

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) PIL No.17152 of 2021*****Gyanadutta Chouhan***

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Petitioner***-versus-******The Additional Chief Secretary to
Government, Health & Family Welfare
Department, Government of Odisha***

....

Opposite Party**Appeared in this case:*****For Petitioner***

:

In person***For Opposite Party***

:

**Mr. P.K. Muduli,
Additional Government Advocate****CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK****JUDGMENT
23.03.2022****Dr. S. Muralidhar, C.J.**

1. The background to the present petition has been set out in some detail in an order dated 7th July 2021 of this Court which reads as under:

"1. This matter is taken up by video conferencing mode.

2. A letter sent by e-mail to this Court on 23rd May, 2021 by the Petitioner who is a resident of Kendbahal in Bargarh District, Orissa highlighting, *inter alia*, the health crisis and Covid-19 mismanagement in western Orissa was registered as the present petition. In particular, the letter drew attention to the lack of proper medical facilities at the Veer Surendra Sai Institute of Medical Sciences and Research (VIMSAR), Burla,

Sambalpur. It was alleged, *inter alia*, that the medical professionals and authorities in charge of VIMSAR's management had behaved irresponsibly and displayed insensitivity to the plight of the Covid-19 victims.

3. The Registrar (Judicial) of this Court, on the directions of this Court, served a copy of the letter and its enclosures on the Office of the Advocate General asking for the comments of the Government of Odisha. In response thereto, on 25th May 2021 the Additional Chief Secretary, Health and family Welfare Department, Government of Odisha, sent a letter to the Collector & District Magistrate, Sambalpur, asking him to "make a discreet inquiry into the matter and furnish a report" to the Department by 28th May, 2021.

4. By an order dated 26th May, 2021, the Collector & District Magistrate, Sambalpur constituted a three-member Committee comprising the CDM & PHO, Sambalpur, the Commissioner Sambalpur Municipal Corporation (SMC) and the ADM, Revenue, Sambalpur to hold an inquiry and submit a report.

5. The aforesaid three-member Committee submitted a report on 26th May, 2021 itself where it was broadly stated that there was no shortage of medicine and no lack of proper treatment or facilities. By an order dated 2nd June, 2021, this Court directed that a copy of the said report be furnished to the Petitioner to enable him to make submissions on the next date.

6. Thereafter on 8th June, 2021 the following order was passed by this Court:

"1. This matter is taken up by video conferencing mode.

2. In response to the inquiry report submitted by the three Senior Medical Professionals, Mr. Chouhan who appears in person states that he has filed a reply disputing their findings.

3. While a direction is issued to the Registry to place the said reply on record, it is important for the Petitioner, if he seeks to dispute the correctness of the inquiry report, to place on record the affidavits of at least five persons who have themselves or whose close relatives or friends have been victims of either medical negligence or lack of timely medical treatment during the relevant period of the second resurgence of the COVID-19 pandemic.

4. Mr. Chouhan states that he will try and file the affidavits before the next date and seeks some time.

5. At his request, list on 7th July, 2021."

6. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021."

7. Pursuant to the above directions, Mr. Gyanadutta Chouhan, the Petitioner in person, has filed nine affidavits of persons whose close relatives purportedly suffered on account of lack of proper or timely treatment at the Veer Surendra Sai Institute of Medical Sciences and Research (VIMSAR), Burla, Sambalpur during the Covid-19 pandemic.

8. The copies of the affidavits be made available to Mr. M.S. Sahoo, learned Additional Government Advocate and a second set be prepared for the Court's record.

9. At this stage, the Court would like to observe that each of the nine affidavits reveal prima facie that the victims did not receive the requisite medical treatment

at VIMSAR and that needless deaths had occurred as a result thereof. These are only *prima facie* conclusions and the proof of the averments would require to be established by a proper inquiry and by giving VIMSAR an opportunity of presenting its version.

10. The issues raised in the letter of the Petitioner as well as the affidavits of the nine deponents raises serious questions involving the fundamental right to health which is an inherent part of right to life under Article 21 of the Constitution. VIMSAR is one of the premier medical institutions of the State catering to the medical needs of the population of western Odisha. It has to function in the manner befitting its status of providing the highest standard of care and treatment to everyone for that purpose.

11. While during COVID-19 times all resources were indeed stretched and many medical personnel and nursing staff went beyond the call of duty to render tireless service, it is entirely possible that there were lapses. Whether this was for the reasons beyond the control of the doctors, nurses and staff of VIMSAR and whether it was avoidable, can properly be established only in a detailed enquiry which should be held in an impartial manner to ensure that justice is done in accordance with law.

12. Considering that the deponents of the affidavits submitted are located in and around the districts of Bargarh, Jharsuguda and Sambalpur and had approached VIMSAR for treatment of their relatives, the Court considers it appropriate to direct that an independent inquiry by a retired District Judge be held in Sambalpur itself to elicit the complete facts and submit a report to this Court on completion of such inquiry. Accordingly, the Court issues the following directions:

(i) Mr. A.B.S. Naidu, a former District Judge is appointed as Inquiry Officer to examine the instances set out in the nine affidavits filed in this Court by the

Petitioner and in particular whether there was medical negligence in the treatment of the victims of those cases.

(ii) Registry is directed to provide a copy of the complete set of record of this writ petition including the nine affidavits to Mr. Naidu at the earliest.

(iii) The Government of Odisha shall take immediate steps for completion of necessary formalities by publication of the Notification within a week from the date of receipt of the order. The Inquiry Officer within a period of one week from the date of publication of the Notification will initiate the process of inquiry by giving a public notice both electronically as well as in the print media inviting affidavits of the persons (other than those nine who have already submitted affidavits) who have been victimized by lack of proper treatment and care at VIMSAR and fixing an outer limit for receiving such affidavits which in any event should not be more than 15 days from the date of publication of such notice.

(iv) The place of enquiry shall be the premises of the District Court at Sambalpur. The District Judge, Sambalpur shall provide the space in the premises of the District Court for holding such enquiry. The Opposite Party-Government through the local administration shall provide all necessary infrastructure as well the Secretarial Staff and other support services as would be required by the Inquiry Officer without any delay to enable him to function and conduct the enquiry as quickly as possible.

(v) The Superintendent of Police, Sambalpur will also ensure the safety, security of the Inquiry Officer, his records and generally the premises where the enquiry shall be held by deploying sufficient police personnel as may be determined by the SP, Sambalpur on an assessment of the situation.

(vi) The Inquiry Officer will be paid an honorarium of Rs. 2.00 (two) Lakh per month by the Government of Odisha for the enquiry which will be concluded within a period of 3 months from the date of commencement of such enquiry. In any event, the enquiry report should be made available to this Court by the Inquiry Officer not later than 1st November, 2021. The incidental expenses of the Inquiry Officer in conducting the enquiry and his functioning shall be borne by the Government of Odisha as per the bills raised on actual basis without any delay. The Government of Odisha will also provide the Inquiry Officer, the transport and conveyance facility besides his temporary accommodation.

(vii) Full cooperation be extended to the Inquiry Officer by the local administration and in particular by the Management, medical personnel, staff and workers of VIMSAR.

(viii) The Inquiry Officer will ensure that the relevant records for treatment of the victims available in VIMSAR is immediately secured and kept in a sealed cover with the custody of the Inquiry Officer.

(ix) The Inquiry Officer will draw up the procedure for conducting enquiry, and the schedule for completion of the pleadings, receipt of affidavits and examination of witnesses, within a week of taking over the inquiry, and give it wide publicity in the print media and on the internet. He may create a website for the office of the inquiry. The Inquiry Officer is at liberty to devise a flexible procedure consistent with the needs of the situation without overlooking the basic requirement of the rules of natural justice so as to subserve the ends of justice.

(x) It will be open to the Petitioner to participate in the enquiry proceedings and place the necessary documents and further information before the Inquiry Officer. In particular he should provide forthwith the

Inquiry Officer the original of affidavits of nine individuals filed by him in this Court.

(xi) The Inquiry Officer will in his report also give suggestions, after consulting expert witnesses, on the steps taken to improve the existing medical infrastructure and the standard of medical treatment and care provided at VIMSAR and generally in other government medical/health facilities. He will give his suggestions regarding payment of compensation where the allegation of lack of proper medical treatment and care and/or medical negligence stands established.

13. It may be mentioned at this stage that Mr. Chouhan, the Petitioner in person, also adverted to his coming across several instances of lack of proper medical care and treatment of victims in other parts of Odisha and prayed that such instances should also be enquired into. While appreciating the above submission, this Court would at this stage like to take up the issue of the care and treatment provided at VIMSAR during the relevant period so that concrete directions can be issued in that regard. The question whether the other instances referred to should also asked to be investigated will be considered after receipt of the report of the Inquiry Officer.

14. If there is any difficulty in carrying out the above directions, it will be open to the Petitioner, the Opposite Parties as well as to the Inquiry Officer to apply to this Court for directions.

15. List on 8th November, 2021 for further directions.

16. The Registry is directed to provide a copy of this order to Mr. M.S. Sahoo, learned Additional Government Advocate for communication to the Opposite Parties forthwith.

17. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High

Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021."

2. Pursuant to the above order, Sri. A.B.S. Naidu, former District Judge held an inquiry during which he examined 13 witnesses on behalf of the Petitioner and one on behalf of the Opposite Party. He examined the exhibits submitted by the parties and returned his findings in a 23-page report dated 29th October, 2021. On 8th November 2021, this Court directed that a copy of the said inquiry report be supplied to both the Additional Government Advocate (AGA) for the State as well as to the Petitioner, who appeared in person. The Petitioner in person sent a response to the report by e-mail on 11th December 2021. The Deputy Secretary to Government, Department of Health and Family Welfare, Odisha has submitted an affidavit dated 24th December, 2021.

3. A perusal of the report shows that apart from the nine affidavits filed before this Court, in response to the public notice published in the local press, four new affidavits were received.

4. Affidavits in respect of the thirteen victims were filed by the relatives. The Superintendent, VIMSAR submitted medical records of the following twelve victims.

"(1) Shantilata Disri, (2) Chanchala Badhei, (3) Labanga Pandey, (4) Biranchi Podh, (5) Julekha Bibi, (6) Sahajadi Begum, (7)

Sanjaya Chand (Chandra), (8) Tarini Luha, (9) Bhumisuta Sahu, (10) Shama Parween, (11) Hiralal Behera and (12) Prasant Pruseth"

5. As regards the record of Ersad Khan, it could not be produced as he was not treated at VIMSAR.

6. The deponents of the affidavits were cross-examined by the Opposite Party, who examined one witness namely, Dr. Sudarsan Pothal (OPW-1), who was the COVID Advisor-cum-Nodal Officer, VIMSAR during the relevant period. OPW-1 was cross-examined by the counsel for the claimants.

7. As regards the authority of OPW-1 to give evidence on behalf of the Opposite Parties, the proceedings of the meeting held at VIMSAR on 25th January 2020 in the participation of the Director, Dean and Principal and other faculty members assured that Dr. Pothal had in fact been nominated as Nodal Officer for the management of Coronavirus cases in VIMSAR. While the stand of the Opposite Party was that Dr. Pothal's authority could not be questioned and that he was competent to give evidence on behalf of the Opposite Party, the inquiry report notes as under:

"However, from the evidence of OPW.1, it appears that in none of the medical records marked Exts. C to P he made any endorsement nor advised regarding treatment of the Covid patients. He has not attended any of the patients in the Covid Hospital. It is also not disputed by OPW.1 that he had no direct knowledge with regard to the condition of the patients at the time of their admission".

8. The inquiry report then proceeds to note that the footage of the CCTV could be stored only for 9 to 10 days and thereafter gets automatically deleted. Therefore, no CCTV footage was able to be produced.

9. The report then proceeds to discuss the evidence of each of the PWs. 1 to 13 in sufficient detail. It has been held for the reasons stated therein that barring the cases of Prasant Pruseth and Shazadi Begum, in the remaining eleven cases, the material on record did not establish medical negligence and laches by VIMSAR. Yet the report notes that "there is no dispute that the above victims died while undergoing treatment." For the said two victims, the report suggested that a compensation of Rs.5 lakhs shall be paid to each of them through their legal heirs upon proper identification. The report contains a series of suggestions which would be referred to later in this judgment.

10. The report has discussed the evidence vis-à-vis each of the thirteen persons in sufficient detail. As regards Prasant Pruseth, the affidavit regarding his death was filed by Prabhas Pruseth, his elder brother, who was examined as PW-2, who admitted Prasant Pruseth by transferring him from the isolation ward of VIMSAR to the District Headquarters Hospital, Sambalpur where he died. The facts in relation to Prasant Pruseth have been noted in the report as under:

"On going through Ext.P the Bed-Head ticket of the victim Prasant Pruseth produced by VIMSAR, I find that the said victim was admitted at VIMSAR on 30.08.2020. He was transferred to isolation ward for RTPCR test. During admission of the victim in

isolation ward, a call was given to Pulmonary Medicine Department to evaluate the patient and to do the needful. On 03.09.2020 the Asst. Professor, Pulmonary Medicine attended the victim and opined that "in case confirmed to be Covid-19, switch to Remdesivir". In spite of advice of the Assistant Professor, Pulmonary Medicine it appears that RTPCR test was conducted at a belated stage on 05.09.2020. The test report was submitted showing Covid-19 positive. Thus, from the date of admission i.e. on 30.08.2020 till 05.09.2020 no proper diagnosis was made and simply treatment continued in a routine manner. Unfortunately, after the test report was received on 05.09.2020 the victim was transferred to Covid Hospital, Sambalpur on the plea that no Covid Hospital was functioning at that time at VIMSAR. The treating Physician shifted his responsibility by transferring the victim to Covid Hospital, Sambalpur forgetting for a moment that the Assistant Professor, Pulmonary Medicine on evaluation of the victim had categorically advised that in case confirmed to be Covid-19, switch to Remdesivir injection. Thus, I find that the treating physician of VIMSAR without following the advice of the expert and without giving proper treatment simply transferred the victim to other hospital, that too when the victim was in a critical condition and the victim died at Dist. Headquarter Hospital, Sambalpur on 07.09.2020.

On going through the medical record Ext.P it becomes apparent that there was delay in conducting RTPCR test, that apart the instructions of the Specialist Doctor has not been followed strictly and the patient was transferred without giving Remdesivir injection which was immediately necessary for a Covid-19 patient. VIMSAR, Burla being a premier medical institution, such type of lapses is not expected in respect of serious Covid patient. Thus, I am of the conscious opinion that there was medical negligence and lapses in the manner of proper treatment of the victim PrasantPruseth at VIMSAR."

11. As regards another victim Sahazadi Begum, the affidavit was sworn to by Mohammad Aslam, her brother who was examined as PW-13. In his evidence, PW-13 pointed out that the victim was first admitted at the Mandalia Hospital, Brajaraj Nagar. Subsequently, she was referred to Dist. Headquarter Hospital, Jharsuguda and thereafter to Covid Hospital, VIMSAR. In his affidavit evidence PW-13 further stated that the sample for RTPCR test was collected on 8th May 2021 but as the testing machine in VIMSAR Burla was not functioning properly, sample was again collected on 11th May 2021 and sent to Deogarh and report was received on 13th May, 2021. The O.Ps in their counter submission stated that the victim was admitted in a critical condition with Type-II diabetes and acute respiratory distress syndrome. They denied the averments made by PW-13 in the affidavit evidence.

12. As regards Sahazadi Begum in particular the following findings were returned:

"On 14.05.2021 the treating physician again gave ICU call note mentioning that the victim is in low condition and requested for arrangement of ICU bed. But no ICU bed was provided and at about 4.15 PM the victim died. No explanation has been submitted by the Opposite Parties in their counter for not providing ICU bed to victim Sahazadi Begum. It is not disputed that better care is provided in ICU, such as 24 hours monitoring, availability of medical officers round the clock and oxygen facility etc. The treating physician BEING SATISFIED THAT THE PATIENT NEED TO BE SHIFTED TO ICU, referred FOR SHIFTING when he felt it necessary. It is submitted on behalf of the OPs that due to overcrowding of Covid-19 patients and non-availability of ICU bed the victim could not be provided ICU bed in spite of requisition. In my opinion, the EXPLANATION cannot exonerate the

liability of the institution which is not an ordinary hospital but a premier Medical Institution of the State. It is always expected that patients from entire Western Odisha take admission at VIMSAR, Burla with a hope to avail best medical facility.

The Authority should have planned properly for availability of ICU bed so that no patient in need of ICU should have been deprived. Therefore, I am of the opinion that there is apparent medical negligence/laches on the part of VIMSAR with regard to treatment of Sahazadi Begum."

13. Accordingly, the report recommended payment of Rs.5lakhs compensation to each of the victims. The Petitioner sent his response to each of the findings in respect of the thirteen deaths. According to him, four of the victim families including all victims deserve compensation.

14. It is sought to be argued by the State that all possible steps had been taken to save the life of late Prasant Pruseth. It is stated that due to renal complications, he was not administered Remdesivir, but medicines like Azithromyc in and Flavipiravir were administered. As regards the death of late Sahazadi Begum, it is again sought to be contended that her condition became too critical for reference to any other hospital for treatment. There was an unexpected increase in the number of severe Covid cases. Although she was not provided ICU bed, she was treated in "ICU like facilities in the form of oxygen, monitored by multipara monitors and drugs which are essential for Covid treatment". It is denied that there was any problem with oxygen supply or medicines and it is submitted that medical service provided by the doctors was of high quality. It is further submitted that proper sanitization and

cleanliness was maintained by engaging sufficient number of sanitary workers and that all of this was monitored by senior officers. According to the Opposite Parties, a set of dedicated workers and three Mahaprayana vehicles were engaged for the cremation of the dead bodies in a dignified manner and performance of different religious rituals. For this purpose, one officer in the Sambalpur Municipal Corporation was coordinating with VIMSAR. It is accordingly submitted that there was no negligence in the provision of medical facilities to the victims either at VIMSAR or elsewhere in the State.

15. Before proceeding to deal with the above submissions, the Court would like to recapitulate the legal provisions governing the issue of compensation for victims of Covid-19 disaster. In a common judgment dated 30th June 2021 in two writ petitions i.e. ***Reepak Kansal v. Union of India*** and ***Gaurav Kumar Bansal v. Union of India*** 2021 SCC OnLine SC 443, the Supreme Court of India was dealing with two public interest litigation (PIL) petitions seeking directions to the Central and State Government to provide ex gratia monetary compensation to the families of the victims of the Covid-19 pandemic. The Supreme Court noted in the said judgment that Covid-19 was a "Notified Disaster" to which the provisions of the Disaster Management Act, 2005 (DMA) would apply. By a letter dated 14th March 2020, the Ministry of Home Affairs, Government of India conveyed its decision to treat Covid-19 as a "Notified Disaster" for the purposes of providing assistance under the State Disaster Response Fund (SDRF). Section 12 of the DMA provides that the National Disaster Management Authority

(NDMA) “shall recommend guidelines for the minimum standard of relief to be provided to persons affected by a disaster”. This includes; (i) minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation; (ii) special provisions to be made for widows and orphans; (iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood; (iv) such other relief as may be necessary. Section 19 of the DMA provides similar guidelines for minimum standards of relief by the State Disaster Management Authority (SDMA).

16. In interpreting Section 12 of the DMA, which had been enacted for prevention and mitigation of disasters and for undertaking a holistic, coordinated and prompt response to a disaster situation, the Supreme Court interpreted the word 'shall' occurring in Section 12 of the DMA as under:

"35. In Section 12 of DMA 2005, the word 'shall' is used twice. The intent of the legislature by using the word 'shall' twice is very clear and the same can be in tune with the Statement of Objects and Reasons for enactment of DMA 2005 and the functions and powers of the National Authority.

36. Section 12 specifically provides that the National Authority 'shall' recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which 'shall' include

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(iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;

47Therefore, what amount to be paid by way of ex gratia assistance to the family members of the persons who died due to Covid-19 pandemic should be left to the National Authority/Central Government."

17. In a subsequent order in an application filed in the same writ petition, the Supreme Court specified the amount of compensation and the manner of disbursal of the amount by issuing a series of directions as under:

“ i) that the next of the kin of the deceased died due to Covid-19 shall be paid ex-gratia assistance of an amount of Rs.50,000/-, which shall be treated as ex-gratia payment under Section 12(iii) of the DMA, 2005 and which shall be minimum and which shall be over and above the compensation/amount to be paid by the Union of India/State Governments/Union Territories to be declared/provided under different benevolent schemes;

ii) that the ex-gratia assistance of Rs. 50,000/- shall be provided by the concerned States from the State Disaster Response Fund (SDRF);

iii) that the ex-gratia assistance to the next of the kin of the deceased shall be disbursed by the District Disaster Management Authority/District Administration;

iv) that the full particulars and address of the District Disaster Management Authority/District Administration who is required to disburse the ex-gratia assistance of Rs. 50,000/- shall be published in the Print Media and Electronic Media and wide publicity shall be given; that the same shall be published within a period of one week from today; it is further directed that such information shall also be published in the prominent offices of the

village/taluk/district, such as, Gram Panchayat Office, Taluk Panchayat Office, District Collector Office, Corporation Office etc.;

v) that such ex-gratia assistance of Rs. 50,000/- shall be disbursed within a period of 30 days from the date of submitting the application to the concerned District Disaster Management Authority/District Administration along with the proof of the death of the deceased due to Covid-19 and the cause of death being certified as “Died due to Covid-19”;

vi) that the amount to be disbursed as per the Guidelines dated 11.09.2021 and as observed hereinabove on the death being certified as Covid-19 death for which the cause of death mentioned in the death certificate shall not be the conclusive and if other documents are provided as discussed hereinbelow, the next kin of the deceased died due to Covid-19 shall be entitled to the ex-gratia assistance of Rs. 50,000/-;

vii) that no States shall deny the ex-gratia assistance of Rs.50,000/- to the next of the kin of the deceased died due to Covid-19 solely on the ground that in the death certificate issued by the appropriate authority, the cause of death is not mentioned as “Died due to Covid-19”

18. Follow up orders have been passed in the same issue by the Supreme Court in the same petition in different Miscellaneous Applications.

19. Subsequently, on 29th November 2021, the Supreme Court directed the Chief Secretaries of 17 States to file a compliance report and furnish full particulars on:

(a) Whether the directions issued in the judgment and order dated 4th October, 2021 has been fully and duly implemented or not?

- (b) The procedure to be followed to invite applications and format of the application for compensation;
- (c) The number of deaths recorded;
- (d) The claim forms received so far;
- (e) The number of claimants/persons to whom the compensation has been paid;
- (f) Whether the Grievance Redressal Committee in each district had been constituted?
- (g) Whether any wide publicity is given with respect to the scheme of compensation and to which office and where the application claim of compensation is to be made?
- (h) Whether any online portal for disbursement of compensation has been created or not?

20. In its order on 6th December 2021 while dealing with the affidavits filed by the States of Maharashtra, West Bengal, Rajasthan, Uttar Pradesh and Gujarat, the Supreme Court emphasized that "the registered deaths need to be dealt with urgently. The minimum the State can do is disburse the ex-gratia payment for the family members of the person whose deaths are already registered with the State." Subsequently, on 13th December 2021, the Court stated that widespread publicity is needed to reach out to common man and making them aware about Covid compensation; wide publicity by giving advertisement in newspapers, more particularly in the vernacular language newspapers and the local channels by giving the full particulars with respect to the online address on which the victim can make application online. The Court heard the counsel for the State of

Maharashtra and Gujarat and asked them to publicize widely and pay the compensation amount.

21. On 19th January 2022, the Supreme Court noted that nine States including the State of Orissa received more applications seeking compensation than the official death records maintained by the State Governments. As per the data made available to the Supreme Court, the total applications received by the State of Orissa were 10,865 as compared to the official death toll of 8469. It also directed that "no claim shall be rejected on technical grounds and if there is any defect in the claim application, an opportunity should be given to the concerned Claimant to rectify the mistake so that the concerned person may be paid the compensation. Such particulars of rejection shall be sent to the concerned applicants as well as the concerned Grievance Redressal Committee (constituted pursuant to the earlier order passed by this Court) within one week." The Supreme Court further directed that States should reach out to children who became orphans due to COVID to pay them compensation as they may not be in a position to file the claim applications.

22. It therefore emerges that as far as the ex-gratia payments are concerned, each of the 12 victims in respect of whom affidavits were given to the enquiry authority (EA) are entitled to such ex-gratia amount of Rs.50,000/- each in light of the orders of the Supreme Court of India as mentioned hereinbefore. While only in two cases, the charge of medical negligence resulting in the death of the victims could be established, there is no doubt that in each of

the cases the death was on account of Covid-19. Therefore, even though the case of medical negligence may have been proved only in two cases, each of the victims including the two cases of medical negligence become entitled to the ex gratia amount of Rs.50,000/-. It is so ordered.

23. As regards the two specific cases of Prasant Pruseth and Sahazadi Begum, the Court finds that the EA has examined in sufficient detail the reasons for their deaths. Likewise, the IO has also discussed why in other cases this charge was not made out.

24. The Court has carefully examined the submissions made by the Petitioner seeking to bring two more persons within the ambit of deaths due to medical negligence as well as submissions of the State as to why even the two cases as pointed out by the IO ought not to be treated as deaths due to medical negligence.

25. Having carefully perused the report of the EA, the Court is not persuaded by either side of arguments. The EA has found an objective view of the evidence laid and has come to the correct conclusion about the deaths of PrasantPruseth and Sahazadi Begum having occurred during the medical negligence of doctors attending them at VIMSAR, Burla. While it may not be sufficient to pinpoint the medical negligence of any particular doctor in the said hospital, the collective responsibility for their deaths must be affixed on the institution itself.

26. The Court in the present instance is dealing with violation of the right to health of the victims guaranteed and protected under Article 21 of the Constitution of India. After the judgment of the Supreme

Court in *Pt. ParmanandKatara v. Union of India* 1989 AIR 2039 and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996) 4 SCC 37, no person can be denied adequate standard of medical care in Government health institutions. The excuse of lack of resources was never accepted by the Supreme Court of India. In *PaschimBanga Khet Mazdoor Samity* (*supra*), it was specifically observed as under:

“9...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....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.

16...It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people.”

27. In the present case, the claim for compensation is for the violation of the fundamental rights of the two victims and is fully supported by the above decisions of the Supreme Court of India. This Court has had the foundational facts determined objectively by ordering an enquiry by a former District Judge before whom evidence was led by the parties. It is on an appreciation of the evidence so led that the EA has come to the aforementioned

conclusions. The Court is not satisfied that any of the said conclusions are erroneous or are not based on the evidence laid before the EA.

28. With the facts having been objectively established, the Court has no difficulty in proceeding to award compensation for the deaths of Prasant Pruseth and Sahazadi Begum on account of medical negligence. The compensation amount as recommended by the EA of Rs.5 lakhs to be paid to the next of kin of each of the said two deceased appears reasonable. The Court accordingly directs the State of Odisha to compensate the families of the two victims in the sum of Rs.5lakhs each which should be apart from the ex-gratia sum of Rs.50,000/- which will also become payable.

29. In view of the above discussions, the following directions are issued:

(i) On or before 15th April 2022, the State shall pay Rs.50,000/- as ex gratia amount to the victims (if alive) and the next of kin of the victims who have died, on account of the Covid-19 disaster whose names have been mentioned in the report of Shri A.B.S. Naidu, Retired District Judge;

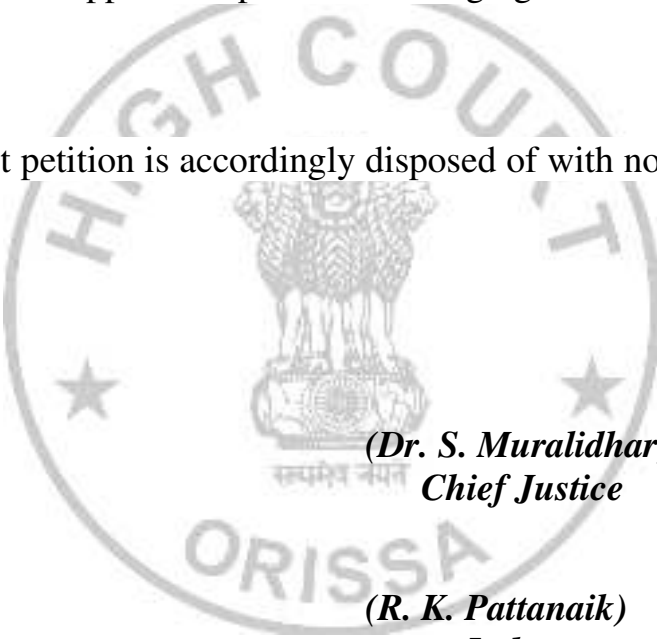
(ii) Rs.5 lakhs shall be paid each to the families of Prasant Pruseth and Sahazadi Begum as compensation for their respective deaths on account of the medical negligence. This will be in addition to Rs.50,000/- ex gratia amount which will be payable to the said families.

(iii) VIMSAR, Burla will file through its Medical Superintendent an affidavit of compliance with the above directions on or before 2nd May, 2022.

(iv) If the affidavit of compliance is not filed by the above date, the Registry of the Court will automatically place a note forthwith before the Court for appropriate directions.

30. The Court records its appreciation of the efforts of the Petitioner, who appears in person for bringing the issue before the Court.

31. The writ petition is accordingly disposed of with no orders as to costs.

The seal of the High Court of Orissa is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'Satyameva Jayate' in Devanagari script below it. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. Two five-pointed stars are positioned on either side of the central emblem.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin