

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 18607 of 2021

Sanjiv Joshi *Petitioner*
In Person
-versus-
State of Odisha and others *Opposite Parties*
Mr. B.P. Tripathy
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY

Order No.

ORDER
16.05.2023

22. 1. The affidavits of both the Chief District Medical Officers (CDMOs) of Nabarangpur (dated 27th April, 2023) and Kalahandi (dated 1st May, 2023) have been perused by this Court. This Court has also heard the submissions of Mr. Sanjiv Joshi who appears in person and Mr. B.P. Tripathy, learned Additional Government Advocate for the State.
2. The Court finds that while both affidavits purport to address some of the issues highlighted in the Court's order dated 9th February, 2023 neither affidavit is candid about the actual ground situation as regards the public health system in both these districts. Both affidavits claim that there are adequate medical facilities in terms of doctors, staff, equipments and facilities in both districts, whereas a careful reading of the affidavits would show that there is a serious problem on hand as regards each of the issues. Through the interaction with both the CDMOs who appeared in virtual mode, it is apparent that 'Specialists' like Gynaecologists, Cardiologists, Paediatricians, ENT doctors, Eye specialists etc., are

not available in adequate number in either of the districts; that doctors are being engaged on contractual basis for short terms; that proposals for appointment of nurses, pharmacists etc., are pending with the Government for months on end with no response.

3. The Court would have expected both the CDMOs to inform the Court the actual position with regard to each of the PHCs and CHCs apart from the DHHs in the respective districts in respect of doctors, nurses, pharmacists and so on. In other words, the affidavits should have clearly set out the sanctioned strength and the working strength in each of the said posts and what needs to be done to fill up the gap.

4. The Court would like to emphasize that this kind of litigation is essentially 'non-adversarial'. As explained by the Supreme Court in *Dr Upendra Baxi v. State of U.P. (1986) 4 SCC 106 (at 117)*:

“It must be remembered that this is not a litigation of an adversary character undertaken for the purpose of holding the State Government or its officers responsible for making reparation but it is a public interest litigation which involves a collaborative and cooperative effort on the part of the State Government and its officers, and lawyers appearing in the case and the Bench for the purpose of making human rights meaningful for the weaker sections of the community. It marks a step forward in the direction of reaching socio-economic justice to the deprived and vulnerable sections of humanity in this country.”

5. The first step is to acknowledge that there is a problem, the second is to correctly identify the contours thereof, and the third is to work together to find a solution to the problem. The problem-solving potential of a PIL is what is being explored in this kind of a

litigation. It may not always be possible to find a perfect or a complete solution but certainly a sincere attempt has to be made.

6. The Court would have expected the CDMOs to have physically visited each of the facilities to offer a candid view. Mr. B.P. Tripathy, learned AGA offers that both the CDMOs will file better affidavits explaining the actual ground situation in both districts. At the same time, the Court would like the Secretaries of the District Legal Services Authorities (DLSAs) in both Districts to constitute, as far as possible, the same teams that were earlier constituted pursuant to the order dated 15th September, 2021 of this Court to again visit a sampling of the medical facilities in both these districts since it is now more than a year since the previous visit was undertaken. The honorarium for the members of the said teams would be the same as was fixed by virtue of the aforementioned order. The said teams will undertake their visits between 15th June, 2023 and 30th June, 2023 and file reports with video clips and photographs in a pen drive in this Court. The reports will try and make a comparison of what was observed more than a year ago and indicate in their report whether there has been any improvement in the situation.

7. The reports be placed before this Court in a pen drive on week before the next date of hearing with advance copies to learned counsel for the State and to Mr. Sanjiv Joshi who appears in person.

8. The Court would like the Additional Chief Secretary, Health and Family Welfare Department to examine the affidavits and reports filed so far in this matter and to have a meeting with both the CDMOs of Kalahandi and Nabarangpur before they file their respective further affidavits in the matter. Mr. Tripathy, learned

AGA offers to communicate today's order as well as the previous orders of this Court in this matter to the Additional Chief Secretary, Health forthwith for this purpose. The Court also requests the Additional Chief Secretary, Health apart from the CDMOs of Nabarangpur and Kalahandi to participate in virtual mode in the next hearing.

9. List on 27th July, 2023 at 2 pm.

(Dr. S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge

S. Behera

