
(2011) 12 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition No. 676 of 2003

Smt Rambha Bai	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2012) 2 MPHT 9

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondents to make payment of Rs. 2,00,000/-, as compensation for maintenance of her children, who were born on failure of family planning sterilization operation undergone by the petitioner.

2. Learned counsel appearing for the petitioner submits that on 11.09.1995, the petitioner had undergone family planning sterilization operation, as is evident from Annexure-A at Primary Health Center, Gujara. Thereafter, on 19.02.1999 (Annexure B), she gave birth to a male child and again on 18.03.2002 (Annexure C), she gave birth to a female child.

3. According to the petitioner, before the family planning operation, she was already having five children (3 male & 2 female). Learned counsel further submits that since it was a case of negligent on the part of the concerned Doctors, the respondent State is under an obligation to grant compensation to the petitioner and maintenance of the children, who were born after performing the family planning sterilization operation.

4. On the other hand, learned counsel appearing for the State submits that neither the petitioner is entitled to compensation nor the State is under an obligation to grant maintenance to the children, who were born after family planning operation, was done.

5. The sterilization operation was done on 11.09.1995 (Annexure A). Thereafter, after a period of four years, the first child was born on 19.02.1999 (Annexure B) and the second child was born on 18.03.2002 (Annexure C). The petitioner has failed to establish that on account of any negligence or dereliction of duty on the part of the Doctor, who performed sterilization operation, two children were born after the operation.

6. The petitioner had undergone sterilization operation on 11.09.1995. The first child was born on 19.02.1999. The petitioner has not raised any objection with regard to failure of sterilization operation on account of negligence on the part of the Doctor. Thereafter, the second child was also born after about a period of three years. The petitioner filed the instant writ petition on 07.02.2003, without establishing the case that the subsequent birth of children was on account of any mishandling, negligence or delinquency on the part of the Surgeon, who had performed the operation. Thus, for want of sufficient materials and without proving the negligence on the part of the Surgeon, no relief can be granted. It has been held by the Supreme Court also that in sterilization operation, there is no 100% certainty and for that the Doctor cannot be liable.

7. It is also not pointed out by the petitioner that there is any condition or provisions under the law to fasten the liability in such cases on the Doctor or the State Government in case of failure of sterilization operation.

8. The Supreme Court in *Martin F. D'Souza v. Mohd. Ishfaq* observed as under :

53. In *State of Haryana v. Raj Rani*, it was held that if a child is born to a woman even after she had undergone a sterilization operation by a surgeon, the doctor was not liable because there cannot be a 100% certainty that no child will be born after a sterilization operation. The Court followed the earlier view of another three judge Bench in *State of Punjab v. Shiv Ram*. These decisions will be deemed to have overruled the two Judge Bench decision in *State of Haryana v. Santra* in which it was held that if a child is born after the sterilization operation the surgeon will be liable for negligence.

9. The identical issue came up for consideration before this Court in *Sonau Ram Suryavanshi & Another v. State of Chhattisgarh & Others*, wherein, this Court held as under :

The allegation with regard to the negligence of the doctor cannot be decided in writ jurisdiction as it requires proper investigation. The petitioner may approach the proper forum that may be available under provisions of law, if so advised, for the purpose of establishing negligence of the doctor.

10. In view of the above analysis and applying well settled principles of law to the facts of the case on hand, there is no merit in this petition and as such, the same is dismissed.

11. No order as to costs.