
(1997) 02 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Petition No. 621 of 1997

Mrs. Shanta

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1999) ACJ 454 : AIR 1998 AP 51 : (1997) 4 ALT 357 : (1997) 3 RCR(Civil) 561

Hon'ble Judges : P.S. Mishra, C.J.;V. Rajagopal Reddy, J

Bench : Division Bench

Advocate : S. Sharath Kumar, for the Appellant; Government Pleader, for Medical and Health for Nos. 1 and 2, R.V. Subba Rao and S. Bharat Kumar, for the Respondent

Judgement

P.S. Mishra, C.J.—One Mrs. Shanta, 25 years old woman, has invoked this Court's jurisdiction under Article 226 of the Constitution of India seeking, inter alia, a direction to the first respondent to institute complaint for investigation by the police into the acts and omissions of the second and the third respondents herein i.e., Superintendent, Government Maternity Hospital, Afzalgunj and Dr. Rama Sundari, Assistant Professor of Obsterics & Gynaecology, Government Maternity Hospital, Afzalgunj, Hyderabad, which constitute, according to the petitioner, (1) offences against her body while operating for the delivery of a child; (2) other and further actions against the second and the third respondents in accordance with law; and (3) to pay compensation consolidated in a sum of Rs. 8,00,000/- to her for the injuries and sufferings caused to her by the second and the third respondents.

2. Facts in brief:-- Petitioner who hails from the State of Karnataka has been residing in Hyderabad and working as an assistant to a cook -- Janaki Ramaiah and receiving a monthly remuneration. She has given birth to three children, the eldest being a son of seven years of age, the second being a daughter of four

years of age and the third a girl child, who is born only in the Government Maternity Hospital, Afzalgunj on 20-11-1996. According to the petitioner, since she had undergone Caesarean operations for deliveries of the first and the second child, she consulted and visited the Government Maternity Hospital, Afzalgunj for periodical check-up during pregnancy and since she had not been having sufficient financial back-up, she depended upon the free medical services, which finally resulted in her admission into the hospital on 15-11-1996 and operation on 20-11-1996 at 4 a.m. in the hospital. She has narrated the facts in this behalf as follows :

"It is in these circumstances that I was admitted into the hospital on 15-11-1996 and I was operated upon 20-11-1996 at 4-00 a.m. According to the medical report given to me I was operated by the doctors working in the medical unit called B/C Yellow. I was also affected sterilisation and BC No.88/46 it was indicated that the operation was conducted under spinal aesthesia. I did not have any consciousness when the operation was conducted.

I was discharged from the Government Maternity Hospital on 26-11-1996. I went home. After 1 or 2 days I started developing pain in my abdomen. The pain gradually increased. During this time I visited the Government Maternity Hospital and requested the doctors to give me treatment for the pain. In this connection I met with the 3rd respondent who had conducted the caesarean operation upon me on 20-11-1996. In fact I came to know this only through the medical staff in the out-patient ward.

.....the 4th respondent after a customary examination told me that the pain would subside in course of time and suggested that I should not be unnecessarily worried about the pain.

.....by 1st January, 1997 my condition became so serious that I could not even get up from my bed. By then I have a one and half month old baby to be looked after personally and two other children who also needed my services. On 1-1-1997 Mr. Janakiram came to my house to see my condition and he rushed me to a private nursing home under the control of the 4th respondent hospital. The 4th respondent Dr. S. Chandra Shekar Rao on examination told me that there wa's some thing wrong in my stomach and I require to be under his continuous supervision at least for a week and he also prescribed me half a dozen tests for complete examination and diagnosis of my ailment. I was subjected to CBP, ESR, RBC, WBC, Differential Count, Blood grouping, complete Urine examination and Random blood sugar. On 2-1 -1997 Dr. S. Chandra Shekar Rao sent me to Shravya Scan Centre, Narayanaguda, Hyderabad for an ultra sound examination of my abdomen.

..... Dr. Kamalakar Reddy, the consultant radiologist in his scanning report observed that on palpation of my abdomen he found a defusable swelling in the left quadrant of the abdomen and it looked tender. He doubted that there was some foreign mass which could be the reason for the continuous pain in my

abdomen. He observed that there was a hyper echoic band in the paraspinal region in the left lower abdomen measuring about 10 x 5 cms. He doubted that some material used in the surgery was left in my abdomen and that could have been a reason for the pain. After receiving the scanning report I have shown it to Dr. S. Chandra Shekar Rao under whose constant vigil I was kept in the nursing home. Dr. S. Chandra Shekar Rao told me that I should undergo laparotomy immediately as the retention of foreign mass might prove fatal to me.

..... I was in the hospital almost penniless and no attendants to me. I was attended to by Dr. S. Chandra Shekar Rao and his team of doctors including Dr. Sudha and Dr. Latha very magnanimously. Despite their repeated suggestions to me to undergo the operation immediately I resisted it on the ground that I would like to have at least one of my relatives and some money at the time of my operation. My condition became serious day by day.

..... I was given all necessary medical help by Dr. S. Chandra Shekar Rao and his team of doctors. On 4-1-1997 I was operated upon at the 4th respondent hospital at about 9-00 a.m. Dr. A.Y. Chary, Assistant Professor of Surgery at Gandhi Medical College along with Dr. S. Chandra Shekar Rao, Dr. Sudha, Dr. Latha and Dr. Madhava Rao who conducted the operation for nearly 4 hours. I was shocked to learn that the mop contained in my abdomen was a towel used in the surgery and a few other surgical material was also extricated from my abdomen. Because of the remaining of the foreign body in the abdomen the small intestine and all other surrounding parts were highly infected and I was almost in the jaws of death on 4-1-1997.

..... I came to know about this only through Dr. Chary, Dr. S. Chandra Shekar Rao. The team of doctors had a sign of relief after the successful operation and they told me that it would take at least one and half month for my recovery. They also told me that the foreign body that is the mop protruded into the small intestine and it caused a large hole thereby necessitating cutting of my intestine at the infected regions and it was reattached. I was told that I should be required to go another operation within a short span for my total recovery.

..... during this time I have sold away all the jewellery including my Mangalasutram to meet the expenditure.

.....now I am almost a penniless and I am continuing at the magnanimity and mercy of Dr. S. Chandra Shekar Rao and his team of doctors. They are giving me medicines and food to me and to my attendants. My one and half months old baby is separated from me and she is fed on a external food. I am sorry that I am not in a position to attend my one and half month old boby and this causing me lot of mental agony. My daughter is not able to adjust to the external food and I have a doubt to that extent that she may not survive if she is not brought under my control, but the doctors cautioned me that the child with me at the hospital might prove fatal to both of us.

..... at presentl am suffering from Jaundice and other related ailments and I

require to be in the hospital for another 2 months..... I was taken to the 3rd respondent thrice and the 3rd respondent instead of giving me any help and treatment has threatened me that I would be starved for medicare if I happen to make any complaint or informed any body that she had conducted the operation upon me. She also told me that she had informed the doctor's association about this and if I am shifted to the Government Maternity Hospital again it would get publicity and the 3rd respondent would be blamed. She prevented me from going back to the hospital for further treatment. I am afraid that if I am shifted back to the same hospital I may not survive and I may be killed to demolish the evidence. I became a victim of the Criminal negligence of the doctors and I am also subjected to black-mailing by the 3rd respondent and others. In these circumstances, I am left with no other option except to approach this Hon''ble Court to protect and preserve my life and also further pray this Hon''ble Court to give me an opportunity to look after my children by myself. I am a very poor lady and I have already spent at least Rs. 1 lakh for my treatment from November 2nd week to till date. I am totally bed-ridden and I have lost my source of livelihood and I became totally dependant upon the mercy of Dr. S. Chandra Shekar Rao and his team of doctors and Mr. Janakiram. I would like to die rather than to be a total dependant and liability to my family unless I am given due medical assistance at any other hospital or at least in the present hospital itself, the chances of my recovery look very grim. I am financially totally drained.

.....I am prepared to be examined by any doctor or doctors or independent body of impartial people to examine the veracity or otherwise of the contentions made by me in this petition."

3. Janaki Ramaiah, who has figured in the above narration of facts in the affidavit, which has been filed in support of the petition, is introduced in the contents of the affidavit as the expert cook, as whose helper or assistant the petitioner has been working. Since the petitioner was receiving treatment in Sumanchandra Nursing Home, which is not a Government Hospital, we directed for immediate shifting of the petitioner in the Nizam's Institute of Medical Sciences and also for a medical report by a Committee constituted for the purpose by the Government of the State. Director in-charge, Nizam's Institute of Medical Sciences sent to the Court the medical report submitted by the Committee, which examined the petitioner on 25-1-1997 at 5 p.m. We also directed for notices upon the second, the third and the fourth respondents. The second respondent entered appearance and filed counter. The third respondent although entered appearance before 5-2-1997, but on the day the Court dealt with the report of the expert committee, she had filed no counter. The fourth respondent in spite of notice, however, had not entered appearance. We, after seeing the above, ordered on 5-2-1977 as follows :

"Before any final order is passed, it is necessary to know all facts concerning the admission of the petitioner in the fourth respondent-Nursing Home, operations

and treatments given to her in the said hospital and to see all records pertaining to the patient i.e., the petitioner in the said hospital.

..... Accordingly, let notices issue through a Special Messenger at the cost of the Court to be served upon the fourth respondent in course of the day. Let also all records pertaining to the petitioner in the fourth respondent-Nursing Home be brought to the Court in a sealed cover for which purpose let a direction issue to the Chief Metropolitan Magistrate to depute an officer of his unit for the said purpose and report compliance.

Put up for further orders on 7-2-1997.

In the meanwhile, the second respondent is directed to produce all original records in respect of the treatment of the petitioner in the hospital under his control. Until further orders, treatment of the petitioner in Nizam's Institute of Medical Sciences shall continue and she shall be kept as an indoor patient at the cost of the Government of the State."

4. The third respondent has since filed court ter-affidavit. The fourth respondent has also appeared and filed affidavit. Records, as directed by the order dated 5-2-1997, have since been received. Responding to the further observations of the Court, the Principal Secretary to the Government, Health, Medical and Family Welfare Department has filed an affidavit stating as follows:

"Ms. Shanta was admitted into the Nizam's Institute of Medical Sciences on 22-1-1997 for treatment and observation. She was provided the necessary medical support during her stay in the institute. A Medical Board consisting of four members examined her and second report given by the Board is enclosed.

I would like to submit before the Hon"ble Court that Ms. Shanta will be provided free treatment at the expense of the State Government within the State and if required outside the State. The Nizam's Institute of Medical Sciences is equipped to provide her surgical treatment for closure of colostomy and the institute will provide the surgical treatment and other allied medical treatment free of cost, and the Govt. will bear the expenditure."

5. In continuation of the medical report aforementioned, the Committee has submitted a further report, which reads as follows :

"1. Mrs. Shanta is suffering from a temporary disability.

2. Mrs. Shanta is due for another operation (Closure of Colostomy) in another 2-3 weeks time. She will require another two weeks to recover from the time of surgery. Altogether she will require another 1-1 1/2 months to recover completely provided no further complications occur.

3. According to patient's history, she underwent sterilization procedure along with the last caesarean section. Therefore, there is no chance for her to conceive in the present state. However, the fact that she has undergone sterilization procedure has to be confirmed from the hospital records of the Maternity

Hospital where she was operated."

6. Dr. A.Y. Chary, who has figured prominently as one who responded to the call of the fourth respondent and attended upon and examined the petitioner, has stated as follows :

"I was called to see a patient by name Shantha on 4-1-1997 at Suman Chandra Nursing Home, Narayanaguda. She was admitted for pain in Abdomen, distention of abdomen by the Nursing Home. I examined the patient on 4-1-1997 at about 7-30 p.m. She had distention of abdomen with features of subacute intestinal obstruction and locally on the left side with tenderness and features of local peritonitis. I was told she underwent L.S.C.S. operation at Government Maternity Hospital about 45 days back. I have seen the investigations performed on the patient by the Nursing Home. U. S. Examination of Abdomen report showed a F.B. (Mopp) in the abdomen. In view of the subacute intestinal obstruction, local peritonitis and the F.B. in abdomen, I advised laparotomy for the patient. I did the laparotomy. On opening the abdomen the intestines were found to be distended, Sigmoid colon and loop of small bowel were densely adherent to a mass which was present in lower part of left flank. On separation of the mass there was a F.B. (Mopp) with surrounding puss which has produced an internal fistula into sigmoid colon and densely got adherent to loop of small intestine. "There were no needles no scissors or any metallic objects in the abdomen. The F.B. removed and pus sucked out. The sigmoid colon and the loop of small bowel resected and end to end anastomosis performed. A defunctioning transverse colostomy performed to safeguard the anastomosis. Thorough paritoneal toilet performed and abdomen closed in layers after applying tension sutures and leaving an abdominal drain.

Patient was managed post operatively with blood transfusions, IV fluids and antibiotics, patient made a smooth, post operative recovery, and her drain and sutures were removed gradually. Patient was taking liquids, soft to normal diet. She was attended by me regularly in the post operative period, her colostomy was functioning normally and I was planning to close it after 4 to 5 weeks. Prior to her shift to NIMS I have seen the patient and she was progressing satisfactorily, she was ambulatory and taking food and was out of critical period."

7. Dr. S. Chandra Shekar Rao, who attended upon the petitioner in the 4th respondent-Nursing Home, has stated in the affidavit that the petitioner came to the Nursing Home on 1-1-1997 complaining of acute pain in the abdomen. After going through her previous medical records and listening to her, he felt that it was necessary to treat her as an inpatient in the hospital. After giving her the preliminary treatment, he advised certain pathological tests, which included CBP, ESR, RBC, WBC, Differential Count, Blood Grouping, complete urine examination and Random Blood Sugar. On 2-1-1997 he sent the petitioner to Shravya Scan Centre, Narayanaguda, Hyderabad for Ultra Sound Scanning of the stomach and abdomen. The Scanning report revealed that there was evidence of a Hyper Echoic Band in the Paraspinal region in the left lower abdomen, measuring

about 10 x 5 Cms., no echoes noted posterior to the hyper-echoic area foreign body (MOP) impression suggestion of foreign body (MOP) in the left paraspinal region. He has further stated,

"the consultant Radiologist Dr. D. Kamalakar Reddy of the Shravya Scan Centre opined that there was a MOP in the abdomen. In fact the petitioner was complaining of acute pain hence we gave her treatment for subsiding her pain. On 3-1-1997 I gave a prescription and recommended the petitioner to go to the Government Maternity Hospital, Hyderabad-2 for further treatment. The petitioner's attendant Mr. Janakiram informed on 4-1-1997 afternoon that the patient's condition was becoming serious and the doctors at the 2nd respondents hospital refused to readmit the petitioner into their hospital nor they were prepared to give her any treatment and further he requested me that the petitioner shall be treated in our hospital.

.....considering the medical urgency, I invited Dr. A.Y. Chary, Assistant Professor of Surgery, Gandhi Hospital, Hyderabad, a renowned Surgeon for the operation which is called Laparotomy. I along with Dr. Sudha, Dr. Latha, Dr. Madhava Rao, assisted Dr. A.Y. Chary in the conduct of operation which began at 10.00 p.m. on 4-1-1997. The clinical findings about the operation done, the MOP removed were mentioned in the case record of patient which was submitted to the Hon'ble Court on 5-2-1997."

8. All records from the 4th respondent Nursing Home have been received and the 4th respondent has also surrendered to the Court the MOP and the portions of intestine nut removed from the patient during the operation on 4-1-1997.

9. The second respondent, however, has stated as follows :

".....as disclosed by the Hospital records, the petitioner was admitted in the Government Maternity Hospital, Afzalgunj, Hyderabad, on 15-11-1996 for delivery for a third time.

.....as the petitioner had previously two deliveries and both babies were delivered by Caesarean Section in our Hospital, she was advised to get admitted in the Hospital for undergoing elective Caesarean Section. As seen further from the Hospital records, she was admitted in the ante-natal ward of the Yellow Unit (Unit V) of our Hospital. Dr. (Mrs.) Adilakshmi, Professor of Obstetrics and Gynaecology is the Chief of the Yellow Unit. In her absence from 18-11-1996 to 24-11-1996 on other duty, Dr. (Mrs.) G. Chandrasena, Professor of Obstetrics and Gynaecology was in-charge of the Yellow Unit. Elective Caesarean Section was planned and the date of operation was fixed on 25-11-1996. But as she set into labour pains early, Caesarean Section was done on her as an emergency operation in the early hours of 20-11-1996 by the then Duty Medical Officer -- Dr. (Mrs.) Ramasundari, Assisted by Dr. Manohar, Anaesthetist, Dr. Viswabharathi, Post Graduate Student and Mrs. Krupa, Scrub Nurse. She delivered a female child. After the operation, the petitioner was shifted to the Yellow Unit Ward for further post-operative management. She was under routine

post-operative check-ups by the doctors of the said unit up to 26-11-1996. As she was found fit for being discharged by the doctors attending on her, she was discharged from the hospital with her baby girl on 26-11-1996 after removal of sutures and with advise to come for review at the post-natal Department after two weeks."

10. Second respondent has disputed the allegations of the petitioner, called them "reckless and bereft of truth", particularly, the allegation foreign objects, namely, Surgical Towel and instruments were negligently left in abdomen and the abdomen was sutured. She has given some details of the role of the Superintendent of the Government Hospital and has stated,

"In our Hospital, there are six Professors of Obstetrics and Gynaecology and there are six units. Each Professor is the Chief of one unit, I am the Chief of the Unit called Green Unit, i.e., Unit No. 1, while Dr. (Mrs.) Adilakshmi is the Chief of the Vth Unit called Yellow Unit, i.e., Unit No. II. The Professors who are the Chiefs of their respective Units are the immediate superior officers to the Doctors working under them."

11. The third respondent, Assistant Surgeon in the Government Maternity Hospital, who conducted the caesarean operation of the abdomen of the petitioner has, however, denied all the allegations and stated as follows :

"Suffice it to state that she was admitted in the Government Maternity Hospital, Nayapul, Hyderabad for delivery of her third child on 15- 11-1996. At this juncture,I am an Assistant Professor in Obstetrics & Gynaecology and I am attached to White Unit. The petitioner was admitted in the Antenatal Ward of Yellow Unit (Unit V) of the hospital. The records of the hospital show that caesarean section was planned on 25-11-1996 on the petitioner. But, it so happened that when I was the Duty Medical Officer on 20-11-1996, the petitioner developed labourpains and I being the Duty Medical Officer, was called upon for examination. I found that the petitioner required a caesarean operation to be performed in as much as the complications would set in if she is not operated immediately. As such, surgery was planned and I being the senior most Duty Medical Officer formed a team along with Dr. Manohar, Anaesthetist, Dr. Viswabharathi, a post-graduate student for assistance during the operation and Mrs. Krupa, who was the sub Nurse. The surgery was performed effectively and the petitioner delivered a healthy female child. The surgery was performed under spinal anaesthesia. At this stage, I submit that under spinal anesthesia, the patient does not lose consciousness; and only the lower portion of the abdomen would become numb and senseless to the pain. I submit that the petitioner/patient was fully conscious and was also co-operating at the time of surgery. There was minimal blood loss during the surgery and as per the procedure, the sub Nurse viz., Mrs. Krupa, who counted all the instruments and swabs intimated to me that the count was correct. She had also counted the instruments and swabs before the operation. In fact, the sub Nurse viz., Mrs. Krupa had also made an endorsement on the case sheet that she had counted all the

instruments and swabs and they were found correct. After the assurance was given by the said Mrs. Krupa, I also made a personal verification with respect to the count of the swabs and instruments and made an endorsement in the case sheet to that effect. It was only after the counts, the abdomen was closed and sutured."

The third respondent stated,

".....the petitioner was never brought to me for treatment and it is absolutely false to allege that she was brought to me thrice and that I instead of giving any help and treatment had threatened her that she would be starved for medicare if she complains against me..... I have never seen the patient at the hospital after completion of the operation, which was performed on 20-11-1996. It is also absolutely falsehood for the petitioner to state that I informed her that she should not be shifted to Government Maternity Hospital, as it would be a blemish on me and it is absolutely baseless for her to state that I prevented her from coming back to the hospital for further treatment. In fact, I came to know from the records that while discharging the patient on 26-11-1996, the petitioner was clearly directed to come for examination for a review after two weeks. I also came to know that the petitioner did not come to the hospital for a review nor she complained about any problems during that period. All the allegations made by the petitioner in her affidavit such as that there has been a conspiracy including the petitioner to bring disrepute to the Government hospital and also to my career, thereby cause loss to me. I state and submit that it would be worthwhile to investigate into what that conspiracy is and punish the responsible. This writ petition appears to have been filed only with ulterior motives and to make unlawful gain out of the situation. Soon after I receive notice from this Hon'ble Court I was also served with a memo by the 2nd respondent herein asking me to appear for an enquiry. This memo was served on me on 22-1-1997 and I appeared before the 2nd respondent and submitted my representation on 24-1-1997. I am herewith filing a copy of the same for the kind consideration of this Hon'ble Court."

In short, she has asserted she had performed the surgical operation perfectly and had closed the abdomen only after her personal verification with respect to the count of the swabs and instruments as confirmed by scrub Nurse Mrs. Krupa.

12. Second respondent has forwarded the statement, which he purportedly got recorded in an enquiry and the Scrub Nurse -- Mrs. Krupa has also given her statement to the effect that she assisted the third respondent and committed no mistake in counting of the materials and accordingly informed the Doctor i.e., third respondent to close the womb.

13. We have taken almost full stock of the happening and found that the following facts are undisputable.

(1) Petitioner was admitted as an inpatient in the Government Maternity Hospital on 15-11-1996 and subjected to a caesarean operation on 20-11-1996 at 4 a.m.

by the third respondent, assisted by others, including Mrs. Krupa, the nurse.

(2) Petitioner developed severe pain and other complications after the operation and was taken to the fourth respondent -Nursing Home, she was subjected to several tests and examinations and on 2-1-1997 was taken through Ultra Scanning of the Stomach and abdomen by Dr. Kamalakara Reddy, who submitted report revealing that there was evidence of a Hyper Echoic Band in the Paraspinal region in the left lower abdomen suggestion of foreign body (MOP) in the left paraspinal region.

(3) On being called by the fourth respondent-Nursing Home, Dr. A.Y. Chary examined the petitioner and attended at her for the operation called "Laparatomy" and according to him, on opening the abdomen the intestines were found to be distended, Sigmoid colon and loop of small bowel were densely adherent to a mass which was present in lower part of left flank. On separation of the mass there was a F.B. (MOP) with surrounding pus which has produced an internal fistula into sigmoid colon and densely got adherent to loop of small intestine. The F.B. removed and pus sucked out. The sigmoid colon and the loop of small bowel resected and end to end anastomosis performed. A defunctioning transverse colostomy performed to safeguard the anastomosis. Thorough peritoneal toilet performed and abdomen closed in layers after applying tension sutures and leaving an abdominal drain.

14. Rest, however, following the Court's intervention, are matters which leave no manner of doubt that petitioner's sufferings have not yet ended. She is yet to go through another operation and she will need expert and careful treatment to resurrect what she has lost in her body and to recuperate what she has lost in her life.

15. Hypocrites must not have thought and many, who believe that a physician or a surgeon is a healer and a life giver, would never have thought that the oath, which he performed would be only a ritual, would be used more for professing and less in practice. Directives in Part IV of the Constitution included in the list of principles of policy to be followed by the State in Article 39 therein, include that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity unsuited to their age or strength and in Article 47 therein provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The cherished right of life as in Article 21 of the Constitution of India extends to receiving proper and complete medical attention from medical practitioner, whether working in a Government Hospital or a private practitioner. It was believed and there appears to be some still believing that a man of medicines is a missionary and so he takes the oath of service to the suffering human beings, in return receiving subsistence and satisfaction.

16. The Preamble and Article 38 of the Constitution of India envision, in the

words of the Supreme Court, in Consumer Education and Research center and others Vs. Union of India and others, , "as its arch to ensure life to be meaningful and liveable with human dignity." The right to health is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which life is a misery. Any one thus who has the opportunity to tinker in any capacity with another, has a duty to ensure that his or her interference with the life of another has done no injury or harm which would affect the life of that person either diminish it or injure it in any manner. A doctor thus to whom a patient is brought for treatment gets full control upon the life of the patient and when he or she treats the patient, his or her command upon the patient is all pervasive.

17. The question thus posed before us, in the instant proceeding, is whether the second and third respondents have, in any manner, affected the life of the petitioner by what they have been found to have done to her in the early morning of 20th November, 1996 and thereafter when the petitioner's sufferings aggravated and needed immediate attention. On the facts as above, we have no other answer to the above except that they have been negligent and to an extent callous in performing their duty and they, accordingly, have violated the petitioner's right under Article 21 of the Constitution of India.

18. It is not possible, on the facts of this case, to imagine that there was any foreign body in the petitioner's abdomen when she was admitted in the Government Maternity Hospital, Afzalgunj or when she was examined by the Doctors in the said hospital. Possibility of existence of any foreign body in petitioner's abdomen from before third respondent opened her abdomen for the caesarean operation is completely ruled out by the fact that the third respondent has not noticed any such foreign body or MOP in petitioner's abdomen when she operated upon her. It is difficult to accept the plea that the nurse meticulously and carefully counted every item used in the surgical operation of the abdomen of the petitioner in the morning of 20th November, 1996 and removed all of them before the third respondent took up the post operational action of closing the womb as well as that before closing the womb the third respondent herself counted each item and nothing used in the course of operation was left in the abdomen of the petitioner. Ultra Sound Scanning report indicated the presence of foreign body on 2-1-1997 and on 4-1-1997 Dr. A.Y. Chary, Assistant Professor of Surgery, Gandhi Hospital, Hyderabad, who is described as a renowned surgeon, along with Dr. Sudha, Dr. Latha and Dr. Madhava Rao, removed the MOP and the foreign body from petitioner's body. Presence of the MOP with the womb, which was yet to heal, in the abdomen of the petitioner, it is revealed from the statement of Dr. A.Y. Chary and that of Dr. S. Chandra Sekhara Rao, the Director, in-charge of the Suman Chandra Nursing Home, caused many complications and such portions of the intestine nut of the petitioner, which got affected, were removed along with the mop during the operation on 4-1-1997. The latest opinion of the Committee of Experts has emphasised the need for another operation (closure of colostomy) before she would be free of all complications,

2-3 weeks time for the petitioner being sufficiently recovered for the next operation, another two weeks to recover from the time of next surgery and yet another one and half months to recover completely provided no further complications occur. Circumstances are so heavily witted against the statements of the second respondent and the third respondent, which incidentally included the statement of Nurse, who attended the petitioner during the caesarean operation for the third child, that it is irresponsible and only inference which we can draw that she has suffered serious injury in her abdomen because the third respondent and others, who assisted her, failed in discharge of their duty of cleaning the abdomen of all portions, objects and bodies, including the cotton (mop), which later was removed from her abdomen on 4-1-1997 at Suman Chandra Nursing Home. It would be frightening to the person, more so for a woman, who has to nurse three children and work for livelihood, to suffer the presence of foreign body in the abdomen, which slowly would damage the system and create complications and if not attended to on time, would lead to collapse and death. It is not difficult to visualise the petitioner's anxiety and her desperation to see the Doctors, who were examining her and who operated upon her, for treatment of the pain, detection of the cause of pain and for necessary surgery. In spite of negligence, that caused unbearable sufferings and agony to the petitioner, of the second respondent's hospital and the third respondent in particular, we would have appreciated their conduct had they responded to the repeated demands of the petitioner to treat her of the pain and the sufferings what may shake the conscious of any person, however, is utter callousness of the Maternity Hospital people and the third respondent, which the petitioner has narrated in some details. Although the second and third respondents have chosen to deny the allegations, since, as we have found earlier, circumstances speak volumes about their negligence, we cannot accept their version that the petitioner never attempted to meet the third respondent and/or that the third respondent or the second respondent did never refuse to attend upon her and/or threaten her and wanted to restrain her from taking the matter to any other hospital. Contrast in the conduct of Dr. A.Y. Chary, Dr. S. Chandra Sekhara Rao on the one hand and that of the third respondent and other Doctors and staff of the Government Maternity Hospital, who participated in the conduct of the operation upon the abdomen of the petitioner on 20-11-1996, on the other hand is such one can find words insufficient to appreciate the former two and to lament and regret the conduct of the third respondent and the other Doctors and staff of the Government Maternity Hospital, who are involved in the caesarean operation upon the petitioner on 20-11-1996.

19. Our attention has been drawn to Section 20-A of the Indian Medical Council Act, 1956 and we are informed that the said Medical Council has prescribed standards of professional conduct and etiquette and a code of ethics for medical practitioners. Our attention is also drawn to Section 33 of the Act, which, besides providing for making the regulations generally to carry out the purposes of the Act, and, without prejudice to the generality of the said power, speaks of certain

items for which the Council can frame regulations and includes, regulations for the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners. Since petitioner has not addressed us with any specific idea in respect of the role of the Medical Council in the matter, we are not persuaded to give any specific direction, yet, the facts being dealt with all constraints, since we regard it as a serious concern for all, we record and accordingly observe that in case any petition is made by the petitioner in accordance with the regulations in this behalf, the Medical Council shall be duty bound to take cognizance of the same and proceed in accordance with law to deal with the conduct of the third respondent and any other person, who is found involved in the matter.

20. It is axiomatic that one who causes loss or injury to another by accident, negligence or design is required to compensate the loss or injury. Any loss or injury produces a right in the person who has suffered to seek compensation by way of damage and an obligation upon the person, who causes the loss or injury, to compensate or indemnify. Courts in due course of justice are faced with situations when they need to decide whether compensatory damages and nothing more should be granted, only a nominal damages be ordered or exemplary or punitive damages be ordered. Is the case in hand one that the Court can successfully quantify the damages to make good the loss and the injury sustained by the petitioner? In other words, can the Court measure the compensation which would be a retribute for harm sustained by the petitioner? When we care to scan the facts for the said purpose and try to see whether the petitioner can be restored to the position in which she was prior to the injury and the loss, we do not find it to be a case for grant of compensatory damages only. This is a case even by conservative estimates of irreparable damages as no certain pecuniary standard is noticeable for measurement of the injury of the petitioner. Her injuries are such as noticed above which has residual as well as future effects upon the petitioner and on her life. There is sufficient impairment of the capacity of the petitioner by removal of part of intestine and yet a further operation is due. Petitioner's future pains and sufferings can only be tentatively estimated. It is a case in which the negligence of third respondent is aggravated by circumstances which could have been avoided by a reasonable and caring approach and steps to reassure the petitioner which the second and the third respondents have failed to take. There is a need, on the facts of this case, to provide to the petitioner solace for mental anguish, solace for laceration of her feelings, solace for definite and well oriented future and solace for her to fulfil the obligations of a mother towards her three children. The third, however, is yet to receive the primary and essential nourishment of the mother's milk.

21. We have held that right to health and health-care is protected under Article 21 of the Constitution of India as a right to life. The first three respondents are the State of Andhra Pradesh and servants of the Government of Andhra Pradesh. It is well settled that apart from the punishment to the wrongdoer for the resulting offences and recovery of damages under private law by the ordinary

process, in case of any deprivation of life or damage thereto, damages are not awarded only for the tort. Damages are granted in such cases for the contravention of fundamental right and remedy in public law in this behalf is recognised by the courts in our Country. In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , it is said that the defence of sovereign immunity is inapplicable, and alien to the concept of guarantee of fundamental rights. Such a defence is not available in the constitutional remedy. The Court in exercise of its power under Article 226 of the Constitution can grant monetary compensation for contravention of fundamental rights guaranteed by the Constitution. That is an invaluable right and one of the most practicable mode of redress available for the contravention of the fundamental rights by the State or its servants in the purported exercise of their powers. When the State or its servants failed to discharge their duty, when their omissions are such that are seen causing serious injuries, as in the case of the petitioner, we have no hesitation in holding that besides any remedy under the private law for damages, the petitioner shall be entitled to be compensated by the Government of the State for the negligence of its servants -- the third respondent and other Doctors and members of the staff of Government Maternity Hospital, Afzalgunj. In *Vasanthi Vs. Jaya Prakasha Rao and Others*, , speaking for the Court, one of us has reiterated the principle that the Supreme Court and the High Courts, being the protectors of the civil liberties of the citizens, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 to the victim or the heir of the victim whose fundamental rights under Article 21 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, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Much of the burden of the Court in the matter has been lessened by the response of the Government of the State by way of an affidavit filed by the Principal Secretary to Government, Health, Medical and Family Welfare Department. The Government of the State has taken the responsibility of providing the best medical treatment and agreed to meet all expenses for the treatment as well as other attendant expenses. She has been thus taken by the State Government in its charge for providing to her all necessary medical care, which care the Government has agreed to provide to her until she is completely cured and until her complete recuperation. We see still good reasons to grant monetary compensation for she is not alone to be cared for her, her kids will need all care which she was giving to them and the new born will need more care. Children who are all school going age will need education and the loss of income will need be compensated. It will not only look unfair but shall be substantially unfair to the petitioner and many others who suffer at the hands of the servants of the State if penal compensations are not granted. We order, on the facts of this case, accordingly that the first respondent -- the Government of the State of Andhra

Pradesh shall set aside a sum of Rs. 3,00,000/- and invest the same in one of its equities or deposits for a monthly income not less than Rs. 3,000/- for a period of not less than five years and pay to the petitioner each month the amount of interest for expenses other than the medical expenses, hospital charges and charges for her food in the hospital and for the expenses upon her dependants i.e., the children and shall pay, after the expiry of the fixed period of not less than five years as above, the said amount of Rs. 3,00,000/- with interest thereon minus interest already paid to the petitioner by way of compensation. The State, however, is indemnified and shall be accordingly entitled to recover the said amount of damages from the third respondent and any other person found responsible for the injuries and losses caused to the petitioner. The petitioner shall be free to take action in tort for the damages under the private law against the third respondent and others and to make complaint for any criminal act of the third respondent before the police and/or any Court, if so advised and in case such complaint is filed, proceedings shall be taken up in right earnest and speedily in accordance with law. Any observations, however, in the judgment by us in respect of the conduct of any of the respondents shall not be taken as conclusive for the proceedings either for damages under the private law or for any criminal prosecution. The first respondent shall issue necessary instructions to the hospitals for the treatment of the petitioner forthwith and invest the above said amount without delay so that the payment of interest to the petitioner begins from the month of March, 1997. The Mop and other materials taken out of the womb of the petitioner in the operation at Suman Chandra Nursing Home shall be kept in Nizam's Institute of Medical Sciences for a period of six months to enable the petitioner to take such legal action as she may deem fit and proper and further retention of the same shall be subject to the order of any other competent Court of law. Let the said articles deposited in Court by the fourth respondent be transmitted at the cost of the Court to Nizam's Institute of Medical Sciences. Let records pertaining to the petitioner received from the fourth respondent as well as second respondent shall be returned to them.

22. Writ petition is ordered accordingly.