



Mohd Ahmed (Minor) v. Union of India, et al.

W.P.(C) 7279/2013

Country: India

Region: Asia

Year: 2014

Court: High Court of Delhi

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Medicines, Poverty

Facts

Petitioner was a 7-year-old boy suffering from a rare genetic disease called Gaucher Disease (a type of Lysosomal Storage Disorder) which, if left untreated, would render him unlikely to survive. Although Enzyme Replacement Therapy (ERT), a monthly, lifelong treatment, would afford him a normal life, the drug, due to low demand arising from the rarity of conditions requiring its use, was exceptionally expensive. The petitioner is the only surviving child of his parents as his three other siblings all succumbed to the same disease.

Despite a meeting of Central and State Governments to attempt to solve the matter on February 25, 2014, no adequate solution was found. Thus, the High Court of Delhi at New Delhi heard final arguments on March 25, 2014 to consider whether a child born to an economically disadvantaged part of society, who has a rare genetic disorder, would be entitled to free medical treatment.

Decision and Reasoning

The Court directed the Government to provide the ERT free of charge to the boy as he requires it.

In addition to its reference to Article 21 of India's Constitution, the Court looked at the right to health as embodied in Article 25.1 of the Universal Declaration on Human Rights, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICCPR) and General Comment 14 of the United Nations Committee on Economic, Social and Cultural Rights, as well as other Conventions and regional human rights instruments.

It reasoned that because India is a signatory to the ICCPR, Article 21 of the Constitution had to be interpreted in such a way as to conform to India's obligations under that treaty. While the Court recognized that financial and resource constraints of the government, as well as separation of powers, prohibit courts from directing governments to provide free medical treatment to all at state expense, it also found that the right to health is a fundamental human right. The Court held that access to essential medicines is a core obligation of the right to health, and thus is non-derogable.

The Court made a number of different recommendations to the Government, including the encouragement of donations on the part of civil society, as well as corporate social responsibility and expansion of the health budget, in order to meet resource inadequacies. However, it ultimately found that the burden of ensuring compliance with core human rights obligations rests with the State.

As such, it determined that the lack of government planning that resulted in the "pricing out" of orphan drugs constituted a breach of the State's constitutional obligation "to provide medical aid on a fair, reasonable, equitable and affordable basis," and determined that such inaction was in violation of Articles 14 and 21 of the Constitution of India.

Decision Excerpts

"[T]he Indian Supreme Court has developed a jurisprudence around the right to life so as to impose positive obligations on the government in respect of the basic needs of its inhabitants." (Para. 48)

"This Court is of the view that core obligations under the right to health are non-derogable. This minimum core is not easy to define, but includes at least the minimum decencies of life consistent with human dignity." (Para.

“A reasonable and equitable access to life saving medicines is critical to promoting and protecting the right to health. This means that Government must at the bare minimum ensure that individuals have access to essential medicines even for rare diseases like enzyme replacement for Gaucher disease.” (Para. 68)

“Government cannot cite financial crunch as a reason not to fulfil its obligation to ensure access of medicines or to adopt a plan of action to treat rare diseases. In the opinion of this Court, no government can wriggle out of its core obligation of ensuring the right of access to health facilities for vulnerable and marginalized section of society, like the petitioner by stating that it cannot afford to provide treatment for rare and chronic diseases.” (Para. 69)