(2000) 12 GAU CK 0024

In the Gauhati High Court

Case No : Civil Rule No''s. 514 and 557 of 1996

Haripada Saha and Another — APPELLANT

Vs

State of Tripura and Others — RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:
Constitution of India, 1950 — Article 21, 226, 32, 47

Citation : (2002) ACJ 1877 : (2000) 3 GLT 512

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : Mr. A.K. Bhowmick and Mr. S. Ghosh, for the Appellant; Mr. U.B. Saha, for the Respondent

Final Decision : Allowed

Judgement

1. In these two writ petitions under Article 226 of the Constitution, the petitioners have prayed for directions on the respondents to pay compensation for the damage caused to their eyes at the Dr. B.R. Ambedkar Memorial Hospital at Hapania, in West Tripura.

2. The relevant facts as stated in the writ petitions are that the two petitioners in Civil Rule No. 514/96 were admitted in the Hospital on 17.6.1996 and their left eyes were operated by the Medical Officers of the said Hospital on 18.6.1996 and they were discharged from the said Hospital on 21.6.1996. The petitioner No. 1 in Civil Rule No. 557/96 was admitted in the Hospital on 18.6.1996 and his left eye was operated on 19.6.1996 by the Medical Officer and he was discharged on 21.6.1996. The petitioner No. 2 in Civil Rule No. 557/96 was admitted in the Hospital on 11.6.1996 and her left eye was operated on 12.6.1996 and she was discharged form hospital on 24.6.1996. The petitioner No. 3 in Civil Rule No. 557/ 96 was admitted on 12.6.1996, her left eye was operated on 13.6.1996 and she was discharged from the Hospital on 26.6.1996. The petitioners have alleged in the two writ petitions that their left eyes which were operated upon were damaged due to infection at the Hospital. They have claimed compensation of

Rs. 2(two) lakhs each for violation of their fundamental right to life guaranteed under Article 21 of the Constitution of India.

3. At the hearing, Mr. A K. Bhowmick, learned counsel for the petitioners submitted that the Government of Tripura constituted a Committee for investigating into the causes of infection and a report dated 3.7.1996 was submitted by the said committee which would show that it is on account of lapsee on the part of the authorities that infection was caused to the eyes of the different patients including the petitioner. He further submitted that the Government constituted another committee which also enquired into the causes of the eye infection of different patients and the said committee submitted a report dated 25.7.1996 in which it was stated that the infection was a result of contamination in the O.T. (Operation Theatre). Mr. Bhowmick vehemently argues that since the eyes of the petitioners were damaged due to lapses of the authorities, the State of Tripura was liable to compensate the petitioners by way damages. He cited the decision of the Supreme Court in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, and the decision of Madras High Court in Headmistress, Government Girls High School and Others Vs. Mahalakshmi and Another, in support of his submission that the State was liable for the negligence of its officers to a citizen who had suffered on account of negligence of such officers. Mr. Bhowmick also relied on the decision of the Karnataka High Court in Miss Pushpaleela Vs. State of Karnataka and Others, in which the Court directed the respondents to pay compensation of Rs. 75,000 for the loss of one eye in operation held in an Eye Camp. Mr. Bhowmick argued that in the present case the right to life of the petitioners guaranteed under Article 21 of the Constitution has been affected by the State of Tripura and its officers and State of Tripura is liable to pay compensation to the petitioners.

4. In reply, Mr. U.B. Saha, learned Senior Government Advocate, referred to the averment in Paras 8, 9 and 10 of the counter affidavit and the averments in Paras 4, 5, 6, 7, 8, 10 and 11 of the additional affidavit filed by the respondent Nos. 1 and 2 and submitted that the petitioners came to the Hospital with their left eyes completely blind and the doctors of the Hospital successfully removed the cataract but because of subsequent developments, the petitioners were unable to get back their vision. Thus the allegations of the petitioners that the infection in their left eyes was due to sheer negligence of the Medical Officers of the Hospital is not correct. Mr. Saha referring to a publication of the Government of India, Ministry of Health and Family Welfare, Delhi on the subject "Hospital-acquired infections" submitted that Post Operative Infection was world wide problem. Mr. Saha further submitted that at the time when the petitioner were discharged from the Hospital, there was no infection in their eyes and it is quite possible that infection in their eyes took place after they were discharged. Thus the court cannot record a definite finding that the infection in the eyes of the petitioners was due to negligence on the part of the Medical Officers who conducted the operation. Mr. Saha relied on the decision of the Supreme Court in Tamil Nadu Electricity Board v. Sumathi and others AIR 2000 SC 1603 in which it

has been held that when disputed questions of fact arise and there is clear denial of any tortuous liability remedy under Article 226 of the Constitution may not be proper. Mr. Saha sought to distinguish the decision of the Karnataka High Court in the case of Miss Pushpaleela v. State of Karnataka (supra) cited by Mr. A.K. Bhowmick. He explained, in that case the guidelines of the Government of India had not been followed properly at the Eye Camp for eye operation and for this reason the Court awarded compensation to the victims who had lost their vision of one or both the eyes. But no such case had been made out in this present writ petition. Mr. Saha submitted that on the facts and circumstances of the present case the writ petition is liable to be dismissed.

5. The first question to be decided in these two cases is as to whether the remedy under Article 226 of the Constitution is available to the petitioners in these cases. In Tamil Nadu Electricity Board v. Sumathi and others (supra) cited by Mr. Saha, the Supreme Court held :

" In view of the clear proposition of law laid down by this court in Sukumani Das case (AIR 1999 SCW 3383, AIR 1999 SC 3412 when disputed question of fact arises and there is clear denial of any tortuous liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortuous liability recourse be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution."

The aforesaid quotation would show that the Supreme Court held that when the disputed question of fact arises, the remedy under Article 226 of the Constitution in a case of tortuous liability is not proper, but where there is negligence on the face of it and infringement of Article 21 is there, there will be no bar to proceed under Article 226 of the Constitution. Thus, it has to be seen in these cases as to whether there are disputed questions of fact and as to whether there is infringement of fundamental right to life of the petitioners guaranteed under Article 226 of the Constitution.

6. The fact that all the petitioners in these two cases were operated upon in their eyes at the Dr. B. R. Ambedkar Hospital, Hapania, West Tripura, during the period from 12.6.1996 to 19.6.1996 has not been disputed in the counter affidavit filed by the respondent Nos. 1 and 3 in these two cases. In Paragraph 4 of the writ petition in C.R. No. 514/96, it has been stated that the two petitioners were suffering from eye disease and were admitted in Dr. B.R. Ambedkar Hospital on 17.6.1996 and left eye of each of them were operated by the Medical Officers of the Hospital on or about 18.6.1996 and they were discharged from the hospital on 21.6.1996. In Paragraph 9 of the counter affidavit filed by the respondent Nos. 1 and 2, it has been stated that as per records Shri Haripada Saha, the petitioner No. 1 was admitted in Dr. B.R. Ambedkar Hospital for eye treatment on 17.6.1996 and operated upon in his eye on 18.6.1996 and was discharged from the Hospital on 21.6.1996. With regard to Smt. Rubia Khatun, the petitioner No. 2, nothing has been stated in paragraph 9 of the said counter

affidavit by respondent Nos. 1 and 2 but the averments in para 4 of the writ petition that the petitioner No. 2 also was admitted and operated upon in her eye by the Medical Officers of the aforesaid hospital on or about 18.6.1996 and thereafter discharged on 21.6.1996 have not been denied in the said counter affidavit. Similarly, in Paragraph 3 of the writ petition in C.R. No. 557/96, it has been stated that the petitioner No. 1 was admitted in the said Hospital on 18.6.1996, her left eye was operated upon on 19.6.1996 and she was discharged on 21.6.1996, the petitioner No. 2 was admitted on 11.6.1996, her left eye was operated and she was discharged on 24.6.1996, the petitioner No. 3 was admitted on 12.6.1996, her eye was operated on 13.6.1996 and she was discharged from the Hospital on 22.6.1996. All these facts relating to the petitioner No. 1 Smt. Amritabala Sen, the petitioner No. 2 Radia Paul and the petitioner No. 3 Smti Hemlata Paul that they were admitted and operated upon and discharged on the aforesaid date from the Hospital have admitted in Paragraph 8 of the counter affidavit filed by the respondents. Thus there is no dispute whatsoever raised by respondent Nos. 1 and 2 that all the petitioner in the two cases were in fact admitted and operated upon in the Dr. B.R. Ambedkar Hospital during 12.6.1996 to 19.6.1996.

7. What is disputed by the state respondents is that the eyes of the petitioners were infected either at the time of after the operation in the aforesaid Hospital. But it appears that the State Government of Tripura had constituted a Committee comprising of Dr. N. Banerjee of Micro-Biology of GE Hospital as its Chairman and Dr. M.K. Paul, Deputy Drugs Controller, Agartala and Miss A. Dev, Nursing Superintendent, Agartala as members of the said committee for investigating into the causes of infection, fixation of responsibility and remedial measures. The committee visited the Dr. B.R. Ambedkar Hospital on 26.6.1996 and enquired into the matter, examined available records, collected samples and specimen from the O.T. and other steps for Micro-Biological examination and submitted a report dated 3.7.1996. Paragraph 3 of the said report dated 3.7.1996 which is relevant for the purpose of disposing of these writ petitions is extracted herein below :

"The cases of eye infection were first detected on 17.6.96 in the post-operation ward and samples were collected and handed over to Dr. Banerjee on 17.6.1996 by Dr. Indrajit Sinha of B.R.A. Hospital for microbiological test. Later on more cases of eye infection were detected, and Dr. Banerjee as per request of the M.S. Dr. B.R.A. Hospital collected specimen from O.T. as well as from patient for microbial examination on 22.6.1996.

The operation conducted w.e.f. 13.6.1996 are given below as per records maintained at O.T.

Date No. of case Remarks

13.6,1996 5 cases (3 minor) All the two developed infection & conformed by Lab. test.

15.6.1996 7 cases No record of infection available

17.6.1996 Nil No operation conducted due to development of Infection of patient operated on 13.6.1996

18. 8 cases 5 suspected to be Infected one suspected to be infected.

Detail investigations could not be done as all the patients were discharged (except one). The operation contained even after detection of post-operative infection on 17.6.1996, and verbal objection by the O.T. Staff."

Thus the aforesaid report dated 3.7.1996 would show that the infection in the eye of the patients was first detected on 17.6.1996 in the post-operation ward of the Hospital and not after they had been discharged from the Hospital.

8. Thereafter another committee comprising of Dr. D.N. Chattopadhaya, Opthalmologist, Nil Ratan Sarkat Medical College, Calcutta and Sri D.P. Dutta, Director of Institutional Finance and Small Saving and Joint Secretary to the Govt. of Tripura was constituted and the said committee visited Dr. B.R. Ambedkar Hospital on 24.7.1996 and met the Head of the Department and the Superintendent of the Hospital and other Medical Officers of the Hospital, collected required information and submitted a report dated 25.7.1996 are quoted herein below :

"On 17.06.1996. 2 patients. 1 operated on 12.06.1996 and 1 operated 13.06.1996 were detected to suffer from post-operative infections. The patients were treated with topical antibiotic sub-conjunctival injections of antibiotic, intravenous infusion, to cautarisatic etc. O.T. fumigation and carborilisation was done and intraocular operations were performed in the same O.T. on 18th and 19th June, 1996 and 4 patients out of 8 operated patients of 18th June, 1996 and 3 patients out of 4 operated patients of 19th June 1996 developed post-operative infection. Subsequently, 2 other patients also reported with post-operative infection.

All the patients initially presented with infection around the incision and stitch line and progressed to severe intraocular infections. Intense medical treatment were offered and as the cases appeared to be of fungal origin clinically, anti-fungal drugs were used."

"Alter detailed discussion with all the Medical Officers including the Superintendent, Nursing personnel and other O.T. Staffs of Dr. B.R. Ambedkar Hospital. Hapania, Agartala. Tripura and after visiting the Eye Wards and the different operation theatres the committee is of the opinion that these unfortunate cases were the result of an exogenous infection presumably as a result of some contamination in the operation theat. The microbiological studies conducted by the department revealed mixed type of infection from bacteria and fungus and the organism were isolated from diffrent areas of the operation theatre including the floor of the O.T., overhead lights, walls etc one of the organisms isolated from the O.T, was also found to be the causative organisms in

some patients."

It would be clear from the aforesaid report that the patients operated upon on different dates from 12.6.1996 to 19.6.1996 were infected initially around incision and stitch line and the said initial infection progressed to severe intraocular infections and the infection appeared to be of fungal origin clinically. It will also be clear from the said report that the unfortunate cases were the result of exogenous infection presumably account of some contamination in the OT and that micro-biological studies revealed a mixed type of infection from bacteria and fungus isolated from different areas of the OT including floor of the OT, overhead lights, bulbs, etc.

9. Thus the contention of the State respondents that the infection in the eyes of the petitioners may not have taken place at the Dr. B.R. Ambedkar Hospital has been negatived by the findings of the expert committee constituted by the Government of Tripura. This is, therefore not a case where this court cannot record a finding on the disputed question of fact as to whet her the infection of the eyes of the petitioners took place at the Hospital or out side the Hospital after they were discharged. It is clear from the findings recorded by the two expert committees constituted by the State Government that eyes of the petitioners suffered infection at the Dr. B.R. Ambedkar Hospital where they were operated upon.

10. Under Article 21 of the Constitution, every person has been guaranteed fundamental right to life. A pair of good eyes and clear vision is necessary for enjoyment of life. The directive principle of State policy incorporated in the Article 47 of the Constitution provides that the State shall regard improvement of public health us among its primary duties. In Vicent v. Union of India, the Supreme Court has held that in a welfare State, it is an obligation of the state to ensure the creation and sustenance of conditions congenial to good health. It is in discharge of this obligation of a welfare State that the Government maintains a net work of Govt. Hospitals and Public Health Centres for the good health of the people. If people go to such Govt. Hospitals and Public Health Centres for improvement of their health but instead return with further damage to their health on account of infection at such Govt. Hospital or Public Health Centre, their fundamental right to life under Article 21 of the Constitution would stand infringed. In the present case, the petitioners had gone to Dr. B.R. Ambedkar Hospital of the Government of Tripura with the hope that after cataract operation, their eye sight in their left eye would be fully restored, but they returned with further damage to their eyes caused on account of infection in the said Hospital.

The findings of the two expert committees discussed above clearly indicate that the infection in the eyes suffered by the petitioners were on account of negligence on the face of it. The claim of the petitioners to compensation for such damage to their eyes cannot be thrown out by the Court on the ground that such hospital acquired infection is a world wide phenomenon and do take place.

The petitioners are entitled to compensation for breach of their fundamental right to life under Article 21 of the Constitution from the State Government of Tripura and the petitioners who all belong to low income families should not be driven to the Civil Courts for pursuing their remedy for damages in the facts and circumstances of the present case. In the case of Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, Dr. A.S. Anand J, as he then was observed in his concurring judgment :

"This Court and the High Courts, being the protectors of the Civil liberties of the citizen, have not only the power and jurisdiction, but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victum or the heir of the victim whose fundamental rights are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State of course, such action as may be available to it against the wrongdoers in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under Articles 32 and 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the Court in the facts and circumstances of the case is possible."

11. Coming now to the quantum of compensation, the petitioners have claimed compensation of Rs. 2,00,000 each. Mr. Bhowmick, learned counsel for the petitioners, has also cited the judgment of the Karnataka High Court in Pushpaleela v. State of Karnataka (supra) in which compensation of Rs. 75,000 has been allowed to those who have lost sight of one eye and arc alive. In Paragraph 6 of the said judgment of the Karanataka High Court, it has been indicated that the said lump-sum compensation was awarded taking into consideration the over all circumstances and situation in which the ill fated victims were placed. In Paragraph 7 of the said judgment of the Karanataka High Court, it has further been observed that the quatum of compensation awarded in the said judgment shall not be a precedent or guiding factor for any other case and the compensation awarded is restricted to the case only. It further appears that in the case the eye camp was organised on 28/29 January, 1988 and the court awarded the aforesaid sum of Rs. 75,000 as compensation for those who have lost sight of one eye and were living at the time the judgment was delivered on 17.4.1998 more than 10 years after the operation took place in the eye camp. Thus the said judgment of the Karnataka High Court cannot be straightaway followed in the present cases. The facts and circumstances of the present cases will have to be taken into consideration for determining the quantum of compensation.

12. The contention of the State respondents that all the petitioners came to the Hospital completely blind cannot be accepted. It appears that the petitioner suffered cataract in their left eyes. Cataract in the eyes does not completely blind

the eye but only affects the vision of the eye. Further had the cataract operation been successful, the visions in the left eyes could have been restored to a large extent. Instead of the vision of the petitioners being restored in their left eyes, they have lost their left eye completely on account of the infection in the Hospital. As a result, they have all lost partially enjoyment of life. From the discharge certificate, copies of which have been annexed to the writ petition, it appears that the age of all the petitioners except Smt. Amritabala Sen was about 60 yrs. and that the age of Smt. Amritabala Sen 68 years. Further, the petitioners belonged to low income family and do not have high income earning capacity. Considering all these relevant factors 1 am of the opinion that a compensation of Rs. 60,000 for each of the petitioners for violation of their fundamental right under Article 21 of the Constitution would meet the ends of justice.

13. For the reason stated above, these writ petitions are allowed and respondent Nos. 1 and 2 are directed to pay a compensation of Rs. 60,000 and in addition cost of Rs. 2000 for this litigation to each of the petitioners in the two writ petitions. An Account Payee Bank Draft drawn on State Bank of India for Rs. 62,000 in the name of each of the petitioners will be deposited by the Secretary to the Govt. of Tripura, Deptt. of Health Services, with the Registrar of the Gauhati High Court, Agartala Bench within 3 months from the date of receipt of a certified copy of this judgment by the said Secretary from the petitioners and the Registrar. Gauhati High Court, Agartala Bench will ensure that the Bank Drafts are delivered to the petitioners after proper identification by their Advocate within 15 days from the date of receipt of the said Bank Draft.

