
(1997) 01 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 9010 of 1995

Smt. Gaganaprava Behuria

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 83 CLT 380 : (1997) 1 OLR 351

Hon'ble Judges : A. Pasayat, J;A. Deb, J

Bench : Division Bench

Advocate : N.C. Panigrahi and S C. Dash, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A. Pasayat, J.

1. Petitioner, Smt. Gaganaprava Behuria, a rural lady has questioned legality of threatened action to cancel the green-card which was issued to her for having undergone sterilisation operations.

2. The factual position is almost undisputed. Petitioner had undergone tubectomy operation by the terminal method of contraception on 18-1-1992 at the Medical Centre, Balasore. By that time she had two children. She was attracted by the incentives given to the persons undergoing such operation. The benefits available are enumerated in the Government Order dated 19-10-1983, and subsequent orders issued by the Health and Family Welfare Department. Green-card was issued to the petitioner on 23-7-1992 bearing No. 194580 which confirmed the fact that she had undergone tubectomy operation and was entitled to the benefits. To her dismay she found that the first operation had failed, and she had to undergo second sterilisation operation in the Post Partem Centre at Bhadrak on 20-7-1993. That also did not bring any relief to her and she again became pregnant. When she went to the District Headquarters Hospital, Bhadrak, it was confirmed that she was pregnant and termination of such pregnancy was suggested. Vasectomy operation so far as her husband is concerned was also

advised. When she consulted some doctors, termination of pregnancy was advised against. Dr. S Sahoo of the District Headquarters Hospital, Bhadrak suggested vasectomy operation of her husband only after termination of pregnancy by her. On 21-11-1995, petitioner was admitted to the District Hospital, Jajpur, and she delivered a baby. She has claimed compensation for the mental torture, weak physical condition and for a direction to the authorities not to cancel the green-card, which was threatened by the letter (Annexure-4) of O. G. Specialist in-charge, District Headquarters Hospital, Bhadrak.

3. In the counter-affidavit filed it has been stated that while undertaking tubectomy operation. It was clearly indicated that same is not cent per cent full-proof and there is chance of pregnancy. Family Welfare Programmes are intended for the benefit and welfare of the citizens, and the petitioner having undergone the operation with a missionary zeal should not insist on continuance of green-card, and in any event she is not entitled to benefits available to green-card holders". She should have accepted the advice for termination of pregnancy, if she wanted continuance of the benefits available under the green-card. She had herself accepted in the application for sterilisation that for all practical purposes, operation is irreversible. There was no deficiency in the operation conducted twice. The case of petitioner is somewhat unusual, and she has an additional tube which is an unusual physical phenomenon. That is how, in spite of all effective steps taken for tubectomy operations, she conceived again, It is stated that tubectomy operation and the re-operation were conducted with due care and caution, but those did not overtake unusual physical phenomenon.

4. If a too rigidistic view is taken, certainly the benefits of green-card are not available to the petitioner. It has been stated by the learned counsel "for Stats that because of unusual physical phenomenon, the petitioner could not derive any benefit of the tubectomy operation and re-operation. Green-cards are intended to be given to the people who come forward to encourage family planning programmes. The population not only of our country but also of various countries in the world is growing at an abnormal pace. Family welfare programmes are meant for benefit and welfare of fee citizens, and are intended to combat population growth. Petitioner had no role to play in the irreversible situation. No doubt on account of unusual physical phenomenon of existence of an additional tube, the operations failed to deliver expected result. " Petitioner had done her part. While the doctors cannot be blamed for the third child, yet her desire to put stop, after the second child cannot be lost sight of.

5. in the peculiar circumstances, we direct that the petitioner shall be entitled to benefits available to green-card holders. This case shall not be treated as a precedent and we have passed this order keeping in view the peculiar facts situation.

6. The application is disposed of.

A. Deb, J.

7. I agree.