
(2008) 08 OHC CK 0028
In the Orissa High Court
Case No : OJC No. 1191 of 2001

Kanaka Rana

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Citation : (2008) CLT 426 Supp

Hon'ble Judges : B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : P.C. Misra, N. Panda and A.N. Rout, for the Appellant; P. Panda, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed for issuing a direction to opposite party No. 1 to pay adequate compensation to the Petitioner for the negligence on the part of the opposite parties.

2. The facts and circumstances giving rise to this case are that Petitioner claims herself to be a poor woman. Her husband is a mechanic and earns his livelihood by running truck repairing garage at Jajpur. After having two baby girls, Petitioner and her husband decided not to have a third child and opted for family planning operation of the Petitioner. Tubectomy was conducted by the Medical Officer, Jajpur Road PHC on 15.1.1994. However, she gave birth to a female child on 25.12.2000. Husband of the Petitioner reported the matter to various authorities of the Health and Family Welfare Department and asked for damages, but no action was taken. Therefore, this writ petition has been filed seeking compensation for conducting unsuccessful tubectomy.

3. Learned Counsel for the Petitioner submitted that in spite of the fact that the tubectomy was conducted by opposite party No. 3 on 15.1.1994 the Petitioner gave birth to a female child on 25.1.2000. Due to failure of tubectomy the Petitioner had been forced to have unwanted child. Therefore, the opposite

parties are liable to make payment of compensation to the Petitioner. Petition deserves to be allowed and this Court must award adequate compensation.

4. Learned Additional Standing Counsel has vehemently opposed the petition contending that Petitioner claims to have undergone tubectomy on 15.1.1994. She gave birth to a third child on 25.1.2000. But the certificate of sterilization filed by her as Annexure-1 is dated 4.1.2001, i.e., after the birth of the child and after 7 years of the operation. Petitioner should have conceived in March-April, 2000, and in order to avoid the said child she could have opted for abortion as it is permissible in law under the provisions of the Medical Termination of Pregnancy Act, 1971. (hereinafter called "the Act"). In case she did not opt for abortion and gave birth to a child it could not be a unwanted child. Petitioner after opting to have the child is not permitted to say that she has given birth to a unwanted child. There is nothing on record to show as to under what circumstances the operation has failed. There are various reasons for failure of such an operation and the question involved herein cannot be adjudicated upon in writ jurisdiction. The writ petition is liable to be dismissed.

5. We have heard learned Counsel for the parties and perused the record. Petition has been filed without taking proper pleadings as there is nothing on record to show as to under what circumstances the tubectomy failed; what were the assurances given by the doctors to the Petitioner after the operation in respect of success of the operation. There is nothing on record to show that she was given any certificate that the operation had been successfully conducted. There may be various reasons for failure of such an operation.

6. A similar question was considered by the Hon'ble Supreme Court in State of Haryana and Ors. v. Smt. Santra 2000 (II) OLR (SC) 234 ; 2005 (II) OLR (SC) 526 ; AIR 2000 SC 1888. In that case the Respondent underwent a sterilization operation at the General Hospital, Gurgaon. She had already seven children and wanted to take the advantage of the scheme of sterilization launched by the State Government. She was issued a certificate that her operation was successful, and she was also assured that she would not conceive in future. The Respondent therein conceived and ultimately gave birth to a female child. She filed a suit against the State seeking recovery of Rs. 2 lakhs as damages for medical negligence. The suit was decreed for a sum of Rs. 54,000/- with interest. The said decision was confirmed by the Appellate Court as well as by the High Court. The Apex Court rejected the contention on behalf of the State of Haryana that it was not bound to pay the damages for the negligence of the Medical Officer for performing unsuccessful sterilization operation. The claim ultimately stood confirmed. The said Judgment in State of Haryana and Ors. v. Smt. Santra (supra) was later on considered by a larger Bench of the Supreme Court in State of Punjab Vs. Shiv Ram and Others, and it was held that the said case was decided on its own facts as negligence in conducting the sterilization operation on the part of Doctors stood established. A certificate had been granted that the operation was successful and there was assurance that she would not conceive

any more. Therefore, the said case did not lay down the law of universal application. In Shiv Ram's case, the Apex Court referred to various aspects of medical sciences in this context and observed that operations of sterilization are not 100% safe and secure. In exceptional circumstances in spite of successful operation a sterilized woman can become pregnant due to natural causes and in such cases the best remedy available to her is to get the pregnancy terminated as it is permissible under the provisions of the Act. In view of the said provisions termination of unwanted child is legal and valid. Therefore, if a woman has conceived, unwanted pregnancy can be terminated legally. The Court further observed as under:

The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of childbirth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone the sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.

(Emphasis added).

7. In view of the above, the claim damages/compensation/maintenance of a unwanted child depends on large number of factors.

It has to be established by the Petitioner that there has been negligence on the part of the doctor in sterilization operation. She has to produce the certificate issued to her that the operation was successful and establish that she was given assurance that she would not conceive in future. These are the factual issues which are to be proved by the party by adducing evidence. In the instant case no pleadings have been taken to that effect. A bald assertion has been made that the Petitioner undergone the sterilized operation on 15.1.1994 and gave birth to a female child on 25.1.2000.

8. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law. Vide *Bharat Singh and Others Vs. State of Haryana and Others*, , *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, ; *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, ; *Ram Narain Arora Vs. Asha Rani and Others*, ; *Smt. Chitra Kumari etc. Vs. Union of India and Others*, ; and *State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.*, ; *M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh*, ; *Vithal N. Shetl and Anr. v. Prakash N. Rudrakar and Ors.* (2003) 1 SCC 78 , *Devasahayam (D) by LRs. Vs. P. Savithramma and Others*, ; and *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, .

The present petition does not meet the aforesaid legal requirement.

9. Learned Addl. Standing Counsel for the State has raised doubts about genuineness and correctness of the certificate of sterilization operation dated 4.1.2001 pointing out as to why the Petitioner waited for 7 years for obtaining the certificate. The certificate has been obtained after birth of the child and not even during the period of pregnancy, it raises the factual controversy, not worth examination herein.

10. No averment has been made to explain as to why the Petitioner gave birth to a unwanted child and did not opt for termination of pregnancy. Once the Petitioner gave birth to a child it is not open to her to say that it was a case of unwanted child.

11. In view of the above, the instant case stands squarely covered by the said Judgment of the Supreme Court. We do not find any merit in the petition. It is accordingly dismissed.

B.N. Mahapatra, J.

12. I agree.