

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.2502 of 2020**

Ms. X, aged about 14 years, minor represented through father Mukesh Kumar Mahant S/o Itwari Das Mahant, aged about 40 years, R/o village Kharkena, Police Station Dabhra, District Janjgir-Champa (CG)

---Petitioner

Versus

- 1.State of Chhattisgarh, through Secretary, Department of Health and Family, Mahanadi Bhavan Mantralaya, Atal Nagar, Raipur, District Raipur (CG)
- 2.Station House Officer, Police Station Dabhra, District Janjgir-Champa (CG)
- 3.Chief Medical and Health Officer, District Janjgir-Champa (CG)

---Respondents

For Petitioner	:	Mr.Amit Kumar, Advocate
For Respondents/State	:	Mr.Amrito Das, Addl. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

18/01/2021

1. This writ petition filed by rape victim seeking termination of her pregnancy being rape victim on account of her health condition, which was permitted by this Court by order dated 20.10.2020. However, finding difficulty in getting the victim examined by Female Gynecologist at District Hospital, Janjgir-Champa, this Court on 20.10.2020 directed to the Principal Secretary(Health)/Secretary (Health) to ensure that there is atleast one Female Gynecologist posted at all District Hospitals at the District

Headquarters of every Districts in the State.

2. Today, when the matter is taken up for hearing, Mr. Amrito Das, learned Additional Advocate General for the respondents/State, would inform to the Court that in all district hospitals of the State 205 posts of specialist are sanctioned posts of specialist includes the post of Female Gynecologist, but out of 205 posts, only 50 specialists are working. He would further submit that the post of specialist is promotional post from Post Graduate Medical Officer, but on account of non-availability of member of said category, promotion on the posts of specialist which includes Female Gynecologist could not be done, however, it will be done expeditiously as in December, 2020 also, meeting of Departmental Promotion Committee was convened and 27 specialists were promoted which have been posted in different district hospitals and in most of the hospitals, the State Government is trying its level best to appoint Gynecologist and further steps will be taken within 3 months from today to fill-up the remaining posts of specialist which includes Male and Female Gynecologist in every districts and thereafter every districts will have the facility of Female Gynecologist for specialized treatment.
3. The Supreme Court in the matter of Paschim Banga

Khet Mazdoor Samiti and others v. State of W.B. and

another¹ held that providing adequate medical facilities for the people is an essential part of obligations undertaken by the Government in a welfare State and held as under:-

"9. The Constitution envisages the establishment of a welfare state at the federal level as well as at the State level. 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. 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. 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. Since the said denial of the right of Hakim Seikh guaranteed under Article 21 was by officers of the State in hospitals run by the State the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Seikh. In respect of deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be

1 (1996) 4 SCC 37

awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution. [See : Rudal Sah v. State of Bihar², Nilabati Behara v. State of Orissa³, Consumer Education and Research Centre v. Union of India⁴]. Hakim Seikh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution. Having regard to the facts and circumstances of the case, we fix the amount of such compensation at Rs. 25,000. A sum of Rs.15,000 was directed to be paid to Hakim Seikh as interim compensation under the orders of this Court dated 22-4-1994. The balance amount should be paid by respondent No. 1 to Hakim Seikh within one month."

Their Lordships while directing that proper medical facilities are available for dealing with emergency cases also directed as under:-

1. and 2. xxx xxx xxx

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 the matter of **State of Punjab and others v. Mohinder Singh Chawla and others**⁵ it has been held by the Supreme Court that right to health is integral to the right to life and the Government is under a constitutional obligation to provide health facilities.

5. Similarly, in the matter of **Devika Biswas v. Union of India and others**⁶ it has been held by the Supreme Court that right to life under Article 21 of the

2 (1983) 4 SCC 141

3 (1993) 2 SCC 746

4 (1995) 3 SCC 42

5 (1997) 2 SCC 83

6 (2016) 10 SCC 726

Constitution of India includes the right to lead a dignified and meaningful life and right to health is an integral facet of this right.

6. Similarly, in the matter of **Gurusimran Singh Narula v. Union of India and another**⁷ it has been held by the Supreme Court that right to health is also recognized as an important facet of Article 21 of the Constitution. It was observed as under:-

“22. Article 21 of the Constitution provides for protection of life and personal liberty. The expression “life” used in Article 21 has wide import and connotation. Article 21 encompasses a bundle of rights which have been recognized from time to time by the legislature of this country and courts of this Country including this Court. Right to life as recognized under Article 21 is right to live with dignity. Right to health is also recognized as an important facet of Article 21 of the Constitution.”

7. Recently, the Supreme Court in the matter of **In Re: The Proper Treatment of Covid 19 Patients and Dignified Handling of Dead Bodies in the Hospitals etc. (Suo Motu Writ Petition (Civil) No.7 of 2020** has held that right to health is a fundamental right guaranteed under Article 21 of the Constitution of India. Right to health includes affordable treatment. Therefore, it is the duty upon the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or local administration are made.

⁷ (2021) 1 SCC 152

Right to health is a fundamental right guaranteed under Article 21 of the Constitution of India and safety and health of the citizen is first priority of the State. Since the posts of specialist which includes post of Female Gynecologist, could have been filled up by the State Government by making appointment to provide specialist treatment to the patient at district headquarters, I hope and trust that the State would do well to consider and proceed further to fill-up the remaining posts of specialist/Female Gynecologist expeditiously so that each of the district hospitals will have facility of specialist treatment at district headquarters of the State and this Court would not be again required to face the difficulty as faced in the instant case.

8. With the aforesaid observation/direction, this writ petition stands finally disposed of.

Sd-

(Sanjay K. Agrawal)
JUDGE

B/-