. Central government issue guidelines related to this within a week.⁵

5. ANALYSIS:

In a welfare state, it is a duty of state work for the benefit of society. When the Socialist word was added in the constitution the government cleared its intention about the welfare and benefit of society.

ShashankDevSudhi takes a visionary decision and filed a writ under Article 32. After 24th March when the government declared the lockdown in the whole country, other than essential services everything was closed. In such situation, where about 2/3rd of the population is poor everything seemed as confusing. After the declaration of lockdown, they have no source of income; they lived a hard life so how can they afford an amount of ₹4,500 for COVID-19 test. It is a charge for conducting a test of one person and if unfortunately whole family is infected from this virus then it is impossible for the poor people to afford this expensive treatment. Government medical facilities are limited and they are under burden. People are dependent upon the private medical facility but the poor people are unable to afford the private medical facility so it was most salient to provide free medical access to poor people who are infected from COVID-19.

⁵<https://www.manupatrafast.in.uulrc.remotexs.in/pers/Personlaized.aspx>.

On 8th April 2020, the court gave its verdict, the test of COVID-19 will charge-less for all in government and private hospital both. It was an admirable decision but in developing countries like India where the infrastructure and economy are not indestructible as the other developed countries, the government is not able to spend so much because of limited resources. Later application of Intervention is allowed and another IA filed by Bijon Misra for demand free medical treatment for all those contaminated from COVID-19. Mukul Rohatgi appeared on the behalf of laboratories, kept his point that Labs conducting a free test of those who covered under the Ayushman Bharat Yojna but it is not possible to conduct the medical test free for all because the equipment used for setting-up a lab and test kit for conducting a test is expensive, if provide free medical cover to all it will be an economic burden on the government in this situation where already government struggling with financial resources in this economic crisis because of the Pandemic.

ICMR has decided ₹4,500 per test; it is decided after the analysis of all reasonable facts and then decided. People who can afford the price if provide free treatment it is not an efficient decision and not the right utilization of public money. Under Article 47, duty of the state to raise the level of nutrition and improving public health, and, medical health is coming under the scope of Article 21

The Constitution of India imposed a duty on the state to protect the life and liberty of citizens. Hospitals and medical services are bound under this obligation. If the state failed or refused to provide medical care to our citizens it would be a violation of Article 21⁶ because dignity and health comes within the scope of Article 21.⁷

Court held that the right to health is an inherent part of Article 21 and the Constitution of India imposed a responsibility on the state to provide health facility to the people of India.⁸

Ayushman Bharat Yojna is launched to provide medical care to the people who are protected under article 21. Article 21 is not suspended even in a national emergency, so it is mandatory for a state who adopted the welfare character, to provide free medical care that are unable to afford the treatment of this pandemic.

⁶Paschim Banga Khet Mazdoor Samiti v State of West Bengal (1996) AIR SC 2426/ (1996) 4 SCC 37.

⁷Bandhua Mukti Morcha V Union of India (1997) 10 SCC 549.

⁸State of Punjab v Mohinder Chawala 1997 2 SSC 83.

And the verdict of the court came on 13th April is not a violation of article 21, equal protection of law gave authority to legislation to frame the different laws for two different people who lived in an unequal situation. If people who are below poverty line and can't afford ₹4,500 per test and costly treatment, if the government provides free medical treatment to those, it is not an arbitrary action of the state towards Mensheviks.

6. CONCLUSION:

We appreciate the act of ShashankDeoSudhi and should praise their thinking. They discovered the situation in the beginning and the petition filed by him is a great work in favor of Bolsheviks. Foreigners who got infected from the disease can take the cost of his treatment, but the person who is unemployed or has been denied a salary in his employment, how will he afford the treatment if he got infected with the virus. The verdict of the Hon'ble Supreme Court is true justice for those giggling with great difficulty in this pandemic because this country is theirs too.