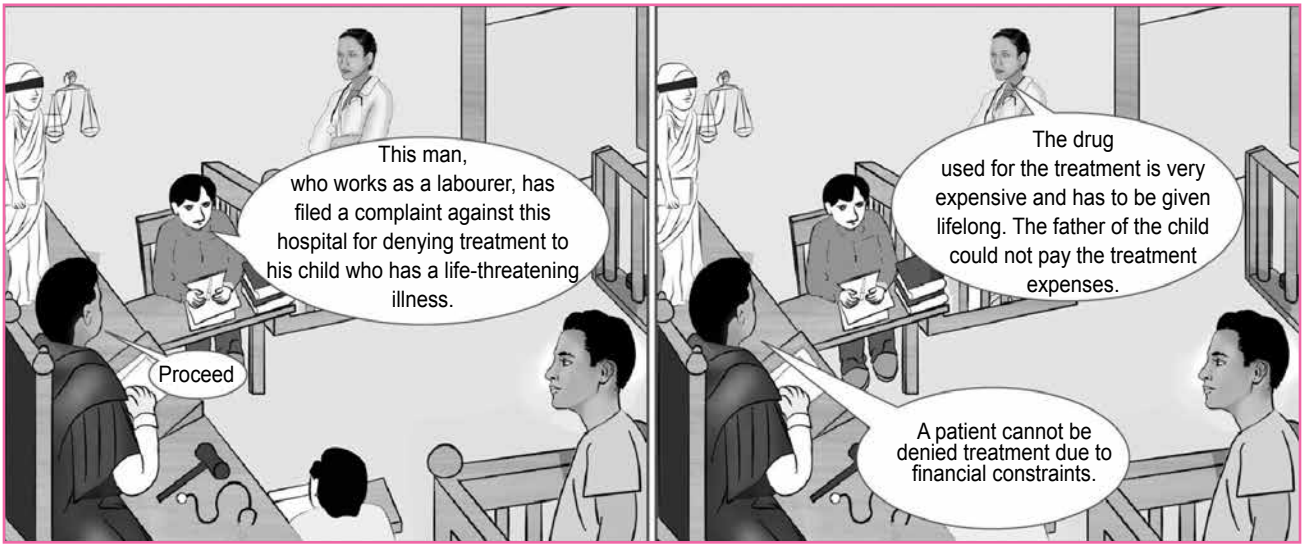
No Patient can be Denied Treatment Due to Financial Constraints



Lesson: Article 21 of the Constitution of India guarantees protection of life and personal liberty to every citizen.

Article 14 provides for 'Equality before law'.

In Mohd. Ahmed (Minor) vs Union Of India & Ors. on 17 April, 2014 W.P.(C) 7279/2013, the Delhi High Court held that "on account of lack of Government planning, there is 'pricing out' of orphan drugs for rare and chronic diseases, like Gaucher. The enzyme replacement therapy is so expensive that there is a breach of constitutional obligation of the Government to provide medical aid on fair, reasonable, equitable and affordable basis. By their inaction, the Central and the State Governments have violated Articles 14 and 21 of the Constitution. Just because someone is poor, the State cannot allow him to die. In fact, Government is bound to ensure that poor and vulnerable sections of society have access to treatment for rare and chronic diseases, like Gaucher especially when the prognosis is good and there is a likelihood of the patient leading a normal life."

The Court also said, "By virtue of Article 21 of the Constitution, the State is under a legal obligation to ensure access to life saving drugs to patients."

CASE SUMMARY

Mr MS, filed a case on behalf of his son aged 7 years, who suffered from Gaucher's disease, a life-threatening disease if left untreated. His three other children also had succumbed to the same illness. The treatment of Gaucher's disease is lifelong enzyme replacement therapy to be administered every month.

The cost of treatment is around Rs. 6-7 lakhs per month. The father, who is a rickshaw puller could not afford this treatment; as a result, the patient was denied treatment. The father filed a case in the Delhi High Court seeking free treatment for his son. The patient underwent the first treatment in August 2013, with financial assistance from the Delhi Government's Delhi Arogya Kosh scheme, which provides financial assistance to the extent of Rs. 5 lakhs to needy eligible patients. Since the patient had already received help of Rs. 4,80,000/-, he could now get assistance of only Rs. 20,000/-. A hospital, a pharmaceutical company and lawyers of Delhi High Court voluntarily came forward to organise treatment for 6 months, while the petition was awaiting decision.

On 12th February, 2014, the Delhi High Court directed the Secretary (Health), Ministry of Health & Family

Welfare and Secretary (Health), Govt. of NCT of Delhi along with other Government officials to decide if a policy could be framed to provide treatment. As no solution could be found at the meeting on 25th February, 2014, the Court commenced hearing final arguments on 25th March, 2014.

SOME SALIENT COURT OBSERVATIONS

- The Counsel for the father argued that AIIMS, Central Government and Govt. of NCT of Delhi were obligated under Article 21 of the Constitution of India to provide totally free treatment to the patient as well as those with similar illness as the treatment was available in India. Denying free treatment to the common man on the alleged grounds of financial constraints, while providing free treatment to government employees was "*arbitrary, discriminatory and hit by Articles 14 and 21 of the Constitution*".
- Delhi Govt./AIIMS/Union of India stated that because of their restricted resources they were not able to fund the treatment as the treatment was lifelong. The Counsel for the Delhi Govt. stated that "*the State had an equal obligation towards all citizens and it had to use its limited resources so as to provide the maximum benefit to the maximum number of people… Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same.*"
- AIIMS confirmed that the petitioner had Gaucher's disease and that it had no fund for treatment of any of these patients. It also submitted that while it was conducting a humanitarian program wherein 16 patients were under treatment for Gaucher's disease, the funds for their treatment were being provided by other parties.
- "*37. This Court finds that the petitioner suffers from a disease/condition which affects such small numbers of individuals that drugs for these diseases/conditions are commonly referred to as 'orphan drugs'.*" While different countries have adopted different policies towards orphan drugs, India has no policy or strategy in place with regard to orphan drugs. The Court observed: "*… neither any promising orphan drug will be developed nor the prohibitive cost of 'orphan drugs' will see a reduction unless changes are made in the applicable laws to reduce the costs of developing such drugs and to provide financial incentives to develop such drugs like in the above mentioned countries.*" The Court expressed its inability to direct the executive to frame a policy or the parliament to pass a legislation in this regard stating that the issue had to be decided in the context of the Indian Constitution.
- "*49. Article 21 of the Constitution of India casts an obligation on the State to preserve life. Article 21 reads as under: 21. Protection of life and personal liberty- No personal shall be deprived of his life or personal liberty except according to procedure established by law.*"
- "*50. The Indian Supreme Court in a catena of cases has held that right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43. It has further held that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21, fundamental in nature, sacred, precious and inviolable.*"
- The United Nations Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights have also recognised the human right to health. And, since India is a signatory to the same, Article 21 has to be interpreted in conformity with International Covenant on Civil and Political Rights.
- "*58. Consequently, right to health and health care access are a part of Articles 21, 38 and 46 of the Constitution. Accordingly, every person has a fundamental right to quality health care - that is affordable, accessible and compassionate.*"
- Recognising the availability of finance as a relevant factor, the Court said "*… courts cannot direct that all inhabitants of this country be given free medical treatment at state expense. Even if such a direction were issued it would not be implementable as there would be neither infrastructure nor finance available for compliance of the said direction.*" However, the Court also recognised that core obligations under the right to health are non-derogable. It stated as follows: "*By virtue of Article 21 of the Constitution, the State is under a legal obligation to ensure access to life saving drugs to patients… Government must at the bare minimum ensure that individuals have access to essential medicines even for rare diseases like enzyme replacement for Gaucher disease...*"
- The civil society and corporates should be involved in providing health care access to the poor and underprivileged in the form of donations. Corporates are required to donate a percentage of their average net profits on CSR activities under Section 135 of the Companies Act, 2013.

FINAL JUDGEMENT

Summarising its observations, the Court said that "*there is a breach of constitutional obligation of the Government to provide medical aid on fair, reasonable, equitable and affordable basis. By their inaction, the Central and the State Governments have violated Articles 14 and 21 of the Constitution*." Nobody should be denied treatment because of financial constraints. Providing access to essential medicines at affordable prices is a core obligation of the state and "*Since a breach of a Constitutional right has taken place, the Court is under a duty to ensure that effective relief is granted*." Health is a state subject. So, the Court directed the Delhi Govt. to provide the required treatment free of cost to the patient "*as and when he requires it*".

REFERENCE

1. Mohd. Ahmed (Minor) vs Union Of India & Ors. on 17 April, 2014 in the High Court of Delhi at New Delhi W.P.(C)7279/2013.