

(2012) 04 OHC CK 0005

In the Orissa High Court

Case No : Writ Petition (C) No. 9140 of 2011

Sri Prabir Kumar Das Advocate and Human Rights Activist

APPELLANT

Vs

Commissioner-cum-Secretary, Health Deptt., Govt. of Orissa,
Bhubaneswar and Others

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Citation : (2012) 114 CALLT 550

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : R.K. Mohapatra, Government Advocate (for State), M/s. Yeeshan Mohanty and P.C. Biswal (For JMJ Grace Vision Netralay), for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This Writ Petition has been filed in the nature of Public Interest Litigation for grant of compensation to the persons who lost their vision after undergoing mass cataract operation organized at the Govt. Hospital (Sub-Divisional Hospital), Dharmagarh in Kalahandi District of Orissa between 9.9.2010 & 28.9.2010 & for prescribing guidelines/directions to ensure safety of patients during conduct of mass operations for the benefit of poor citizens. Petitioner's case in a nutshell is that from 9.9.2010 to 28.9.2010 eyes of some poor persons were operated by the doctors in mass cataract operation camp organized at the Govt. Hospital (Sub-Divisional Hospital), Dharmagarh in Kalahandi district. The said mass cataract operation was organized by JMJ Grace Vision Netralaya (for short, "GVN"), a non-Government organization based in Sambalpur. Sixteen patients have lost their eyesight due to the alleged negligence of the doctors/authorities during the aforesaid mass cataract operation.

2. Mr. Prabir Kumar Das, an Advocate, who is also a Human Rights Activist, submitted that the present incident is the second incident in which 16 poor persons have lost their eyesight. During January 2007, 13 patients lost their

eyesight after undergoing mass cataract operation in the District Headquarters Hospital, Bhawanipatna. The poor persons suffered from loss of eyesight & other ailments due to the negligence, carelessness & indifferent attitude of the doctors & authorities, who failed to ensure proper care during the mass cataract operation & its aftermath. The non-government organizations organizing such mass operations do not take proper care of the patients or educate them to ensure post-operation care. The poor & illiterate persons become victims because of lackadaisical approach of the non-government organizations as well as the authorities concerned, who put much emphasis only to achieve the target to create record & appropriate the grant/aid allocated for the purpose. The patient?, who belong to poor & weaker Sections of the society staying in rural areas are unable to incur expensive litigation to enforce their rights or to remedy the injustice caused to them. The suffering of the poor victims were highlighted by the media. After operation, the only Coordinator was there but no doctor was available. Placing reliance on the Judgment of this Court in the case of Registrar (Judl.) Orissa High Court Vs. State of Orissa, , Mr. Das prayed for granting compensation to the victims & prescribing the guidelines/directions to ensure safety of patients during mass operations.

3. The Chief District Medical Officer, Kalahandi in his affidavit dated 18.4.2011 submitted that National Programme for Control of Blindness (in short, "NPCB") allowed Non-Government Organizations (in short, "NGOs") for providing eye care service. One NGO namely JMJ Grace Vision Netralaya, Sambalpur approached CDMO, Kalahandi as well as Collector, Kalahandi for according permission to conduct cataract surgical camp in Kalahandi district. Basing on the record of past successful performance of cataract surgery by surgeons of GVN, Sambalpur, the said NGO was allowed to conduct cataract surgical camp at S.D. Hospital, Dharmagarh from 9.9.2010 to 27.9.2010 vide order No. 4249 dated 8.9.2010. A Memorandum of Understanding (in short, "MoU") was signed accordingly. During the period from 16.9.2010 to 27.9.2010, the NGO GVN, Sambalpur with their own instruments & equipment & staff & in accordance with the terms & conditions enumerated in the MoU did operation of 1210 cases. Ophthalmic Surgeons posted at Headquarters Hospital, Bhawanipatna & Sub-Divisional Hospital, Dharmagarh were also instructed to visit/ supervise the camp site. Dr. Jitendra Kumar Panda, Assistant Surgeon (Ophth.), SDH, Dharamgarh initially detected 26 numbers of complicated cataract cases during the period when the GVN staff were not there to follow up & brought those cases to the notice of CDMO, Kalahandi on 22.11.2010 & thereafter the CDMO in consultation with the Collector, Kalahandi directed the said NGOs to shift the complicated cataract cases to LV Prasad Eye Institute, Patia, Bhubaneswar for treatment. Simultaneously, Ophthalmic Assistant posted at various Government Hospitals & Medical Officers, CHCs were requested for screening of all the operated cases at SDH, Dharamgarh camp during November, 2010 by convening an emergency meeting on 25.11.2010. Under the direct monitoring of District Administration, the concerned NGO shifted the cataract patients suffering from complications to

LV Prasad Eye institute, Patia, Bhubaneswar phase wise on different dates between 23.11.2010 to 1.12.2010 for super specialist intervention. In total 34 numbers of complicated cases were detected. Basing on successful performance, the NGO was entrusted to conduct cataract surgical camp with a condition to ensure complete incident free camp with 100% efficacy. The CDMO, Kalahandi vide his Office Order deployed doctors on different dates for supervision of the Eye Camp & he himself visited the camp. The Sub-Collector, Dharmagarh-cum-Chairman RKS Sub-Divisional Hospital, Dharmagarh also visited the camp every single day. The NGO, GVN operated 1210 cases from 16.9.2010 to 27.9.2010 with their own instruments/equipment & staff as per conditions enumerated in the MoU. The Rogi Kalyan Samiti gave support by providing generators, water & food for patients, volunteer arrangements, mobilization of ASHA & Anganwadi workers for detection of cases, coordination of transportation of patients etc. Meticulous care was taken of the patients operated upon & detailed instructions were given to their attendants for prevention of post-operative complications & they were directed to attend the Post-operative check up from 1.11.2010 to 10.11.2010 which was scheduled to be conducted by GVN. As such the district administration on its part as per terms & conditions of MoU has taken maximum care for success of such Eye Camp & the allegation of not taking proper care, as stated in the Writ Petition by the Petitioner is not true. Besides, pursuant to CDMO's letter No. 1957 dated 16.04.2011, complicated ophthalmic cases, operated between 16.9.2010 to 27.9.2010 at Sub-Divisional Hospital, Dharmagarh, the patients had been shifted in a batch on 17.4.2011 & another batch was scheduled to be shifted on 19.4.2011 to MKCG Medical College & Hospital, Berhampur for examination & necessary treatment. As per the terms & conditions of the MoU signed between District Blindness Control Society & GVN, Sambalpur on 8.9.2010, the onus/responsibility lies with the GVN, Sambalpur to provide well qualified doctors, equipment & also to take care of post operative follow up & as part of moral & overall responsibility the District Health care Administration through Rogi Kalyan Samiti, Dharmagarh, CDMO & his medical team extended all support for success of the Eye Camp.

4. Learned Government Advocate Mr. R.K. Mohapatra referring to report of District Judge, submitted that cases of 34 patients were referred to LV Prasad Eye Hospital & 16 persons lost their eye sight because of negligence of the NGO GVN.

5. Mr. Y. Mohanty, Learned Senior Advocate appearing on behalf of GVN submitted that the NGO concerned had undertaken 25 operation camps. All except this camp were successful. Every case was taken by NGO GVN. Specialists were present at the time of operation. All expenses for treatment in LV Prasad Eye Hospital were borne by the NGO. Pre-operation & post-operation care was taken with the help of doctors. All the patients have not turned up for first & second check up. They were advised to take certain care & the NGO provided dark glasses & power glasses to the patients.

6. National Programme for Control of Blindness (in short, "NPCB") & the strategy of "Vision-2020 the Right to Sight" of the Government of India permits the NGOs to conduct Eye Care Service programs in different areas of the country. Because of the aforesaid scheme/ project, the GVN has been set up in the district Headquarters of Sambalpur in the Western Orissa. The service area comprises the districts of Sambalpur, Jharsuguda, Bargarh, Bolangir, Kalahandi & Kandhamal. The GVN conducts community outreach camps to screen needy patients essentially for cataract blindness, wherein surgery is, conducted, medicines & dark-glass spectacles are supplied & thereafter power glass spectacles are provided to the patients free of cost including transportation, boarding & lodging along with proper Post-operative care at the cost of the GVN as per the Scheme of NPCB of the State & Central Government. The GVN has all necessary & adequate infrastructures, requisite equipment & trained manpower to undertake cataract surgery having facilities for Intra Ocular Lens implantation using Operating Microscope Sterilization equipment & other equipment, required & trained Eye Surgeons. GVN has been duly identified as a qualified NGO by the District Blindness Control Authority fulfilling all the criteria thereof as per the Scheme for participation of voluntary Organizations for the year 2006 as issued by the Director General of Health Services, Ministry of Health & Family Welfare, Government of India, New Delhi.

7. Since the date of its inception in August, 2007, the GVN has conducted near about 25,000 cataract eye operations successfully in different areas of Western Orissa, in collaboration & under the direct supervision of the District Medical Authority of Government of Orissa, with an aim to prevent/cure blindness in the under-served parts of Odisha. On 01.06.2010, the JVN sought for permission from the Collector; Kalahandi to conduct free cataract surgery camps at SDH, Dharamgarh. On 02.09.2010, the Collector duly accorded permission. Pursuant to such permission, the MoU was signed on 08.09.2010. Thereafter, GVN conducted publicity campaigns throughout the Dharmagarh Sub-Divisional area for public awareness with effect from 03.09.2010 to 14.09.2010, regarding conduct of preliminary screening eye-camps at different places of Dharmagarh Sub-Division with effect from 15.09.2010 to 26.09.2010 for detection of cataract affected patients & holding of eye surgery camp at SDH, Dharmagarh with effect from 16.09.2010 to 25.09.2010 for conducting cataract surgery. On 09.09.2010, Orientation Training Programmes were conducted by the GVN at SDH-Dharmagarh & Town Hall of Junagarh for about 290 Asha Workers & Anganwadi Workers, with prior permission & active collaboration of the District Administration. The main object of such training programme for Asha & Anganwadi workers was to train them to identify the cataract patients, motivating them to go for cataract surgery, intimating them about the camp date & place & to follow up with Post-operative Counselling at the door steps in their respective catchment areas regarding regularly putting the eye drops, taking precautions as instructed by the medical staff & also in the event of any kind of complication or discomfort in the operated eyes, to send them to SDH-

Dharmagarh and/or to intimate the GVN immediately.

8. On 15.09.2010, preliminary screening eye camps were held by the qualified Ophthalmic Assistants at different places of Dharamgarh Sub-Division. The said screening camps continued till 26.09.2010 in the said areas. In the Screening camps, the cataract patients having been identified & motivated for free cataract surgery with their respective consent, they were brought to SDH-Dharamgarh for further diagnosis on the same day & thereafter for cataract surgery on the next day for those who are found fit for such surgery. On the next date, the cataract surgeries were conducted at SDH-Dharamgarh by the qualified & experienced eye Surgeons with the assistance of trained para-medical staff of GVN, under strict monitoring & supervision of the medical & Sub-divisional authorities. The eye surgery camps were held with, effect from 16.09.2010 to 25.09.2010 at SDH Hospital, Dharamgarh by JVN. Taking into consideration, the large number of cataract patients, the tenure of the camp was extended for another two days, i.e., till 27.09.2010, with due permission. The Specialist eye surgeons of GVN have conducted operations with much care & caution after proper diagnosis. As per Office Order No. 4276 dated 09.09.2010 CDMO, Kalahandi, Dr. A.K. Mund, ADMO (Med.), Kalahandi, Dr. Lalishree Bhokta, Specialist in Ophthalmology, DHH, Bhawanipatna, Dr. Nivedita Sahoo, Specialist in Ophthalmology, DHH, Bhawanipatna & Dr. J.K. Panda, MS-Ophthalmologist (Assistant Surgeon) SDH-Dharmagarh have supervised the camp operations at the SDH-Dharamgarh on day-to-day basis in regard to sterilization standards, systems & procedures & allied Post-operative activities.

9. Mr. Mohanty, further submitted that in the aforesaid eye camps, a total of 1210 numbers of cataract operations were conducted & the patients were checked, operated, discharged & taken to their respective destination after providing them required medicines & dark spectacles & also Counselling them & their respective attendants on Post-Operative Care & the same were duly mentioned and/or narrated on the reverse-side of the Patient Discharge Slip. Such instructions pertaining to the Post-Operative Care contain the details of medicines, i.e., eye-drop & the manner of using the same & also general instructions regarding eye care such as not to wet the head, to keep distance from dust, sunshine, etc., to use dark-spectacles regularly, not to take any tobacco, alcohol, smoking & not to put any pressure on the eye for one & half months. Being satisfied with the performance of the N.G.O. during the eye camp the Sub-Collector, Dharmagarh wrote a "Letter of Appreciation" to the GNV. After operation, patients were discharged. After a week, they were called upon for follow-up checking, The said follow-up checking were conducted by the eye Surgeons of the GVN. Though the eye operation camp was closed on 27.09.2010, the eye Surgeons & staff of GVN left the SDH-Dharmagarh on 28.09.2010 afternoon after conducting the 1st follow-up checking in the morning. During the remaining dates of 1st follow-up checking from 29.09.2010 to 05.10.2010, Mr. Paresh Kumar Rout, the Coordinator of GVN was all along present at SDH-Dharmagarh. During that period, the remaining patients who had turned up,

were facilitated by the aforesaid Coordinator, in due consultation with the Government Resident Ophthalmologist Dr. J.K. Panda M.S. (Ophth.), Assistant Surgeon, SDH-Dharamgarh. The number of operated patients, who attended the 1st follow-up & also the 2nd follow-up checks, is well evident from the report of Dr. P.K. Singh, Eye Specialist, GVN.

10. On 03.10.2010 afternoon, an eye-operated patient, namely, Biswamitra Dhurua met Mr. P.K. Rout, the Coordinator of GVN. On being asked, the said patient complained of pain in his operated left eye & watering. The said Coordinator immediately sent him to the base Hospital at Sambalpur. The said patient was admitted to the base Hospital from 04.10.2010 to 07.10.2010 & was given proper treatment by the eye specialist of GVN. After suitable treatment, he was discharged on 07.10.2010 upon his request. On the last day of the 1st follow-up check-up i.e., 05.10.2010, another patient, namely, Rabi Chandan complained of pain in his operated left eye before Dr. J.K. Panda, while the Coordinator of GVN Mr. P.K. Rout, who was present there, immediately sent him to base Hospital at Sambalpur. From 06.10.2010 to 09.10.2010 he was admitted to the base Hospital at Sambalpur & was provided with proper treatment. After required treatment, he was discharged on 09.10.2010 upon his request. The Government Ophthalmologist at SDH-Dharamgarh was duly intimated & requested by the GVN authorities to refer the eye-operated patients to the base Hospital at Sambalpur immediately in the event of report of any complain in their operated eyes and/ or noticed by him.

11. On the rival contentions, the following questions arise for consideration by this Court.

(i) Whether 16 persons named in the Writ Petition who suffered from post-operation complications resulting partial/complete loss of their eye sight are entitled to any compensation?

(ii) Who is liable to pay the compensation?

(iii) What order?

12. All the above questions being interlinked, they are dealt with together. Admittedly, the NGO, JMJ Grace Vision Netralaya, Sambalpur was permitted by the CDMO, Kalahandi to hold the eye camp from 16.9.2010 to 25.9.2010 at Sub-Divisional Hospital premises of Dharmagarh which stood extended till 27.9.2010. One MoU was signed on 8.9.2010 between the District Blindness Control Society & JVN, Sambalpur. During the aforesaid period, the NGO-JVN, Sambalpur with their own doctors, instruments, equipment & staff operated upon 1210 cases in the mass cataract operation eye camp. In the said operation camp 16 persons lost their eyesight partially/fully.

13. Needless to say that poor people who were suffering from cataract blindness & were unable to afford for cataract operation, being assured of successful cataract operation by the NGO supported by the District Administration, reposed

confidence in them & expressed their willingness for such operation. But in the said operation, and/ or due to lack of Post-operative care, if those poor people lost their eyesight, this is certainly an unfortunate incident. A poor man who earns his livelihood by working as a labourer or as a marginal farmer, after becoming blind he will be totally disabled to earn his livelihood. Therefore, almost care should be taken while dealing with cataract operation of those persons. Because of their poverty they expressed their willingness for operation in the eye camp & in the eye camp operation instead of getting good vision if they lost their vision totally or partially, the back bone of their family is broken. It goes without saying that eye sight is most valuable for a human being. If for any carelessness, a person is deprived of his eye-sight, the person(s) responsible for such loss/damage must compensate the same.

14. In the instant case, as per the affidavit of CDMO, Kalahandi, the NGO-GVN, Sambalpur with their instruments, equipments & doctors operated upon 1210 cases in mass cataract operation camp. It is further stated by the CDMO that Ophthalmic Surgeons posted at Headquarters, Bhawanipatna & Sub-Divisional Hospital, Dharmagarh were also instructed to visit/supervise the camp site. Dr. Jitendra Kumar Panda, Assistant Surgeon (Ophth.) SDH, Dharamgarh initially detected 26 numbers of complicated cataract cases during the period when the staff of JVN were not there for follow up & brought those cases to the notice of CDMO, Kalahandi on 22.11.2010 & thereafter the CDMO, Kalahandi in due consultation with the Collector, Kalahandi directed the NGO-GVN, Sambalpur to shift the complicated cataract cases to L.V. Prasad Eye Institute, Patia, Bhubaneswar for further treatment. Simultaneously, Ophthalmic Assistants posted at various Government Hospitals & Medical Officers, CHCs were requested for screening of all the operated cases at SDH, Dharamgarh camp during November 2010 by convening an emergency meeting on 25.11.2010. The concerned NGO shifted the cataract patients to L.V. Prasad Eye Institute, Patia, Bhubaneswar phase wise on different dates between 23.11.2010 & 01.12.2010 for super specialist intervention. In total cases of 34 complicated patients were detected. The CDMO, Kalahandi in his affidavit further stated that vide his Office Order, he deployed doctors on different dates for supervision of the Eye Camp & he himself visited the camp. The Sub-Collector, Dharmagarh-cum-Chairman, RKS Sub-Divisional Hospital, Dharamgarh visited the camp every single day. The NGO-GVN operated 1210 cataract cases from 16.9.2010 to 27.9.2010. Thus, within a period of 11 days 1210 persons were operated. The number of doctors employed are not adequate to operate 1210 persons successfully within such short span of time. As it appears, the operations were conducted hastily. Neither the NGO-GVN nor the District Administration took any step to prevent taking up cataract operations in such a haste manner. In a haste, there is every chance of unsuccessful operation, more particularly the eye operation. Both the District Administration & the NGO should have kept in their mind that in case of failure of eye operation, it would result in blindness of the person & ultimately, the person would lose the source of his bread & butter.

15. In course of hearing of this petition, the District Judge-cum-Chairman District Legal Services Authority, Kalahandi was directed by this Court vide Order Dated 6.4.2011 to conduct an inquiry & submit a report in this regard. In this report it is stated that as per the MoU signed between the District Blindness Control Society & GVN, Sambalpur on 8.9.2010 the onus/responsibility lies on GVN, Sambalpur to provide well-qualified doctors, equipment & also to take care of post operative follow up & as part of moral & overall responsibility, the District Health Care Administration through Rogi Kalyan Samiti, Dharamgarh, CDMO & his medical team extended all supports for success of the eye camp. On 11.4.2011 all the 16 affected persons, the Sub-Divisional Medical Officer in charge of Dharmagarh, the Eye Specialist of SDH, Dharmagarh Dr. Prasant Kumar Singh & Mr. S.P. Clemant, the M.D.-cum-C.E.O. of NGO GVN, Sambalpur were examined. According to Learned District Judge-cum-Chairman, District Legal Services Authority, 16 persons, as has been listed, suffered from post operation complications resulting in partial/complete loss of their eye-sight. The Eye Specialist of SDH, Dharmagarh supervised the entire operation & after operation none from the GVN came to Dharmagarh for post-operation care except the local Co-ordinator & social worker, No doctor came to the camp for that purpose. Undoubtedly, with the permission of CDMO, the NGO conducted the cataract operation in the eye camp & in the said camp 16 persons lost their eyesight fully or partially. Not only the NGO, but the District Administration should have taken every care during operation & post-operation period. In the instant case, both the District Administration & NGO are claiming that they have discharged their duties & responsibilities perfectly & without any negligence. But fact remains that 16 patients in the cataract operation undertaken by NGO-GVN in the eye camp with the permission & supervision of the CDMO have lost their eyesight fully or partially.

16. In the fact situation, we direct the State Government to pay a compensation of Rs. 2.5 lakh (Rupees two lakhs and fifty thousand) to each of the persons, who have lost their eye-sight fully, & Rs. 1.75 lakh (Rupees one lakh & seventy five thousand) to each of the persons who have lost their eyesight partially. We further direct the State Government to cause necessary enquiry through an Officer not below the rank of a Secretary of any Department of the Government of Odisha to find out as to who is responsible for loss of eyesight of these 16 persons. If it is found that the NGO is responsible for this unfortunate incident, Government is at liberty to recover the entire amount of compensation directed to be paid by it from the aforesaid NGO-GVN.

17. Before parting with the matter, we make the following observations & directions:

(i) After granting permission to any NGO to hold eye camp for cataract operation, the Government must monitor & supervise the entire work of the concerned NGO.

(ii) Necessary guidelines in detail may be issued by the Government for taking up pre-operation & post-operation care.

(iii) Before granting permission to an NGO, the said NGO must ensure that operation in camps must be undertaken by qualified/ efficient doctors.

(iv) The patients must not be allowed to leave the camp immediately after operation, wherever the situation so demands.

(v) Before the granting permission, the District Administration must be satisfied that the N.G.O. has adequate infrastructure facilities, equipment & required numbers of qualified doctors & Assistants to undertake the operation work in the camp keeping in view the number of persons to be operated.

(vi) After operation in the eye camps, good quality sun glass, power glass & required medicines should be provided to the patients.

(vii) In case of failure of the operation because of laches on the part of any NGO and/or Government authority, the suffering patients must be adequately compensated immediately.

These are all necessary to achieve the avowed object enshrined in the Scheme of the Central Government on the basis of which the NGOs are functioning & provided with financial assistance.

With the aforesaid observations & directions, the Writ Petition is allowed, but without any order as to costs.

V. Gopala Gowda, C.J.

I agree.