

Court No. - 21

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 53904 of 2016

Petitioner :- B.P. Mishra Advocate

Respondent :- State of U.P.

Counsel for Petitioner :- Letter, B.P. Mishra (In Person), Dr. D.K. Tiwari, H.N. Mehrotra

Counsel for Respondent :- S.C., S.C.

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble Piyush Agrawal, J.

1. This public interest litigation was registered on the letter sent by advocate of this Court Sri B.P. Mishra dated 4.11.2016 addressed to one Hon'ble Judge of this Court, who has treated the said letter as Public Interest Litigation. In his letter the learned advocate has invited the attention of this Court to the casual approach of the State functionaries with menace of dengue fever. This Court has passed the following order on 5.11.2016 :-

“A letter dated 4 November 2016, written by Sri B.P. Mishra, Advocate a practising lawyer of this Court addressed to one of us (V.K. Shukla, J.) and therein mention has been made about the insensitivity that has been shown by the doctors in not rendering medical assistance to a young practising lawyer who unfortunately has to lose his life. Letter in question details the agony that has been faced by the family of the young Advocate.

Once such a situation has been mentioned in the letter and this is accepted position that patients of dengue and chikungunya are on rise caused by viruses carried by mosquito. Once the said epidemic is there and a young practising lawyer has already lost his life then the situation detailed out by his father in the letter addressed certainly requires investigation with regard to insensitivity of the doctors at Allahabad and other places. In view of this, we proceed to pass an order asking the Registrar General of this Court to supply a photostat copy of the letter in question shown to Sri Sanjay Kumar Singh, learned Standing Counsel who is present in the Court. Thereafter, learned Standing Counsel shall forward a copy of the letter in question to the Commissioner, Allahabad Region, Allahabad in order to get the inquiry conducted in the matter and submit report before this Court by the next date fixed.

Letter in question be treated as Public Interest Litigation Petition and the same be listed before the appropriate Bench after six weeks.

Coupled with this, we also proceed to pass an order asking the State Government through its Principal Secretary, Medical Health to give full details:-

i) what are the strategies for prevention and control of the dengue and chikungunya;

ii) what are the medical facilities provided to an incumbent suffering from aforementioned deceased.

iii) about the number of such cases reported from the Government hospital as well as from the private hospital and how many patients have successfully over come from the aforementioned disease.

iv) individual detail be furnished pertaining to District Allahabad.

All the details shall be furnished by the next date.

Sri Anil Tiwari, Advocate and President, High Court Bar Association is requested to act as amicus. Sri Ramesh Upadhyay, Chief Standing Counsel is asked to extend full assistance in the matter.

List this matter on 19-12-2016.”

2. In response to the said directions, an affidavit sworn by Sri Arun Kumar Sinha, who was posted as Principal Secretary, Health and Family Welfare Govt. of UP, Lucknow has been filed. In the said compliance affidavit, it has been stated that the State Government has prepared work plan to control / prevention and rescue of 'dengue and vector borne diseases'. In the year 2016 a direction has been issued to the district authorities for compliance of 'Dengue and Chikangunia Prevention Plans -2016-17', a copy whereof is on record as Annexure -1 to the said affidavit. It is stated that in the year 2016, 'dengue and other vector borne diseases' have been declared as notifiable diseases. In terms of the said direction, the Additional Chief Medical Officers in the districts have been nominated as Controlling Officer. According to the notification, it is compulsory for all Government / non-government hospitals, nursing homes to provide details of all the cases regarding 'dengue and vector borne diseases' to the Chief Medical Officer / Nodal Officer in the concerned district. According to the details received in such cases, 'dengue' infected area (Hotspot) was to be marked and action has to be taken for prevention and rescue. The Directorate of Medical Health Services, UP, Lucknow has made contract rate of larvicide's and amount has been provided for this purposes to the districts. It is also stated that a Committee has been constituted under the

Chairmanship of Principal Secretary, Medical Health and Family Welfare, Government of UP, Lucknow and Technical Advisory Committee has also been constituted. It has been mentioned that in each health centres free treatment 'as first aid' was being provided regarding dengue and other infectious diseases and for patient of dengue bed are reserved with mosquito net in each district hospitals in the State. It has also been stated that in several districts of the State 37 SSH's Labs (Sentinal Surveillance Hospital) were established for test investigation of dengue and chikangunia patients, where free test facility had been provided. The State Government has also issued the additional sum of Rs. 412 lac. for the said purpose. It is averred that supply of blood and platelets for dengue patients, 39 Blood Component Separation Units were established in the State and a sum of 08 crore had been allotted to 08 Districts Hospitals in the State for creation of new blood component separation unit. It is stated that as per the information received in the Directorate of I.D.S.C. Health Services, till 14.12.2016 total 15018 patient of dengue were found in the State Government Hospitals in which 14976 patients of dengue were cured after treatment. It is stated that in district Allahabad (Prayagraj), SSH's Lab (Sentinel Surveillance Hospital) were established for free test of dengue and chikangunia at Moti Lal Nehru Medical College and 03 Blood Component Separation Units were also established for supply of blood and platelets to such patients.

3. In reply to the aforesaid affidavit, the petitioner has filed an affidavit. Relevant part of the affidavit filed by the petitioner is extracted below:-

*(I) That it is submitted here that enquiry report submitted by Dr. Anil Kumar is false and grossly misleading as in his inquiry, as in his enquiry he has submitted that the patient Mr. Piyush Mishra aged about 23 years has been admitted in the hospital at 02:45 A.M. On 28.10.2016 but the order sheet of the treatment mentions the date of admission on 27.10.2016. A true copy of the order sheet issued by the S.R.N. Hospital, Allahabad is being filed herewith and marked as **Annexure no.1** to this affidavit.*

(II) That the contents of the point no. 1 in Annexure No.1 of the enquiry report is incorrect and hence vehemently denied, in reply to the enquiry report submitted by Dr. Anitl Kumar stating there in that shifted to the intensive care

unit (I.C.U.) committing a gross medical negligence.

(III) That the contents of point no. 2 in Annexure no. 1 of the inquiry report states that the patient was having a history of fever, headache and altered mental sensorium still the patient was not referred to the neurology department neither any radiological studies like C.T. Scan and M.R.I. was conducted neither his Glasscow coma scale analysis (GCS) was done.

(IV) That the contents of point no. 3 in Annexure-1 of the enquiry report which says that the patient was immediately attended and promptly treated by I.V. Fluids vasopressors and broad spectrum antibiotics without any blood and radiological investigations is a striking example of gross medical negligence.

(V) That the contents of the point no. 4 in Annexure-1 of the enquiry report says that the blood report showed a great reduction in the platelet count (20,000 cells /ml.) serum creatinine (4.3 mg/dl), S.G.P.T. X 196 I.U./L., these deranged values in renal and liver function test clearly reflects the gross mismanagement of Dr. Ajeet Kumar Chaurasia, who without prior investigation administered broad spectrum antibiotics resulting in the acute kidney injury of the patient and causing gross injury to the liver. Shockingly after multiple organ dysfunction and severe hypovolemic shock Dr. Chaurasiya finally made a clumsy diagnosis of fever with thrombocytopenia with shock with multiple organ dysfunction syndrome, this is just like making a person die and then searching the cause of death. This is a cruel example of medical negligence amounting to murder.

(VI) That the contents of the point no. 5 in Annexure no.1 of the enquiry report says that Dr. Ajeet Kumar Chaurasiya himself observed the patient and concluded that there was no active bleeding from the patient's body still he requested for the platelets unknowing the fact that a patient under shock seldom show active bleeding and the patient needs whole blood transfusion instead of platelets, further more the shock management protocol which includes running the following tests :-

- a) Arterial blood gas analysis (A.B.G.)
- b) Hematocrit (H.C.T.)
- c) Lactate
- d) Chest X-ray and X-ray of long bone

was not performed, this shows the incompetency and non sincerity of Dr. Chaurasiya in discharging the duties as a professional.

(VII) That the contents of the point no.6 in Annexure-1 of the enquiry report says that the urine output of the patient was adequate but he was Hemodynamically unstable, hence was not suited for Hemodialysis, this statement in the enquiry report carry no weight as Dr. Chaurasiya as a Professor of medicine is not qualified enough to assess the Hemodynamic status of a patient and whether he is suited for a hemodialysis or not without consulting a nephrologist and a urologist, this again shows the insincerity and incompetency of Dr. Chaurasiya in performing his duties.

(VIII) That the contents of the point no. 7 in Annexure no. 1 of the enquiry

report says that on 28.10.2016 at 11:25 PM, Mr. B.P. Mishra, father of the patient took the patient away by signing the LAMA form, despite of the improving condition of the patient where his B.P. Was 100/66 mm/hg, this statement in its whole is grossly misleading, contradictory, unethical and baseless to the core as the point no. 6 says that patient was hemodynamically unstable and not suited for hemodialysis but in the next sentence the Dr. himself says that the patient's B.P. Is 100/66 mm/hg, this reflects the clear cut contradiction in the two statemetns.

Further more the hospital administration forced Mr. B.P. Mishra, father of the patient to sign LAMA (Left against medical advise). As no father on this earth will ever risk his son's life by taking him away when his condition is improving.

(IX) That the contents of the point no. 8 in Annexure-1 of the enquiry report says that the treatment of the patient was running fairly well with utmost sincerity and honesty and no amount of medical negligence whatsoever was done, this statement mentioned in this report is hollow and deeply condemnable as if the treatment was running so well and doctors were sincere enough then as 23 years old patient suffering with fever and headache on 27.10.2016 would not suffer from severe shock and multiple organ dysfunction on 28.10.2016 and would not die just 48 hours after the discharge from the hospital.

4. The counsel for the petitioner has placed reliance upon the judgements of Supreme Court in **Nizam's Institute of Medical Sciences Vs. Parastha S. Dhananka and others (2009) 6 Supreme Court Cases 1, Pt. Parmanand Katara Vs. Union of India and others, (1989) 4 Supreme Court Cases 286 and Balram Prasad Vs. Kunal Saha and others, (2014) 1 Supreme Court Cases, 384.**

5. We have heard learned counsel for the petitioner, Sri A.K. Singh Additional Advocate General and Sri Shudhanshu Srivastava.

6. We sought the instructions from learned Additional Advocate General about the number of patients of dengue, who were reported in Allahabad in the last three years.

In compliance thereof Sri Vimal Kant, Additional Chief Medical Officer is present in the Court along with records. Sri Shudhanshu Srivastava, on the basis of instructions as furnished by Additional Chief Medical Officer, has made a statement that in the year 2017, there were total 318 patients, in the year 2018, 767 patients and in the year 2019 till 7.11.2019 total 583 patients suffering from dengue, have been reported. A copy of the instructions received

by Sri Shudhanshu Srivastava, wherein the said figure has been mentioned by Sri Vimal Kant, Additional Chief Medical Officer, under his signature, is taken on record.

7. In the record, it is also mentioned that authorized lab which deals with the dengue cases, is established in the Microbiology Department of Moti Lal Nehru, Medical College, Prayagraj and fogging is being conducted regularly. However, in the other communication addressed by Chief Medical Officer, Tej Bahadur Saparu, Hospital, Prayagraj to the Additional Director Medical Health and Family Welfare dated 14.11.2019, indicates that in the Regional Diagnostic Centre, total 2504 patients were provided facility of dialysis. On 27.1.2019 under P.P.P. Model (Public Private Partnership Model) a private hospital namely Heritage Varanasi has provided 30 dialysis machines and till now 26805 patients have been provided facility of dialysis. A detailed chart of number of patients which were provided facility of dialysis has been brought on record.

8. Sri B.P. Mishra, who is a practising Advocate of this Court had brought his ailing son to the Swaroop Rani Nehru, (S.R.N.) Medical College, Allahabad. A copy of the prescription report is on record. The said report shows that the patient namely Piyush Mishra, who was also a young lawyer of this Court, was admitted on 27.10.2016. Whereas in the enquiry report the date of admission, has been shown as 28.10.2016. The said document clearly shows that he was diagnosed viral fever and the following medicines were prescribed:

1. *Inj. Emitaz 4.5 gm in 100 ml NS I/V 8 hourly*
(Cpiperacillin +Tazobactam)
2. *Inj. Cornate -120 mg I/V 12 hourly*
3. *Inj. Dalcinex 600 mg in 100 ml NS I/V 12 hourly*
4. *Inj. Emset- 1 amp. I/V 8 hourly*
5. *Inj. Primacort 100 mg I/V 8 hourly*
6. *Inj. Aciloc 1 amp I/V 8 hourly*
7. *IVF-IV Normalsaline Stat over 1-2 hours*

8. Inj. Noract -2 amp in 500 ml NS 30 Hd/min

9. It is evident that Piyush Mishra, the patient, was suffering from dengue but in the S.R.N. Medical College, he was diagnosed viral fever and was prescribed 'broad spectrum antibiotics' in dengue fever. It is also clear from the averments made in the reply, which is un-rebutted that no Radiological, M.R.I or Glasscow coma scale analysis (GCS) test was done for the patient. The platelets count of the deceased was 20000 cells/ml; kidney and liver were badly affected, serum cretinine level was 4.3 mg/dl and liver report indicates that the liver was functioning abnormally. Pathology report of Central Pathlogy Laboratory, Department of Pathology, Motilal Nehru Medical College, Allahabad is on record. The relevant part of the pathology report is extracted below :-

Central Pathology Laboratory

Department of Pathology

Motilal Nehru Medical Collage, Allahabad

Date:28-Oct-2016 Reg/Ref: OPD 72569/155294

Name Piyush Mishra

Biochemistry

| | | | |
|--------|---------|-------------|--------|
| Plasma | Glucose | 75.01 mg/dL | 70-140 |
| Random | | | |

Kidney Function Test

Serum Urea

| | | |
|---------------------------|--------------|-------|
| Blood Urea Nitrogen (Bun) | 137.51 Mg/dL | 13-43 |
|---------------------------|--------------|-------|

| | | |
|-----------------|------------|---------|
| Serum Cretinine | 4.32 mg/dL | 0.4-1.4 |
|-----------------|------------|---------|

Liver Function Test

| | | | |
|-------|------------|------------|---------|
| Serum | Bilirubin, | 2.58 mg/dL | 0.2-0.8 |
| Total | | | |

| | | |
|--------|------------|------------|
| Serum | Bilirubin, | 1.53 mg/dL |
| Direct | | |

| | | |
|---|--------------------|----------|
| Serum Bilirubin, Indirect | 1.05 mg/dL | 0.2-0.7 |
| Serum Alkaline Phosphatase (ALP)- DEA method) | 246.48 IU/L | 60.26 |
| Serum Aspartate Transaminase (AST)/SGOT | 195.73 IU/L | 05/01/40 |
| Serum Aspartate Transaminase (AST)/SGPT | 401.33 IU/L | 05/01/42 |
| Serum Albumin | 3.69 gm/dL | 3.5-5.3 |
| Serum Proteins | 7.59 gm/dL | 06/08/03 |
| Serum Globulins | 3.9 gm/dL | 2.0-3.5 |
| Serum A/G ratio | 0.95:1 Ratio | |

10. From the aforesaid report, it is clear that without any proper diagnosis the treatment of the deceased was undertaken. From the record, we find that the patient was not treated for dengue fever. In our opinion, from the affidavits mentioned above, we are satisfied that death of Piyush Mishra was caused due to gross medical negligence on the part of the doctors of S.R.N. Medical College as the patient was not provided any treatment for dengue. In fact the deceased was not properly diagnosed and for the said reason, he died. It is stated that when the condition of the patient become critical, the petitioner has shifted him to Sanjay Gandhi Post Graduate Institute, (S.G.P.G.I.) Lucknow where unfortunately, the patient had died. The death report issued by Sanjay Gandhi Post Graduate Institute, (S.G.P.G.I.), Lucknow is on record in which the cause of death has clearly mentioned as “*dengue shock syndrome ARDS*”. The patient had died on 30.10.2016 at 3:00 P.M. A copy of the death certificate is on record as Annexure-III to the reply filed by Sri B.P. Mishra.

11. In the enquiry report, it has been mentioned that the patient was hemodynamically unstable hence on 28.10.2016, the father of the patient against the medical advise discharged him and there was no negligence on the part of the doctor. However from the report of Sanjay Gandhi Post Graduate

Institute, (S.G.P.G.I.) Lucknow it was shown that the diagnosis from the local doctor was wrong as the patient was suffering from dengue, whereas he was diagnosed in S.R.N. Medical College as “fever with shock with thrombocytopenia with MODS (Multi Organ Dysfunction Syndrome)” for which 'broad spectrum antibiotic' was prescribed. The family of the patient has made allegation that there was no facility of dialysis in the S.R.N. Medical College.

12. From the report submitted by two doctors i.e. Dr. Anil Kumar, Additional Chief Medical Officer and Dr. O.P. Bhaskar, Additional Chief Medical Officer, it is clear that the deceased was diagnosed '*fever with shock with thrombocytopenia with MODS (Multi Organ Dysfunction Dyndrome).*'

13. From the affidavit of Principal Secretary, Medical Health and Family Welfare, Lucknow, Dengue and Chikungunia Prevention Plan 2016-17 (Annexure -1 to the affidavit) was made, which observe the following for dengue patients:-

"डेंगू एवं चिकनगुनिया के रोगियों को एस्प्रिन, कार्टिसोन, आइब्रुप्रोफेन, डोपामीन औषधियों का प्रयोग सर्वथा वर्जित है। इनका प्रयोग प्राणघातक हो सकता है। 20,000 से कम प्लेटलेट काउंट होने पर मरीज को तुरंत अस्पताल में भर्ती करना चाहिए तथा प्लेटलिट्स दी जानी चाहिए।"

14. In view of the above material, it is clear that the medicines prescribed by Dr. A.K. Chaurasia, S.R. N. Hospital was 'broad spectrum antibiotic'.

(Emphasis supplied by us)

15. We put a query to Additional Chief Standing Counsel that how many units of the dialysis in the S.R.N. Medical College, which was one of the oldest medical college of the State.

On the basis of instructions received by Additional Chief Medical Officer, who is present in the Court, he made a statement that S.R.N. Medical College has 04 units of dialysis machine, which are functional.

Since the said statement was made by the Additional Chief Medical Officer in the Court, we are requested Sri K.K. Rai, learned Advocate of this Court to visit S.R.N. Medical College and submit his report in this regard.

Sri K.K. Rai has submitted his report, which is taken on record. In the report it is stated that there are only 04 units of dialysis machines available in the S.R.N. Medical College.

The Additional Chief Standing Counsel has produced the communication sent by Chief Medical Officer, Prayagraj dated 13.11.2019 and communication of Chief Medical Officer, T.B. Saparu Hospital, Prayagraj to Additional Director dated 14.11.2019, which indicates number of patients and facility of dialysis, which is taken on record. Along with instructions, learned Additional Chief Standing Counsel has also produced a xerox copy of the details of positive cases of dengue from 1st January, 2019 to 07th November, 2019 at district Prayagraj. A perusal of the said document indicates that in November, 2019 till 7.11.2019, total 183 cases of dengue have been reported in this month itself within 07 days. Thus figure itself indicates that no effective measure has been taken by the State functionaries to prevent the dengue in district Allahabad. During 07 days of this month alone more than 180 cases of dengue have been reported. This figure also indicates that various measures taken by the State Government, which has been mentioned in the affidavit filed by Principal Secretary, has not been implemented effectively, in spite of the necessary funds released by the State Government.

16. We are also surprised to know that medical college and Government hospital did not have enough dialysis units and a private nursing home i.e. Heritage Varanasi has provided 30 dialysis units to use in Government hospital at Allahabad.

17. State Government in the year 2016 has found that certain part of Uttar Pradesh is infected by and threatened with an outbreak of Malaria, Dengue, Kala-azar or any Vector Borne disease; exercising its power under Clause (3)

of Article 348 of the Constitution made “The Uttar Pradesh Prevention and Control of Malaria, Dengue, Kala-azar and any Vector Borne Disease Regulations, 2016.” Some of relevant part of Regulations is extracted below:-

6. Notification of persons suffering from Malaria, Dengue, Kala-azar or any vector borne disease. - When Malaria, Dengue, Kala-azar or any vector borne disease break out at any place, the District Magistrate, Chief Medical Officer shall cause the name and addresses of persons suffering from Malaria, Dengue, Kala-azar, or any vector borne disease to be notified to the Chief Medical Officer or Nodal Officer, Vector Borne Disease.

7. Powers of Controlling Officer. - In any urban or rural area which is situated in any infected area or a threatened area, the Controlling officers may -

(a) require every owner or occupier of a building and every Medical practitioner to report every case of Malaria, Dengue, Kala-azar or any vector borne disease. Which may come to the notice of such owner, occupier or practitioner, to the officer in charge of the nearest passive surveillance centre established by the Medical and Health Department;

(b) arrange for the examination of blood of any person suspected to be suffering from Malaria, Dengue or Kala-azar or any vector borne disease and for his treatment and also refer the suspected case of Malaria, Dengue, Kala-azar or any vector borne disease to any of the referral institute, Government Medical College, District Hospital or Higher Institutions as the case may by;

(c) carry out or cause to be carried out intensive prevention operations within the area in which a case of Malaria, Dengue, Kala-azar or vector borne disease by the Chief Medical Officer/Nodal Officer Vector Borne Disease or the District Malaria Officer;

(d) ensure give preventive insecticidal indoor spraying in any type of premises including animal dwelling, streets, shops or any other type of roofed structures in hamlets, villages, labor colonies, slums and low lying areas etc.;

(e) carry on mass blood survey and mass drug treatment to the inhabitants, temporary labor and casual visitors in the affected are, as the situation may demand;

(f) give such directions to the contractor or employer at the sites of projects like irrigation, roads, buildings, etc. with a view to preventing and controlling of the outbreak of Malaria, Dengue, Kala-azar, or any vector borne disease at such sites.

8. (1) No person shall -

(a) keep or maintain any collection of standing or flowing water in which mosquitoes breed or are likely to breed; or

(b) cause, permit or suffer any water within such area to form a collection in which mosquitoes breed or are likely to breed, unless such collection has been effectively protected to prevent such breeding;

(c) occupy a new building (private, Government or Semi-Government) unless an occupation certificate is obtained from the controlling officer, regarding the requirements of anti mosquito system in such premises.

(2) The natural presence of mosquito larvae, pupae in any standing or flowing water shall be evidence that mosquitoes are breeding in such water in premises, institutions and office or dwelling units.

10. Where with the object of preventing the breeding of mosquitoes in any land or building, the owner or the occupier at his instance has constituted any works in such land or building, the owner or the occupier for the time being of such land or building shall prevent it being used in any manner which may cause or is likely to cause, the deterioration of such works, or which impairs or is likely to impair their efficiency.

12. The owner or the occupier of any house, building or shed or land shall not keep therein any bottle, vessel, cane, auto-tyre or any other container broken or unbroken in such a manner that it is likely to, collect and retain water which may breed mosquitoes.

13. All burrow pits required to be dug in the course of construction and repair of roads, railways, telecommunication, embankments etc., shall be filled so as to ensure that the water does not stagnate therein, where possible and practicable, the burrow pits shall be left clean and drainage shall be ensured.

18. Involvement of Private Practitioner, clinicians and Nursing Homes. - All private practitioners, clinicians/doctors in charge of nursing homes, medical institutions, clinical laboratories etc. within the State of Uttar Pradesh shall furnish information pertaining to blood slide collection and positive cases, information regarding the suspected/confirmed cases of Malaria, Dengue, Kala-azar or any vector borne disease to the Controlling Officer Chief Medical Officer, District Malaria Officer or Doctor in charge of the said clinics, nursing homes, medical institutions, clinical laboratories etc. and shall send examined blood slide as and when required by the Controlling Officer for the purpose of cross checking.

18. The counsel for the petitioner has relied upon large number of judgements of Supreme Court which we have referred earlier part of judgement. However, in view of recent judgement of Supreme Court in the case of **Arun Kumar Manglik v. Chirayu Health & Medicare (P.) Ltd. (2019) 7 SCC 401**, we find that there is no necessity to deal with the cases cited by the petitioner. In **Arun Kumar Manglik (supra)**, Supreme Court has considered its earlier judgements elaborately and came to hold as under:-

24. The WHO guidelines indicate that Dengue is a 'systemic and dynamic disease' which usually consists of three phases i.e. febrile, critical and recovery. There had been a precipitous decline in the patient's platelet count

the day she was admitted to the hospital. The WHO guidelines inter alia state as follows:

“2.1.2 Critical phase ...

Progressive leukopenia (3) followed by a rapid decrease in platelet count usually precedes plasma leakage. At this point patients without an increase in capillary permeability will improve, while those with increased capillary permeability may become worse as a result of lost plasma volume. The degree of plasma leakage varies. Pleural effusion and ascites may be clinically detectable depending on the degree of plasma leakage and the volume of fluid therapy. Hence chest x-ray and abdominal ultrasound can be useful tools for diagnoses. The degree of increase above the baseline haematocrit often reflects the severity of plasma leakage.”

25. Clause 2.3.2.2 of WHO Guidelines deals with patients who should be referred for in-hospital management (Group B).

“Patients may need to be admitted to a secondary health care centre for close observation, particularly as they approach the critical phase. These include patients with warning signs, those with co-existing conditions that may make dengue or its management more complicated (such as pregnancy, infancy, old age, obesity, diabetes mellitus, renal failure, chronic haemolytic diseases), and those with certain social circumstances (such as living alone, or living far from a health facility without reliable means of transport). If the patient has dengue with warning signs, the action plan should be as follows:

- Obtain a reference haematocrit before fluid therapy. Give only isotonic solutions such as 0.9% saline, Ringer’s lactate, or Hartmann’s solution. Start with 5–7 ml/ kg/hour for 1–2 hours, then reduce to 3–5 ml/kg/hr for 2–4 hours, and then reduce to 2– 3 ml/kg/hr or less according to the clinical response (Textboxes H, J and K).
- Reassess the clinical status and repeat the haematocrit. If the haematocrit remains the same or rises only minimally, continue with the same rate (2–3 ml/kg/hr) for another 2–4 hours. If the vital signs are worsening and haematocrit is rising rapidly, increase the rate to 5–10 ml/kg/hour for 1–2 hours. Reassess the clinical status, repeat the haematocrit and review fluid infusion rates accordingly.
- Give the minimum intravenous fluid volume required to maintain good perfusion and urine

output of about 0.5 ml/kg/hr. Intravenous fluids are usually needed for only 24–48 hours. Reduce intravenous fluids gradually when the rate of plasma leakage decreases towards the end of the critical phase. This is indicated by urine output and/or oral fluid intake that is/are adequate, or haematocrit decreasing below the baseline value in a stable patient.

- Patients with warning signs should be monitored by health care providers until the period of risk is over. A detailed fluid balance should be maintained. Parameters that should be monitored include vital signs and peripheral perfusion (1–4 hourly until the patient is out of the critical phase), urine output (4–6 hourly), haematocrit (before and after fluid replacement, then 6–12 hourly), blood glucose, and other organ functions (such as renal profile, liver profile, coagulation profile, as indicated).

- Patients should be monitored by health care providers for temperature pattern, volume of fluid intake and losses, urine output (volume and frequency), warning signs, haematocrit, and white blood cell and platelet counts (Textbox L). Other laboratory tests (such as liver and renal functions tests) can be done, depending on the clinical picture and the facilities of the hospital or health centre.”

28. The issue is not whether the patient had already entered a situation involving haemorrhagic fever or a dengue shock syndrome when she was admitted on the morning of 15 November 2009. The real charge of medical negligence stems from the failure of the hospital to regularly monitor the blood parameters of the patient during the course of the day. Had this been done, there can be no manner of doubt that the hospital would have been alive to a situation that there was a decline progressively in the patient’s condition which eventually led to cardiac arrest.

29. This Court has consistently held in its decisions (the decision in Kusum Sharma (supra) reiterates that principle) that the standard of care which is expected of a medical professional is the treatment which is expected of one with a reasonable degree of skill and knowledge. A medical practitioner would be liable only where the conduct falls below the standards of a reasonably competent practitioner in the field.

30. Decisions of this Court elucidate on the standard of care which is expected of medical practitioners. Medical negligence jurisprudence in India is characterized by a reliance on the ‘Bolam test’.

50. However, in our view, there is no basis for recording a finding of medical negligence against the Director of the hospital. The Director of the hospital was not the treating doctor or the referring doctor. Hence, while the

finding of medical negligence against the hospital would stand confirmed, the second respondent would not be personally liable.

53. The complainant has lost his spouse, who was 56 years of age. Though she was not employed, it is now well settled by a catena of decisions of this Court that the contribution made by a non-working spouse to the welfare of the family has an economic equivalent.

56. In assessing the amount of compensation, we have been guided by the principle which has been laid down by the Constitution Bench in *Lata Wadhwa* and in *National Insurance Company Ltd. v Pranay Sethi*¹⁸ with suitable modifications in a case involving medical negligence.

57. In our view, the interests of justice would be met, if the amount of compensation is enhanced. We accordingly, direct that the appellant shall be entitled to receive an amount of Rs. 15 lakhs by way of compensation from the first respondent.

19. We find that death of Piyush Mishra was caused due to gross medical negligence as the dengue was not diagnosed. The patient had died in S.G.P.G.I., Lucknow. We have no reason to doubt the certificate issued by a prestigious institute like S.G.P.G.I., Lucknow. Accordingly we are of the view that Sri B. P. Mishra, whose only son died, is entitled to get an amount of Rs. 25,00000/- (Twenty Five Lakhs) towards compensation by the State Government.

20. In the case of **Arun Kumar Manglik** (*supra*) , Supreme Court has awarded compensation of Rs. 15,00000/- (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 has 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. 25,00000/- (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.

21. We further direct the State Government to release sufficient fund to Swaroop Rani Nehru, (S.R.N.) Medical College, Allahabad as well as other Government Hospitals to provide sufficient dialysis units. The necessary funds and arrangement of dialysis units should be made within six months.

22. Apart from the counter affidavit filed by Principal Secretary no other material has been brought on record to indicate any preventive measures taken by the State Government to prevent 'Dengue fever' in the State. The figure furnished to the Court in Allahabad district itself shows that in last three years, the number of patients suffering from the Dengue is rising on alarming rate. Only upto the month of November more than 500 cases of Dengue have been reported.

The figure furnished by the authorities and facts mentioned in the affidavit clearly demonstrate that the district administration and functionaries of health department has failed to pay attention to the 'Regulation 2016'.

Regard being made to the fact that vector borne diseases are not contagious diseases but their outbreak shows that sufficient preventive measures have not been taken by the concerned authorities.

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.

24. With the aforesaid directions, the public interest litigation is **disposed of.**

Order Date :- 14.11.2019
Rahul Dwivedi/-