
(2025) 11 GAU CK 1813
In the Gauhati High Court
Case No : WPC Of 7239 Of 2017

Ashok Kr. Sen And Anr

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 27-11-2025

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2025) 11 GAU CK 1813

Hon'ble Judges : Kardak Ete, J

Bench : Single Bench

Advocate : N J Das, A Choudhury, D Deka, N Mahajan, P K Das

Final Decision : Disposed Of

Judgement

Kardak Ete, J

1. Heard Mr. D. Deka, learned counsel for the petitioners. Also heard Mr. P. N. Goswami, learned Additional Advocate General for the State of Assam and Mr. D.P. Borah, learned Standing Counsel, Health and Family Welfare Department.

2. These writ petitions have been filed seeking monetary compensation to the petitioners alleging gross medical negligence by the treating doctors while undertaking the eye surgery at B. P. Civil Hospital, Nagaon (which is a government hospital under the State of Assam).

3. Having considered that the issue involved in these writ petitions is similar on facts and laws, same are taken up analogously and disposed of by this common judgment.

4. The petitioners, hailing from economically backward strata of the society, were suffering from the eye ailment and got themselves admitted in the B.P. Civil Hospital, Nagaon, a Government hospital under the State of Assam. The doctors in the B.P. Civil Hospital had undertaken cataract surgeries on the petitioners in WP(C) No. 7239/2017 on 07.03.2017 & 10.03.2017; petitioners in WP(C) No.

863/2020 on 08.02.2017, 08.03.2017, 08.03.2017 & 09.03.2017; and petitioner in WP(C) No. 1910/2020 on 09.03.2017, and were discharged on different dates, particularly on 08.03.2017, 11.03.2017; 10.03.2017, 09.03.2017, 09.03.2017; and 09.03.2017, & 10.03.2017, respectively.

5. It is the contention of the petitioners that after their cataract surgeries and discharge from B.P. Civil Hospital, they were confronted with severe irritation in their eyes upon which they were operated and were taken back to the said Civil Hospital by the friends and relatives. On examination by the treating doctor, it was informed that the cataract surgeries, which was undertaken, were improperly done. Accordingly, the petitioners were referred to Sri Sankaradeva Nethralaya, Guwahati which they had to rush to Guwahati. On examination at Sri Sankaradeva Nethralaya Hospital, it further came to light that the cataract operation, which was undertaken upon the petitioners by the doctors of B.P. Civil Hospital, was not properly conducted and to prevent further deterioration, it was advised that further surgery had to be conducted for removal of affected eye. Thereafter, the petitioners, on different dates, had undergone surgery at Sri Sankaradeva Nethralaya Hospital for removal of the affected eyes. It is the contention of the petitioners that they had to lose their eyes without any fault on their part. Under the circumstances, the petitioners claim for monetary compensation under the public law remedy.

6. The Director of Health Services, Government of Assam, has placed the enquiry report conducted with regard to the incidence of post cataract surgery complications following cataract surgery of the petitioners at B.P. Civil Hospital, Nagaon pertaining to the period from 07.03.2017 to 11.03.2017 by way of an affidavit.

7. A perusal of the enquiry report indicates that out of the total 41 cases operated, 13 persons had developed complications and were ultimately treated at Sri Sankaradeva Nethralaya, Guwahati. The findings indicates certain deficiency in the hospital so far as the eye operation theatre and therefore the enquiry committee recommended that eye operation theatre at B.P. Civil Hospital, Nagaon to remain closed till the microbiological clearance is available and fulfillment of the renovation and improvement of the eye operation theatre infrastructure etc.

8. The State respondents, vide communication dated 04.11.2025 by the Joint Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, through the Standing Counsel, Health & Family Welfare Department placed the computation of the compensation amount to be paid to the petitioners and/or to the legal heirs who suffered visual complications following cataract surgeries conducted at Nagaon Civil Hospital, Nagaon. Report of the computation of compensation, as placed by the State authorities, indicates that the petitioners have suffered visual complications following cataract surgeries at the said Civil Hospital. Some of whom have subsequently expired due to other ailment.

9. It also reflects that there is no negligence/lapse on the part of the treating authority in the said hospital during the treatment of the patient. However, it assessed compensation of Rs. 4,00,000/- each for all the persons who have suffered visual complications following the cataract surgery at the said hospital and recommended for payment of compensation to the persons and/or to their legal heirs who had suffered visual complications following the said cataract surgeries, including the petitioners herein.

10. Mr. P. N. Goswami, learned Additional Advocate General for the State of Assam and Mr. D. P. Borah, learned Standing Counsel, Health and Family Welfare Department, have fairly submitted that in terms of the recommendation of the committee computing the amount of compensation, the State is ready to pay the said compensation to all the persons, including the petitioners, who have suffered visual complications following the cataract surgeries at B.P. Civil Hospital, Nagaon, which was undertaken under the scheme, namely, National Programme for Control of Blindness (NPCB).

11. It is noticed that the affected persons, including the petitioners, had undergone such an ordeal wherein due to minor cataract surgery availed by them, ultimately had lost their eye vision due to certain deficiency that have arisen during the course of the treatment/surgery at the said B.P. Civil Hospital, Nagaon. Although, no finding is recorded with regard to the negligence on the part of treating doctor, facts remains that the patients/persons, who belongs to economically backward strata availed the welfare scheme under the Government, had lost their precious eyes which has violated the fundamental rights under Article 21 of the Constitution of India.

12. In the case of Paschim Banga Khet Mazdoor Samity -vs- State of West Bengal, reported in (1996) 4 SCC 37, the Hon'ble Supreme Court has held that right to health of a citizen is a fundamental right under Article 21 of Constitution of India.

13. In the case of Nilabati Behera alias Lalita behera -vs- State of Orissa & Ors., reported in AIR 1993 SC 1960, Hon'ble Supreme Court has held which is reproduced herein under:

"16. It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to the remedy private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the

Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution. This is what was indicated in Rudul Sah (AIR 1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226 of the Constitution, for contravention of fundamental rights.”

14. Having considered that the State respondents have benevolently come forward to compensate all the persons, who have lost their eyes following the cataract surgery at B.P. Civil Hospital, Nagaon, even if no finding with regard to the negligence on the part of the treating doctor but acknowledging deficiencies in the eye operation theatre, and also considering the fair submissions of learned Additional Advocate General and the learned Standing Counsel, Health & Family Welfare Department, as well as in view of the fact that the persons, who had undergone cataract surgery, had lost their eyes following the said surgeries and as agreed to by the learned counsel for the petitioners, I deem it appropriate to dispose of these writ petitions with a direction to the respondent authorities to make payment to all the aggrieved persons and/or to their legal heirs, including the petitioners, sum of Rs. 4,00,000/- each within a time frame.

15. Accordingly, the respondent authorities are directed to pay all the persons and/or to their legal heirs, including the petitioners, 7 (seven) in numbers, who have suffered eye complications following the cataract surgery at B.P. Civil Hospital, Nagaon, a sum of Rs. 4,00,000/- each within a period of 6 (six) weeks from today.

16. It is made clear that the respondent authorities are to make payment to the persons/legal heirs, who have suffered, irrespective of whether they have approached this Court or not.

17. Writ petitions stand disposed of.