VERDICTUM.IN

$~38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st JANUARY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 1127/2023**

PARMINDER SINGH ..... Petitioner

Through: Mr. Jatin Sharma and Mr. Sachin Mistry, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondent

Through: Mr. Santosh Kumar Tripathi, Standing Counsel for GCNTD with Mr. Arun Panwar, Mr. Pradeep, Ms. Mahak Rankawat and Mr. Pradyumn Rao, Advocates
Mr. T. Singhdev, Mr. Aabhaas Sukhramani, Advocates for R-4

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, CJ

1. The instant writ petition has been filed as a Public Interest Litigation (PIL) for a direction to the Union of India, Govt. of NCT of Delhi and the Indian Medical Association for mandatorily making available and ensuring video laryngoscope along with conventional laryngoscope in all desirable areas especially crash cart trolley in the healthcare system to manage difficult intubation systems.

VERDICTUM.IN

2. The Petitioner has also prayed for issuance of a direction to the Respondents to issue directions to medical colleges, institutions for using video laryngoscopes along with conventional laryngoscopes for teaching and training purposes. It has also been prayed that the medical practitioners may be trained and equipped for proper usage of video laryngoscope.

3. The Petitioner states that he is a respected citizen of this country and is involved in working for the welfare of the society. It is stated that the technology in the last two decades has progressed by leaps and bounds and that the nation must adopt new technologies. It is stated that the current market size of medical devices sector in India is estimated to be approximately USD 11 Billion and India's share in the global medical device market is estimated to be about 1.5%. It is stated that India is the 4th largest market for medical devices in Asia after China, Japan and South Korea.

4. It is contended that the government schemes for strengthening of infrastructure in public health space have been largely under-funded and the State is not working towards creating a greater role for itself in the delivery of health services. The Petitioner states that various Parliamentary Committees have found that the medical devices industry is facing several challenges such as inadequacy of indigenous research and development on high end technology including lack of adequate funding, non-availability of adequately trained and qualified manpower in high end technology with entrepreneurial skills. The Petitioner further states that intubation is a procedure that can help save the life of a person who cannot breathe.

5. It is stated that when a person cannot breathe, the healthcare provider uses a laryngoscope to guide an endotracheal tube (ETT) into the mouth,

VERDICTUM.IN

nose or voice box, then it widens the trachea to keep the airway open so that air can get into the lungs. It is stated that intubation is usually performed in hospitals during an emergency or before surgery.

6. The Petitioner submits that the instruments used for intubation is called a laryngoscope and the procedure for intubation is called laryngoscopy. The Petitioner thereafter states that medical science has improved and with the advancement in technology, laryngoscopy is available with videos. The Petitioner has relied on certain journals and publications to highlight the advantages of video laryngoscope.

7. The Petitioner has stated that despite various studies and guidelines, the authorities have not taken any substantial step towards implementation and usage of video laryngoscope and for training of doctors, medical staff etc. along with conventional laryngoscopes. The Petitioner has, therefore, approached this Court by filing the instant PIL.

8. India has taken huge strides in terms of providing medical facilities and this Court can take judicial notice of the fact that many patients from neighbouring countries come to India to avail the medical facilities provided by the hospitals in India. The medical facilities and the equipment that is available in the hospitals of our country are world class and are easily accessible to the public at large. In fact, India is famous for its medical tourism as it combines the latest technologies with qualified professionals at accessible costs.

9. The Petitioner has only placed on record a few journals to highlight the benefits of a video laryngoscope. The Petitioner is not a doctor and has not done any research work to demonstrate that unless a video laryngoscope is not used, the process of laryngoscopy will end in a failure. This petition

VERDICTUM.IN

seems to be sponsored by certain manufacturers to promote the video laryngoscope technology produced by them and are abusing the judicial process by filing the present PIL.

10. The Petitioner has not brought any material to show that absence of video laryngoscope will result in fatalities. Furthermore, it is settled law that in case of policy decisions that are taken by the State, Courts should tread lightly, especially when such decisions pertain to the health sector. The Apex Court in Jacob Puliyel v. Union of India and Ors., **2022 SCC OnLine SC 533,** was broadly examining policy decisions pertaining to health and had observed that in exercise of their judicial review, Courts should not ordinarily interfere with the policy decisions of the Executive unless the policy can be faulted on grounds of *mala fide,* unreasonableness, arbitrariness or unfairness, etc. The relevant portion of the said judgment read as under:-

> *"21. We shall now proceed to analyse the precedents of this Court on the ambit of judicial review of public policies relating to health. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.* ***Courts do not***

VERDICTUM.IN

> ***and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate.*** *The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary."* (emphasis supplied)

11. The aforementioned Judgment had relied upon the observations of the Apex Court in Academy of Nutrition Improvement v. Union of India, **(2011) 8 SCC 274** wherein the Apex Court had explicitly noted that Courts should be reluctant to interfere with policy decisions taken by the State in matters of public health. The observation reiterating the same read as under:-

> ***"35. This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread.*** *The rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after collecting and analysing inputs from surveys and research.* ***Nor will courts attempt to substitute their own views as to what is wise, safe, prudent or proper, in relation to technical issues relating to public health in preference of those formulated by persons said to possess technical expertise and rich experience.***
>
> ***36. This Court in Directorate of Film Festivals v. Gaurav Ashwin Jain [(2007) 4 SCC 737] , pointed out: (SCC p. 746, para 16)***
>
> > ***"16. The scope of judicial review of governmental policy is now well defined. Courts do not and***

VERDICTUM.IN

> ***cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review….*"** (emphasis supplied)

12. The observation that Courts should restrain themselves from interfering in policy decisions relating to the economy or health has been made in Small Scale Industrial Manufacturers Association (Regd.) v. Union of India, **(2021) 8 SCC 511** as well wherein the Court has observed that correctness of reasons that have prompted the Government to take certain decisions should not be a concern of judicial review. The paragraphs stating the same are as follows:-

> ***"71. The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.***

VERDICTUM.IN

72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate.

73. Government has to decide its own priorities and relief to the different sectors. It cannot be disputed that pandemic affected the entire country barring few of the sectors. However, at the same time, the Government is required to take various measures in different fields/sectors like public health, employment, providing food and shelter to the common people/migrants, transportation of migrants, etc. and therefore, as such, the Government has announced various financial packages/reliefs. Even the Government also suffered due to lockdown, due to unprecedented COVID-19 Pandemic and also even lost the revenue in the form of GST. Still, the Government seems to have come out with various reliefs/packages. Government has its own financial constraints. Therefore, as such, no writ of mandamus can be issued directing the Government/RBI to announce/declare particular relief packages and/or to declare a particular policy, more particularly when many complex issues will arise in the field of economy and what will be the overall effect on the economy of the country for which the courts do not have any expertise and which shall be left to the Government and RBI to announce the relief packages/economic policy in the form of reliefs on the basis of the advice of the experts. Therefore, no writ of mandamus can be issued." (emphasis supplied)

VERDICTUM.IN

13. Laryngoscopy is a common procedure done in all hospitals which does not even require hopitalization. Courts cannot force Governments to procure video laryngoscope in all hospitals as it is a matter of policy.

14. It is well settled that the Courts do not run governments and decisions to procure instruments in hospitals are taken by the government depending on several circumstances. It is not for the courts to take a decision whether video laryngoscope should be mandatorily made available or not. No data has been provided by the Petitioner that absence of video laryngoscope has resulted in a number of failures leading to deaths of patients. This petition is ill conceived and the Petitioner has been only used as a front by manufacturers of video laryngoscope who wish to promote their products. Of late, this Court is witnessing that the jurisdiction of Public Interest Litigation is being misused only to secure personal benefits and such PILs are abuse of the process of law which must be discouraged.

15. This Court, is, therefore, inclined to dismiss the petition with a warning to the Petitioner to not file such frivolous petitions in the future.

16. The petition is dismissed, along with pending application(s), if any, with the above observations.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JANUARY 31, 2023
hsk