

**IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) No. 14586 of 2013**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Smt. Moti Prava Mohanty *Petitioner(s) Mr.*
-versus-
State of Orissa & Ors *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. R.K. Swain, Adv*

For Opposite Party : *Mr. Sonak Mishra, ASC*
(s)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-22.03.2024

DATE OF JUDGMENT: -19.04.2024

Dr. S.K. Panigrahi, J.

1. The Petitioner, in this Writ Petition, seeks a direction from this Court to issue notice to the Opp. Parties, and after hearing from the parties, issue a Writ of Mandamus or Certiorari or any suitable form of Writ to give appropriate compensation to the Petitioner not only for their negligence but also for the future of a baby in mother's womb.

I. FACTUAL MATRIX OF THE CASE:

2. Shorn off unnecessary factual details, suffice it to narrate the facts as placed by the petitioner in the Writ Petition as follows:



- i. The Petitioner's family relies on irregular daily wages from both husband and wife, leading to a lot of financial instability. This results in a cycle of poverty, as acknowledged by the issuance of a Below Poverty Line card by the Government Authority. Further, the petitioner has two children, named, Dharitry Mohanty and Liza Mohanty, born out of wedlock, who are currently attending school. Due to financial hardships, their entire educational expenses, including daily meals, are covered by Sarba Shiksha Abhiyan programme.
- ii. Meanwhile, the Opp. Party No.1, the Department of Health, State of Orissa through all the Opp. Parties, encouraged the petitioner and the general public for family planning sterilization. Thus, there was encouragement to the families to participate in Green Card scheme wherein a focus on having two-children or fewer is being promoted, through various incentives like providing landed properties, reservation of seats in higher education for those two children and many more.
- iii. Inspired by the Opp. Parties and being mindful of their economic status and future of those two children, the Petitioner underwent for family planning operation in Tangi P.H.C./ Opp. Party No.2, on 19. 11. 2012. Thereafter, the doctors assured the petitioner that operation is successful and there would be no chance of future conception.
- iv. Subsequently, for a period of one month, the petitioner suffered from the bodily pain as a sign of successful operation, as assured

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- by the Opp. Party No.2. However, the petitioner showed symptoms of conception after five months of the operation. Thereafter, they consulted with a doctor in outdoors of City Hospital, Cuttack, who advised the petitioner for urine test, apprehending further conception. This was eventually confirmed by the report handed over by the pathologist of the City Hospital, Cuttack.
- v. Thereafter, the petitioner sought remedies from the office of U.G.P.S., Tangi-/ Opp. Party-2. However, the officer appraised the negligence in the operation but sent the petitioner to health worker named, one Meera Swain who brought the petitioner to the Operation Theatre, and also issued a certificate regarding the operation of the petitioner.
- vi. Later on, the petitioner had given birth to the third girl child, named Subhasmita Mohanty, after one year of family planning sterilization.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.
- (i) Alleged medical negligence on the part of the doctor in Tangi P.H.C./ Opp. Party No.2. Furthermore, he vehemently laid down that the negligent operation not only signifies mismanagement of significant public funds but also highlights the failure of the entire family planning programme.

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- (ii) Additionally, he stressed upon the opinions of many economists considering the rapid growth in population, as “whatever produce in the country are being eaten up by the uninvited guests”, thus, indicating towards the mismanagement of crores of public money invested in the family planning programme.
- (iii) Further, to emphasize upon abovementioned point, he relied on few cases, mainly on *State of Haryana and others vrs. Santra (Smt)*¹
- (iv) In view of the aforesaid facts and circumstances, he thus prays to this Court that the Opp. Parties may be directed to provide suitable compensation to the petitioner, not only for their negligence but also for the future well-being of the unborn child.
- (v) In such premises, he submitted that the prayer of the Petitioner may be allowed.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES/STATE:

4. In reply, learned counsel for the Opposite Parties/ State earnestly made the following submissions in support of his contentions.

- (i) Opposing the contention of the learned counsel of the petitioner, learned counsel for the State brings to the notice of this Court to the Family Planning Insurance Scheme w.e.f. 29.11.2005 wherein the reimbursement of actual expenditure incurred was fixed to Rs.20,000/- for failure of sterilization



(including first instance of conception after sterilization). He further brings to the notice of this Court to the revised scheme (Part of the State programme implementation plans (PIPS) w.e.f. 1.04.2013, wherein the coverage amount has been fixed to Rs.30,000/- for failure of sterilization.

- (ii) In this respect, he relied on an apposite judgment upheld in the case of **State of Punjab v Shiv Ram and Others**² which has thoroughly discussed the key points pertinent to the present case as well.
- (iii) It is further submitted that the Petitioner has grievances as she was blessed with a girl child. Had she been blessed with a male child she would not have any complain.
- (iv) The learned counsel for the Opp. Parties, thus, submits that the averments made in the Writ Petition be denied by this Court.

IV. COURT'S REASONING AND ANALYSIS:

- 5. Heard the learned counsel for both the Petitioner as well as the Opp. Parties/ State, and in the light of similar issue, this Court is relying on the judgment of **State of Punjab v Shiv Ram and Others**³, wherein the Apex Court has upheld as follows:

"xxxx 17. It is thus clear that there are several alternative methods of female sterilization operation which are recognized by medical science of today. Some of them are more popular because of being less complicated,



requiring minimal body invasion and least confinement in the hospital. However, none is foolproof and no prevalent method of sterilization guarantees 100% success. The causes for failure can well be attributable to the natural functioning of the human body and not necessarily attributable to any failure on part of the surgeon. Authoritative textbooks on gynecology and empirical researches which have been carried out recognize the failure rate of 0.3% to 7% depending on the technique chosen out of the several recognized and accepted ones. The technique which may be foolproof is the removal of the uterus itself but that is not considered advisable. It may be resorted to only when such procedure is considered necessary to be performed for purposes other than merely family planning

28. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to sub-section (2) of Section 3 provides:

Explanation II.- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman

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30. *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 the 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 the maintenance and upbringing of such a child cannot be claimed xxxx”*

6. In view of the aforesaid and considering the peculiar facts and circumstances of the instant case, this Court is of the opinion that contention of the petitioner has no foundation in law. However, considering the poor economic status of the petitioner and the concession given by the Opp. Parties, this Court deems it apposite to grant Rs.30,000/- in favour of the petitioner as compensation. Accordingly, the Opp. Parties/ State is directed to pay the said amount to the petitioner within a period of two months from the date of presentation of this order before the appropriate authority.
7. Accordingly, this Writ Petition is disposed of.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 19th April, 2024/ P*

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