

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1743 OF 2022

(Arising out of Special Leave Petition (Civil) No.2221 of 2020)

STATE OF UTTAR PRADESH

... Appellant

VERSUS

B.P. MISHRA

...Respondent

ORDER

1. Leave granted.
2. This appeal challenges the directions issued by the High Court of Judicature at Allahabad in its judgment and order dated 14.11.2019 in Public Interest Litigation (PIL) No.53904 of 2016.
3. Taking cognizance of letter dated 04.11.2016 addressed by the respondent herein to one of the Judges of the High Court, the aforesaid Public Interest Litigation was registered by the High Court. The letter highlighted certain facts and asserted that the son of the respondent who was about 25 years of age and was a practising Advocate in the Allahabad High Court, died on 30.10.2016 as a result of negligence on part of the treating doctors and the hospital where he was admitted for medical attention.
4. In said Public Interest Litigation, the High Court issued certain interim directions as a result of which affidavits came to be filed by the Principal Secretary, Health and Family Welfare, Government of U.P., Lucknow, placing on record certain

material. It is, however, important to note that none of the treating doctors was made a party to the proceedings.

5. After going into the material on record, the High Court issued directions in paragraph 23 as under:

“23. In view of above facts, we are issuing the following directions to the State Government and its functionaries to take following measures:-

“(i) All the District Magistrates of the State shall be responsible for compliance of these directions and they shall ensure that preventive measures mentioned in the "The Uttar Pradesh Prevention and Control of Malaria, Dengue, Kala-azar and any Vector Borne Disease Regulations, 2016" and work plan prepared by the State Government for control / prevention and rescue of dengue and other vector borne diseases i.e. 'Dengue and Chikangunia Prevention Plans -2016-17' be complied with strictly.

(ii) In the affidavit filed by the Principal Secretary, Medical Health and Family Welfare, it is mentioned that in several districts of State, 37 SSH's Lab (Sentinal Surveillance Hospital) which have been established for test and investigation of dengue and chikangunia patients, should function efficiently under the supervision of Chief Medical Officer and overall supervision of District Magistrate.

(iii) For the supply of blood and platelets of dengue patients, 39 blood separation units, which have been established in the State of UP, should also function as per the direction, strictly in terms of directions issued by State Government and the affidavit filed by Principal Secretary.

(iv) In Allahabad, SSH's Lab (Sentinal Surveillance Hospital), which has been established in Motilal Nehru Medical College and 03 blood separation units, should be made functional efficiently. Any negligence in its function shall be viewed seriously and necessary action shall be taken for negligence. The Chief Medical Officer, who has been appointed by the State Government as Nodal Officer, is charged to ensure the compliance of the directions issued by this Court.”

6. The aforesaid directions issued by the High Court were undoubtedly in the realm of public law and, as such, could certainly be issued while considering a public interest litigation pursuant to the communication received from the respondent. The

High Court, however, also made following observations and issued consequential directions in paragraph 20 of its judgment as under:

“20. In the case of *Arun Kumar Manglik (supra)*, Supreme Court has awarded compensation of Rs. 15,00,000/- (Fifteen Lakhs) but in that case there is finding recorded by the Supreme Court that there was no negligence on the part of the doctors. In that case the doctors have made correct diagnosis but the medical negligence was found the part of hospital.

But in the present case the doctors of S.R.N. Medical College made wrong diagnosis and they administered 'broad spectrum antibiotic' to the patient which is not prescribed in dengue fever as discussed above in the direction of State Government, which is on record, in which it is clearly mentioned that antibiotic should not be given to dengue patient.

In view of gross medical negligence on the part of the doctors of S.R.N. Medical College and in peculiar facts and circumstances of the case that a practising Advocate of this Court has lost his only young son, who was also an advocate, we assess the compensation of Rs. 25,00,000/- (Twenty Five Lakhs) as mentioned above, which shall be paid to the petitioner within six weeks from today. The above payment shall be made through the District Magistrate. Sri K. K. Rai, Advocate, shall also be paid fee of Rs. 10,000/- (ten thousand) by the State in the same manner.”

7. Being aggrieved by the decision of the High Court, the instant appeal has been preferred by the State.

8. While issuing notice, the scope of the matter was confined to the direction issued in paragraph 20 and the order dated 07.02.2020 passed by this Court observed as under:

“Ms. Aishwarya Bhati, learned Senior Advocate appearing in support of the petition submits that the petitioner is not challenging any of the directions issued by the High Court in Para 23 of its decision. It is submitted that the present petition is confined only so far as the award of compensation in the sum of Rs.25 lakhs as directed by the High Court.

Issue notice confined only to the award of compensation.

Pending further consideration, the direction as regards compensation as aforesaid, shall be stayed.”

9. We have heard Ms. Garima Prashad, learned Senior Advocate for the State, and Ms. Preetika Dwivedi, learned Advocate for the respondent.

10. At the outset, it must be stated that none of the treating doctors was a party to the proceedings. During the course of its judgment, the High Court arrived at certain conclusions which were in the nature of findings on the issue of negligence on part of the concerned hospital and the treating doctors. Such findings and conclusions are definitely prejudicial to the interest of the treating doctors and the hospital.

11. Leaving aside the question whether in a public interest litigation, the matter could be seen whether any negligence had occurred in an individual case, the basic feature of the matter as it emerges is quite clear that none of the persons who could get adversely affected by a decision was made a party to the proceedings.

12. We have, therefore, no hesitation in setting-aside the findings and the conclusions in the judgment under appeal about negligence on part of the hospital and the treating doctors and the operative directions issued in paragraph 20 as quoted hereinabove. We, therefore, allow this appeal and set-aside such conclusions and directions. It is however made clear that the directions issued in paragraph 23 are left untouched and shall be operative.

13. If the respondent has a grievance that his son died as a result of professional negligence on part of the concerned hospital and treating doctors, he has every remedy in law either on the criminal side, or before a consumer forum or before any other competent authority. Public Interest Litigation in a manner it was initiated and

dealt with by the High Court was certainly not a proper remedy.

14. Therefore, leaving all questions open, we give liberty to the respondent to initiate such proceedings as are open to him in law. As and when, such proceedings are initiated, the time taken in prosecuting the instant public interest litigation shall be reckoned for the purposes of Section 14 of the Limitation Act, 1963 and in such eventuality, the proceedings so initiated shall be taken to logical conclusion purely on their own merits, without being influenced by any of the observations made by the High Court. The respondent shall however be entitled to rely on the material which was placed before the High Court.

15. This Civil Appeal is thus allowed, with no order as to costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi;
March 04, 2022.

ITEM NO.2

COURT NO.2
(HEARING THROUGH VIDEO CONFERENCING)

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.2221/2020

(Arising out of impugned final judgment and order dated 14-11-2019 in PIL No.53904/2016 passed by the High Court Of Judicature At Allahabad)

STATE OF UTTAR PRADESH

Petitioner(s)

VERSUS

B.P. MISHRA

Respondent(s)

(FOR ADMISSION and I.R.; and, IA No.12605/2020 - FOR EXEMPTION FROM FILING O.T.)

Date : 04-03-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHAFor Petitioner(s) Ms. Garima Prashad, Sr. Adv./AAG
Mr. Vishnu Shankar Jain, AORFor Respondent(s) Ms. Preetika Dwivedi, AOR
Mr. Rahul Raj Mishra, Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, in terms of the Signed Order placed on the file.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER(RAM SUBHAG SINGH)
BRANCH OFFICER