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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 02/08/2017

Judgment Delivered on : 22/09/2017

Writ Petition (PIL) No. 47 of 2015

Kali Bai W/o Sita Ram Kasar aged about 56 years village Jhagrakhad Bandha Tola P.S. Gaurella Block Gaurella District Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. Union of India through The Secretary, Department of Health and Family Welfare, Government of India, Nirman Bhavan, Maulana Azad Road, New Delhi- 11
2. Secretary, Department of Health, Government of Chhattisgarh, Mantralaya, Naya Raipur (Chhattisgarh)
3. Chief Medical Health Officer, District Hospital, Bilaspur, District Bilaspur (Chhattisgarh)
4. Block Medical Officer, Community Health Centre, Gaurella, Block Gaurella, District Bilaspur (Chhattisgarh)
5. Chief Secretary, State of Chhattisgarh, Mantralaya, Naya Raipur (Chhattisgarh)

---- Respondents

For Petitioner	: Smt. Rajni Soren, Advocate
For Respondent/State	: Shri Y.S.Thakur, Additional Advocate General
For Respondent/UOI	: Shri N.K. Vyas, Assistant Solicitor General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Order

Per Thottathil B. Radhakrishnan, Chief Justice

1. This writ petition is instituted as a Public Interest Litigation by a woman of Gaurela Block in District Bilaspur, who allegedly lost her daughter due to the poor health facilities and mismanagement of the situations that

followed her admission to the Community Health Centre, Gaurela; for short, "CHC", for delivery. The Petitioner does not seek any order personally in her favour. Therefore, we leave open all issues relatable to the pleadings made by her regarding the personal loss of the Petitioner and the surviving children of the deceased, as well as the alleged refusal of the Government to compensate.

2. Petitioner pleads that World Health Organisation has defined "maternal death" as "the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes." She points out that the Ministry of Health and Family Welfare in the Government of India had reported Chhattisgarh Maternal Mortality Ratio; for short, "MMR", at a very high level and Bilaspur district as having one of the highest MMRs in the State and in India. In public interest, the Petitioner seeks a direction to the Respondents to fill the post of Anesthetist and Gynecologist trained in Emergency Obstetric Care in the CHC and to establish a blood storage facility in that CHC. She also seeks a direction to provide Sonography diagnostic facilities and to ensure that Caesarean section deliveries are conducted in the CHC. She seeks a further direction for supply of free medicine in the CHC and to ensure that corrective measures be taken in the sector of management of maternal mortality. She also seeks a direction that the findings of maternal death audits and the corrective measures in the maternal deaths which occurred in the year 2013 - 2014 be uploaded on the website.

3. Respondents No. 2 to 5 (State of Chhattisgarh) have placed pleadings in the matter. Since the Petitioner is not claiming any personal

relief on account of death of her daughter, as already noted, we exclude the pleadings of the Respondents in that regard from consideration in this writ petition and leave open all such issues.

4. The Respondents, in their return dated 20.06.2017, have stated that budget allocation was made for construction of 50 bedded clinic / Maternal Child Health; for short 'MCH', wing at Gaurela CHC. It is submitted that the construction of buildings are now complete and the buildings have already been handed over to Health Department. A copy of the letter dated 20.06.2012 along with chart showing the sanction is placed on record by the Respondents as Annexure-R/1. It is also submitted that budget has already been sanctioned for purchasing necessary medical equipments for installing at MCH wings of CHC, as per order dated 08.11.2016. However, in the said return dated 20.06.2017, it is submitted that the State Government is in the process of sanctioning the setup and deputing the staff there and 50 bedded Maternal Child Health wing of the Gaurela CHC will come into operation at the earliest. This plea necessarily shows that the question of deployment of staff to the 50 bedded CHC was yet to be finalized even in June 2017. However, the Respondents, going by the return, are aware of the fact that the State is duty bound to provide the necessary and basic medical facilities to the people having regard to the concept of 'welfare State'. The submission of the Respondents is that the State Government is trying its best to augment the medical facilities in all Public Health Centres, Community Health Centres, District Hospitals, Medical Colleges and the other hospitals established by the State of Chhattisgarh.

5. Making reference to the decisions of the Hon'ble Supreme Court of India in **Pt. Parmanand Katara v. Union of India**; 1989 SCR (3) 997, **Consumer Education & Research Centre v. Union of India**; (1995) 3 SCC

42, **Paschim Banga Khet Mazdoor Samity v. State of W.B.**; (1996) 4 SCC 37 as well as the decision of Delhi High Court in **Laxmi Mandal v. Deen Dayal Harinagar Hospital**; in Writ Petition (C) No. 8853 of 2008, decided on 04.06.2010, and that of the Madhya P12radesh High Court in **Sandesh Bansal v. Union of India**; in Writ Petition No. 9061 of 2008, decided on 06.02.2012, learned counsel for the Petitioner highlighted the scope of Article 21 of the Constitution in relation to the facts and situations pleaded by the Petitioner. Making reference to the provisions of the Universal Declaration of Human Rights; for short 'UDHR' and the Convention on the Elimination of all Forms of Discrimination Against Women; for short 'CEDAW'; she argued that the demonstrated shortage of the medical facilities in the Gaurela CHC results in violation of the human rights.

6. *Per contra*, learned Additional Advocate General, relying on the return filed on behalf of the State pleaded that there is no subsisting shortage which requires to be addressed by issuance of a writ and there is no grievance for the Petitioner to be further prosecuted in the matter.

7. Right to health includes the right to access public health facilities and right to minimum standard of treatment and care through such facilities. Such right to health and reproductive rights of the mother are two among the inalienable components of basic, fundamental and human right to life under Article 21 of the Constitution. Identification of high risk pregnancies, followed by appropriate and prompt referral of cases needing specialist care are indefeasible components of access to protection and enforcement of reproductive rights of the mother and eligibility to medical care and support to ensure protection of the foetus from being lost.

8. India is either a State party or a ratifying State as regards different International Declarations and Conventions. The State has the international

obligation and constitutional responsibility to give effect to, and honour, the terms of such Declarations and Conventions. Motherhood is entitled to special care and assistance in terms of the UDHR. International Covenant on Economic, Social and Cultural Rights, *inter alia*, envisages provisions to ensure reduction of the stillbirth rate and of infant mortality and the obligation of governance to ensure the right of everyone to enjoyment of highest attainable standard of physical and mental health. These are provisions among those international obligations which are binding on India by reason of their acceptance and ratification. Similar are the provisions of the CEDAW, which enjoins, in particular, that women shall be ensured appropriate services in connection with pregnancy, confinement and post-natal period. CEDAW also contains the obligation to ensure focusing on women in rural areas and the obligation to ensure adequate health care facilities. It is the obligation of the State to diminish infant and child mortality and to ensure appropriate pre-natal and post-natal health care for mothers. These situational legal aspects have to be fruitfully effectuated to necessarily ensure that the steps said to have been taken by the Respondents are appropriately carried forward to augment the facilities in the CHCs and other health facility providing centres.

9. Article 42 of the Constitution, among the Directive Principles of State Policy enjoins, among other things, that the State shall make provision for maternity relief. The provisions contemplated in that Article are not confined to social security measures in connection with work and employment or places of work and employment. The gaze of that Article should guide the State in carrying forward the relevant provisions made by it in consonance with the eligibility of women to enjoy their right to life in terms of Article 21 of the Constitution. This is so because the Constitutional dictate to the establishment of governance of a Welfare State is to secure the

welfare of the people. Providing adequate medical facilities for the people is an inexcusable component of the obligation of governance of a welfare State. Such obligation is discharged by the Governments by running hospitals and health centres which provide medical care.

10. The fundamental right to life guaranteed by Article 21 of the Constitution imposes corollary obligation on the State to safeguard the right to life of every person. The Government hospitals including the CHCs run by the State ought to be institutions which extend medical assistance for preserving human life because preservation of human life is of seminal and paramount importance in the context of right to life guaranteed under Article 21 of the Constitution. Failure on the part of Government hospitals to provide timely medical treatment to a person in need of such treatment results in violation of right to life of that person guaranteed under that Article. The State's obligation with reference to Article 21 is to be discharged by ensuring the availability of the Doctors with due acumen at the Government hospitals and by providing equipments of required standard and medicines, blood supplies and other requisites to ensure that the facilitation of the medical and health support through the different hospitals including CHCs are carried out in satisfaction of the constitutional prescriptions and legitimate goals of the polity as a whole.

11. Relevant policy documents, materials and the programmes of the Government of India shows that the National Rural Health Mission was launched, *inter alia*, to reduce MMR. Access to emergency obstetric care was identified as one of the key elements in the Programme Implementation Plan. Improvement of access to skilled delivery care and emergency obstetric care were seen necessary. Reduction of maternal morbidity and mortality due to post-partum haemorrhage by active management of the third stage of labour

is also an inexcusable need. The infrastructure had to be strengthened by ensuring that operation theaters, labour rooms and maternity wards are updated to suit the requirements in Comprehensive Emergency Obstetric Neonatal Care and Basic Emergency Obstetric Neonatal Care facilities. Providing adequate facilities to ensure all services including blood transfusion and storage facilities are also needed to effectuate proper implementation of the goals sought to be achieved by such programmes. There is no gainsaying in the second decade of the 21st century that provisions for such facilities can wait or would take its own time.

12. Gaurela is a part of the State of Chhattisgarh which has a large tribal population. Making reference to the census of 2001, it was noted by the National Legal Services Authority; for short 'NALSA', that majority of the population of "Particularly Vulnerable Tribal Groups" population lives in seven States including the State of Chhattisgarh. They need special attention due to their vulnerability. Those who do not fall into that category, be they in groups identified as Scheduled Tribes or otherwise also fall into the basket which carries the homogeneous group of people of this part of Nation. Section 4(d) of the Legal Services Authorities Act, 1987 enjoins that the Central Authority shall take necessary steps by way of social justice litigation with regard to, *inter alia*, consumer protection as well as any other matter of special concern to the weaker sections of the society. Clause (b) of Section 4 provides that the Central Authority shall frame the most effective and economical schemes for the purpose of making legal services available under the provisions of that Act. Clause (l) of that Section calls for taking appropriate measures, *inter alia*, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by, among other things, administrative programmes and measures. While NALSA formulated a scheme aimed at ensuring access to justice to the tribal population in the country and made NALSA (Protection

and Enforcement of Tribal Rights) Scheme, 2015, it had identified health issues as among different challenges to that community. By and large, that is a challenge which would extend to all communities having regard to the geographical settings and the socio-economic situations in different areas. NALSA specifically noted that though buildings are built and health care institutions created in the form of health sub-centres, PHCs and CHCs, they often remain dysfunctional and that this situation is further compounded by inadequate monitoring, poor quality of reporting and accountability. It was also noted that the health care needs as well as difficulties in delivering health care in a geographically scattered, culturally different population surrounded by forests and other natural forces require issue specific look and are to be pointedly addressed notwithstanding the national health model which is primarily designed for the non-tribal areas. NALSA also noticed that factors such as unfriendly behaviour of the staff, language barrier, large distances, poor transport, low literacy and low health care seeking, lead to lower utilization of the existing health care institutions in tribal areas. We notice these factors at this juncture since the said NALSA Regulations makes it obligatory on the State Legal Services Authority; for short 'SLSA', to provide, among other things, legal assistance, if needed, by initiating Social Justice Litigation with the approval of the Executive Chairman of the SLSA concerned, whenever required. The said Scheme further provides that the Legal Services Authorities could play a vital role in providing medical help by, essentially, playing a connecting role as between the needy and the medical and health service. These provisions clearly show that the SLSA and the District Legal Services Authority; for short, 'DLSA', concerned ought to be well informed with the availability of the facilities, or the lack of them, in any governmental medical institution which is meant to provide service in such sectors. Therefore, it will be open to the SLSA or the DLSA to obtain reports

regarding the provisions for health care, including as regards the deficits brought by the Petitioner to the notice of this Court for consideration, with the plea for issuance of requisite directions.

13. In the result, the writ petition is ordered directing that:

(i) The Respondents shall, without fail, ensure that the CHC at Gaurela and the different institutions which are referred to in the return dated 20.06.2017 filed on behalf of the Respondents, in relation to the medical facilities of the area concerned, shall be effectuated completely and meaningfully, in terms of facilities, personnel and equipments, medicines and blood storage facility, within a period of three months from today. It shall be further ensured that such facilities are run without any deficit in terms of Doctors, Nursing Staff, Paramedical Staff and other personnel as are required and by ensuring uninterrupted supply of requisite medicines, support equipments, blood and other necessities. The Respondents shall specifically address the requirement of Anesthetist, Gynecologist trained in emergency Obstetric care and the need to establish blood storage facility, Sonography diagnostic facility as well as free supply of medicines in the Gaurela CHC.

(ii) The Respondents 3 and 4 are directed to provide bi-monthly report to the DLSA, Bilaspur regarding all the affairs of CHC Gaurela as may be relevant in the context of facts and factors dealt with in this judgment and the directions issued herein. The Member Secretary, DLSA,

Bilaspur, is directed to visit CHC Gaurela and other medical institutions of that area once in three months or at any time, including at such shorter intervals as may be found necessary by the Chairperson of that DLSA. The Chhattisgarh SLSA is directed to ensure that it takes due action on the reports of the Bilaspur DLSA from time to time on issues relating to those medical facility centers.

(iii) The 3rd Respondent is further directed to provide an Action Taken Report on the compliance of the directions contained in this judgment to the Chairperson, DLSA, Bilaspur, on or before 30th December, 2017 ensuring that such details given therein are true and correct, issue specific. Such report shall bind all the Respondents.

(iv) Security amount, if any, deposited by the Petitioner be refunded.

Sd/- Sd/-

(Thottathil B. Radhakrishnan) (Sharad Kumar Gupta)
CHIEF JUSTICE **JUDGE**

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