

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(C) No. 1219 of 2015**

Smt. Yamini Dewangan, W/o. Late Shri Hitesh Dewangan, Aged About 27 Years, R/o. Pathraguda, Jagdalpur, District Bastar, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through the Secretary, Department Of Health & Family Welfare, Ministry, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. The Nodal Officer (Sanjivini Fund), Through The Director, Directorate Of Health Services, Old Nurses Hostel, First Floor, D.K.S. Campus Raipur, District Raipur Chhattisgarh.
3. The Collector, District Bastar, Jagdalpur, Chhattisgarh

---- Respondents

For Petitioner : Mr. Alok Kumar Dewangan, Advocate

For State/Respondents : Mr. Alok Bakshi, Addl. A.G. with Mr. Anmol Sharma, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08.05.2019**

1. The present petition has been filed seeking compensation as also seeking the compassionate appointment to the petitioner who is wife of the deceased namely Hitesh Dewangan who died on 07.07.2014. According to the petitioner, she belongs to the Below Poverty Line and is card holder of Below Poverty Line. It is pleaded her husband was suffering with certain heart disease and as such deceased while alive applied for medical assistance and expenses to the State under the scheme of Sanjeevani Relief Fund established by the State.
2. According to the petitioner, the application for grant of medical relief was made on 06.06.2014 to the Civil Surgeon, Jagdalpur, District Bastar, which was forwarded to the Director Health Services and was pending

adjudication for financial assistance to get the medical aid at a higher medical centre. In the meanwhile, the husband of the petitioner since was to be treated urgently he was being taken to the Hyderabad for medical aid by Car. It is stated by the petitioner that on their way to Hyderabad, the condition of the husband of the petitioner Hitesh Dewangan deteriorated, as such, they were compelled to admit him at the District Hospital Sukma, which is on the way. It is further stated by the petitioner that while the husband of the petitioner was admitted to the Hospital at Sukma, no Doctors were available on duty. Furthermore, it is contended that the petitioner was asked to arrange for oxygen cylinder. It is contended that the oxygen cylinder which were in the Hospital were empty. It is stated that though the oxygen cylinder were brought but because of the lack of oxygen in the cylinder, the husband of the petitioner could not get any medical treatment and eventually died.

3. Learned counsel for the petitioner submits that thereafter the wife of deceased applied for different relief to the State but eventually nothing turned up, therefore, the instant petition for grant of compensation and further to direct the respondents to consider the application for compassionate appointment of the petitioner i.e. wife within the prescribed time frame by the State.
4. Learned State counsel vehemently opposes the argument and would submit that on 07.07.2014, the husband of the petitioner was admitted to the Sukma Hospital at about 1:40 p.m. wherein it was discovered that the husband of the petitioner was having some breathing problem and was a heart patient. It is further contended by the State that immediately looking to the said need of the husband, a duly filled oxygen cylinder was provided to the patient but because of severe heart condition, the patient died. The State counsel has filed the admission ticket. It is pleaded and contended that after taking blood pressure, the oxygen was provided to the husband of

the petitioner, therefore, all possible medical facilities were provided. Reliance was placed on the document Annexure R-1. It is further stated that the husband of the petitioner, the deceased, had applied for financial assistance to the State and after due verification a cheque of Rs.1,30,000/- was issued in favour of Usha Mullakaran Chikitsa Centre, Hyderabad, wherein the petitioner's husband was proposed to be treated. It is further stated that the cheque was never obtained by the petitioner or her family members it was lying in the custody of the respondent. The State counsel further contended that no document has been filed by the petitioner to prove the negligence to provide medical aid and contends that disowns the liability and stated that the petitioner is not entitled for any relief.

5. Heard learned counsel for the parties and perused the documents filed along-with the petition.
6. The death of husband of the petitioner on 07.07.2014 is not in dispute. The document filed along with the petition purports that on 06.06.2014 the deceased applied for financial help to the State to get himself treated. The said application having been filed was duly forwarded by the Doctor i.e. Assistant Professor of Medical College, Jagdalpur. The document filed further purports that it was certified that the petitioner belongs to the group of Below Poverty Line. A certificate issued by the Civil Surgeon, Bastar, is also on record which shows the petitioner was suffering with heart disease for which medical help was advised at higher center. Along-with the petition, a news published in the local newspaper Hari Bhoomi is enclosed with a captioned that *"due to absence of the Doctor and because of empty oxygen cylinder given to patient he died"*. In reply of the State, the admission ticket of patient of District Hospital Sukma is filed as Annexure R-1 and certain invoice copy of some P.S. Gases are enclosed. The contention of the State was that deceased was given due medical care and the reply purports that after taking blood pressure of the deceased, oxygen cylinder was provided

to the patient and only because of severe heart condition, the patient could not survive.

7. Perused the admission ticket wherein State has placed a heavy reliance. Perusal shows part of it are empty. Only the date of admission as 07.07.2014 and time of admission is filled in as 1:40 p.m. As against column of Complaint one word Dyipner has been written. It is not clear by the reply of the State too, what does it mean. The column of Diagnosis is empty. The column as H/o Present Illness is also empty. History of Past Illness is also blank. T.B./DM/HTN/Rheumatic Fever/STD/Surgery/Other column is empty, Personal History column is empty, TB/DM/HTNS/STD/ Sickling? Br.Astha is empty and Treatment/ Durg History is also empty.
8. The aforesaid admission ticket when is compared again, the mandate of the Supreme Court, way back in the year 1996 in case of ***Paschim Banga Khet Mazdoor Samity & Others v. State of W.B. & Another*** in ***(1996) 4 SCC 37*** would show, to deal the case of like nature the guidelines with regard to drawbacks in the system of maintenance of admission registers of patients in the hospitals was considered. It was directed that the Superintendents and Medical Officers of the hospitals should take the following actions to regularise the system with a view to avoiding confusion in respect of Admission/ Emergency Attendance Registers. The directions were as under :
 - "(a) Clear recording of the name, age, sex, address, disease of the patient by the attending Medical Officers;
 - b) Clear recording of date and time of attendance/ examination/admission of the patient;
 - (c) Clear indication whether and where the patient has been admitted, transferred, referred:
 - (d) Safe custody of the Registers;
 - (e) Periodical inspection of the arrangement by the Superintendent;

(f) Fixing of responsibility of maintenance and safe custody of the Registers."

9. With regard to identifying the individual Medical Officers attending to the individual patient approaching Out Patients' Department/Emergency Department of a hospital on the basis of consulting the hospital records, the following procedure was prescribed :

"A. A copy of the duty roster of Medical Officers should be preserved in the office of the Superintendent incorporating the modifications done for unavoidable circumstances;

B. Each Department shall maintain a register for recording the signature of attending Medical Officers denoting their arrival and departure time;

C. The attending Medical Officer shall write his full name clearly and put his signature in the treatment document;

D. The Superintendent of the hospital shall keep all such records in safe custody;

E. A copy of the ticket issued to the patient should be maintained or the relevant data in this regard should be noted in an appropriate record for future guidance.

10. The said directions when are compared as against Annexure R-1, it doesn't comply even 5% of it except the name of the patient. The reply of the State says that after the patient was diagnosed, the blood pressure was checked and the oxygen was given. No data is available on record to presume the same. The bed head ticket filed is empty and no document to show who were the Doctors attending the patients are made available for scrutiny. The reply of the State was filed in the year 2016 and the incident was of 2014. If the document of treatment was available then nothing restrained the State to place it on record to show that the proper treatment was given to the patient. The direction of the Supreme Court was issued to deal with likewise situations to evaluate the factual aspect in a government run hospital along-with the fact to ascertain the treatment provided to a patient. The said directions were issued way back in the year 1996 by the Supreme Court.

Consequently, the averments of the petitioner that the husband of the petitioner was not provided with medical aid as the Doctor was not available and the oxygen cylinder which was applied to the petitioner's husband was empty may or may not be true but in absence of mandatory data the inference of negligence in treatment can be drawn.

11. The Supreme Court in the aforesaid case ***Paschim Banga Khet Mazdoor Samity*** (supra) has further held that the Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. It was observed that in a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. It was further observed that the Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. The extract of Para 9 are reproduced as under :

“Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. In the present case there was breach of the said right of Hakim Seikh guaranteed under Article 21 when he was denied treatment at the various Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention.”

12. The Supreme Court way back has issued direction as remedial measures to ensure the immediate medical attention and treatment to persons be provided who is in real need, who approaches the health centres/OPD/

Emergency Departments of hospitals and had accepted certain recommendation of a special committee, which reads as under : .

(1) Proper medical aid within the scope of the equipments and facilities available at Health Centres and Hospitals should be provided to such patients and proper records of such aid provided should be preserved in office. The guiding principle should be to see that no emergency patient is denied medical care. All possibilities should be explored to accommodate emergency patients in serious condition.

(2) Emergency Medical Officers will get in touch with Superintendent/Deputy Superintendent/ Specialist Medical Officer for taking beds on loans from cold wards for accommodating such patients as extra-temporary measures.

(3) Superintendents of hospitals will issue regulatory guidelines for admitting such patients on internal adjustments amongst various wards and different kinds of beds including cold beds and will hold regular weekly meetings for monitoring and reviewing the situation. A model of such guidelines is enclosed with this memorandum which may be suitably amended before issue according to local arrangements prevailing in various establishments.

(4) If feasible, such patients should be accommodated in trolley- beds and, even, on the floor when it is absolutely necessary during the exercise towards internal adjustments as referred to at (3) above.

13. The Court further accepted the guidelines of the special committee and directed the following measures be available and directed that the copy was to be given to all the Secretary, Health Department of the State. The said guidelines are as under. It is directed that :

1. Adequate facilities are available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stabilize his condition;
2. Hospitals at the district level and Sub-Division level are upgraded so that serious case can be treated there;
3. Facilities for giving specialist treatment are increased and

are available at the hospitals at District level and Sub-Division level having regard to the growing needs.

4. In order to ensure availability of bed in an emergency at State level hospitals there is a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment which is required.

5. Proper arrangement of ambulance is made for transport of a patient from the Primary Health Centre to the District hospital or Sub-Division hospital and from the District hospital or Sub Division hospital to the State hospital.

6. The ambulance is adequately provided with necessary equipment and medical personnel.

7. The Health Centres and the hospitals and the medical personnel attached to these Centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.

14. The said guidelines having been fixed, the State was bound to act on it and if there is any deviation hiding of spot would not help the State. In absence of clear document and history of treatment in a given case negligence can be inferred. Further the facts in this case that recommendation for treatment at higher center though was recommended on 06.06.2014, the same remained to be evaluated up till for a month and the cheque as per the reply though was prepared on 21.07.2014 but the same was prepared after death of patient. Therefore, in case of emergency of any particular claim for treatment to the higher medical centre, the State must also evolve a policy of outer time limit within which the said application for any emergency can be processed so that adequate measures may be provided on time.
15. In the aforesaid facts of this case, after going through the record, in absence of any record, the allegations of absence of Doctor and applying an empty oxygen cylinder to the deceased cannot be ruled out. Even if such proposition is shelved in absence of any medical record to show the

treatment was given to the deceased the inference can be drawn that the State has failed to provide proper medical aid to the husband of the petitioner. Consequently, in facts of case considering the death happened in the year 2014 and petitioner is wife and a minor child survived, it is directed that the State shall be obliged to pay the petitioner an amount of R.10,00,000/- (Rupees Ten Lac) as compensation within a period of two months. On payment of amount, Rs.2.5 Lac shall be kept in a renewable fixed deposit of nationalized Bank in name of two minors each till they attains their majority respectively.

16. The State is further directed to circulate the guidelines at Para 8 & 9 and Para 12 & 13 of this order to all the Hospitals, Primary Health Centres and to circulate in all the Health Department so that the system of keeping medical data and medical help can be revived to avoid any future confusion and clarity.
17. In the result, the writ petition is allowed to the above extent. No order as to cost.

Sd/-
Goutam Bhaduri
Judge