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Hamid Khan v. State of M.P., 1996

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Case Note: Case concerning the presence of excessive fluoride in the drinking water handpumps sunk by the Government leading to illness amongst the inhabitants of the district. The Court held that this represented a failure on part of the State to fulfill a primary responsibility towards its citizen and that the right to water was a fundamental right. It ordered the State to ensure clean drinking water is supplied to the citizens and to provide free medical aid to those affected by the consumption of fluoride.

AIR1997MP191

IN THE HIGH COURT OF MADHYA PRADESH

Decided On: 30.10.1996

Hamid Khan

v.

State of M.P. and Ors.

Hon'ble Judges:

A.K. Mathur, C.J. and S.K. Kulshrestha, J.

JUDGMENT

A.K. Mathur, C.J.

1. This is a public interest litigation filed by one Hamid Khan, who is a practicing Advocate of Mandla for the apathy of the State Government, or rather a gross negligence on the part of the State Government in not taking proper measures before supplying drinking water from hand-pumps, which has resulted in colossal damage to the population of Mandla District.

2. The hand-pumps which have been sunk by the State Government for supply of drinking water had excessive fluoride contents and on account of that, thousand of persons who consumed water have suffered major set-back in their life either in terms of deformity of various nature, like skeletal fluorosis or dental fluorosis. Therefore, this cause has been brought by a public spirited Advocate before this Court and notices were issued to the respondents.

3. In their return, the respondents have pointed out that the matter came to their light that water of certain tube-wells had excessive flouride which has caused great damage to the population by way of deformities in hands, legs and dental problem and immediate measures were taken for sealing of these tube-wells and certain medical facilities were provided to the affected persons. It is pointed out that District Mandla comprises 13,269 sq. kilometers and its population is about 12,91,000. According to the census of 1991, Mandla District has total number of 2160 rural villages. It is pointed out that for the last

25 years, Public Health Engineering Department of Madhya Pradesh, with the help of Central Government Rural Development Department, is providing drinking water by drilling tube-wells in the villages of Mandla District. It is alleged that before drinking water is supplied, quality of water is to be tested and certain guidelines are prescribed for testing of water. But in all those guidelines, no fluoride test has been provided and therefore, such fluoride test was not undertaken. When adverse reports were received, then an enquiry was conducted and the Assistant Surgeon posted at Primary Health Centre, Mohania Patpara in District Mandla submitted a report to the Chief Medical Officer Mandla on 10-2-1995 and on that basis a team of experts consisting of Child Specialist and Arthopaedic Specialist headed by Chief Medical and Health Officer Mandla was deputed and it was found that 29 children were suffering from bone diseases and were having deformity in legs. The team of experts also examined their eating habits as well as drinking water and some treatment was given. Thereafter, the Chief Medical and Health Officer vide his letter dated 30th March, 1995 to I.C.M.R. Jabalpur reported this matter and the I.C.M.R. deputed a team of experts headed by Dr. Tapas Chakma who visited the village on 10th May, 1995 to 17th May 1995 and took water of five hand-pumps of village Talaipani and in that, it was found that fluoride contents were at a high level of 10 mg. per litre. The team of experts recommended that these hand-pumps, should be immediately closed and alternative arrangement for drinking water should be made. It was also found that water contained excessive fluoride. Consequently, hand-pumps were closed of the said village Talaipani. The Executive Engineer, P.H.E. Mandla in the meanwhile also sent a sample of water to the Pollution Control Board, Jabalpur and the Pollution Control Board submitted its report that fluoride contents in the water were 0.96 mg. per litre which is a normal content and was not abnormal. After receipt of this report, again two experts were sent and the two experts advised the State to continue treatment of the affected children.

4. Water samples were also sent to the State P.H.E. Laboratory Bhopal on 13-6-1995 and tested on 15-6-1995 and samples contained fluoride in excess of 8.00 mg. per litre. Certain steps were taken by the Medical Department for necessary treatment of affected children. It is submitted in the additional return that after finding excessive fluoride contents in the drinking water of particular village, a survey was undertaken of the whole of the district and it is pointed out that in all 6155 tubewells have been dug in District Mandla, out of which 536 have been found to be affected by high contents of fluoride and these 538 hand pumps are located in 335 villages of District Mandla. Out of aforesaid 538 hand pumps, the worst affected people are located in eight villages, namely, Tilaipant, Kudiya, Barbaspur, Longapal, Manot, Lawer, Bilgada and Hirapur. It is pointed out that after these tube wells were found to contain excessive fluoride, all the tube-wells were closed down.

5. Survey of affected tube-wells definitely shows that before these tube-wells were commissioned, the respondents did not undertake the fluoride test of water and according to them, as per the earlier guidelines, fluoride test was not advised. When reports regarding deformities of affected persons were received, then survey was undertaken in order to find out the cause for the same. It was found that the water of hand pumps had excessive fluoride.

6. Under Article 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water. State in present case has failed to discharge its primary responsibility. It is also covered by Article 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water, as has been held by their Lordships of the Hon'ble Supreme Court in the case of Subhash Kumar v. State of Bihar AIR 1991 SC 420: (1991 AIR SCW 121) that a right to life includes right to live properly and have the benefit of all natural resources i.e. unpolluted air and water. It was observed at page 424 (of AIR):

"Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or Air which may be detrimental to the quality of life."

Therefore, it was the duty of the State towards every citizen of India to provide pure drinking water. In the present case, it is the State which is responsible for not taking proper precaution to provide proper drinking water to the citizens.

7. Shri Trivedi, learned counsel for the petitioner submitted that those officers who are responsible, should be dealt with strictly and enquiry should be ordered against them. We would have done that, but in view of the fact that this kind of malady was not detected earlier and according to the guidelines laid down water fluoride test was not provided. Therefore, we cannot haul them up for lack of guidance. Be that as it may, it is still the duty of the State to see that whatever best remedy can be provided to them should be made available at the expense of the State. In the present case, when the matter came up before this Court notices were given to other side, returns have been filed and lists of persons who have suffered skeletal disease and dental disease have been given.

8. Today, Collector of Mandla District along with Dr. H. K. T. Naza. Reader in Orthopaedics and Director, Artificial Limb Fitting Centre, Gov. Medical College, Jabalpur, and Dr. L.P. Mathur, Director of Health Services (sic). They have submitted a report which is marked as Annexure-A. Annexure B is list of persons of village Tilaipani. This list Annexure A contains the names of persons who are suffering from skeletal fluorosis or dental fluorosis, i.e. deformity either in hands or legs. There are various persons -- some are minor children some major and some females who are suffering from this deformity. Therefore, it is directed that persons given in list Annexure A shall be given free medical treatment, whether, it be by way of surgery or by way of callipers and shoes. In case surgery is required, then, the same shall be undertaken at the expense of the State and each person whose surgery is done shall be paid Rs. 3,000/- (three thousand) over and above free medical treatment at the expense of the State. If these persons even after surgery, require necessary artificial appliances like limbs or callipers, the same should be provided. Persons in whose cases surgery is not necessary and callipers and other artificial appliances can make them work comfortably in their life,

then the same shall be provided at the expense of the State, i.e. free of cost. List Annexure-B submitted by I.G.M.R. contains the names of certain persons of various villages who suffered from skeletal fluorosis, and dental fluorosis. This list should also be examined by the authorities concerned and if persons given in the list are not common, then these persons should be given same treatment as is to be given to persons mentioned above in Annexure-A. List C is of persons who were found to be suffering from dental fluorosis, which runs in 500 names of various age groups i.e. children as well as grown up male and female children. It is pointed out that so far as dental fluorosis is concerned, it is not a major set-back and some persons who are having cavities on account of drinking of excessive fluoride water can be given treatment. Such persons should also be given treatment free of costs. Each of such persons will also be entitled to compensation of Rs. 200/- (two hundred).

9. Shri Trivedi, learned counsel for the petitioner has also pointed out that in some of the villages, survey has not taken place and he has given list of those villages i.e., Mohgaon, Beejagaon, Mewada, Tumegaon, Umardihi, Dithori, Dungaria, Deori and Chiceli. If survey has not been done in these villages, then the Collector, Mandla, shall see that proper survey is done of these villages and if persons are found to be suffering from the aforesaid diseases, same treatment should be given to them, as directed above in regard to lists Annexures A, B and C. Shri Trivedi, learned counsel has further pointed out that the some of the victims of various villages, as given by him in the list of victims of skeletal diseases and dental diseases, particularly of villages Hirapur and Lakma Dungaria have not been given treatment. The Collector shall look into the matter and if those persons are left out and have not been given treatment, same treatment as directed above for persons mentioned in lists A to C be given to them. Collector of the District Mandla shall also see that if some of the tube-wells which contain excessive fluoride in the water are still functioning, they should be immediately closed down and immediate steps for alternative arrangement for drinking water should be taken.

10. Now, so far as the question of finances is concerned, the same shall be worked out by the Collector and the State Government shall sanction the amount which shall be placed at the disposal of the Collector. It would be the responsibility of the Collector, Director Medical and Health and Dr. H.K.T. Raza, Reader in Orthopaedics and Director of Artificial Limb Fitting Centre, Govt. Medical College, Jabalpur, that there is no shortage of finances in implementing the order of this Court. The Collector, Director, Medical and Health, Dr. H.K.T. Raza, and Dr. Bajpai are directed to see that free Medical treatment is made available to the persons and financial difficulty is not raised in the way of providing treatment to these persons. The State Govt. shall release the amount as may be necessary in addition to the amount already released and placed at the disposal of the Collector Mandla. The whole exercise should be done in phases if not possible to be undertaken simultaneously, so that all people could get proper treatment in the due course of time. The whole exercise should as far as possible be completed within a period of one year. The petition is accordingly disposed of.

We record our appreciation of Shri Hamid Khan Advocate of Mandla and Shri Umesh Trivedi, Advocate for assisting this Court and for bringing this public cause.