

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Writ Jurisdiction]

W. P. (C) No. 4832 of 2009

Khair Mohan Singh Petitioner(s)

Versus

1. The State of Jharkhand.
2. Civil Surgeon-Cum- Chief Medical Officer, Ormanjhi, Ranchi.
3. Sub-Divisional Officer, Ranchi.
4. Circle Officer, Ormanjhi, Ranchi.
5. Special Secretary, Department of Health and Family Welfare, Government of Jharkhand, Ranchi.
6. The State R.C.H. Training Co-ordinate. Department of Health and Family Welfare, Namkom, Jharkhand.
7. I.C.I.C.I. Lombard General Insurance Company Ltd., Ranchi.
8. The Oriental Insurance Co. Ltd. New Delhi.

.. ... Respondent(s)

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CORAM : HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

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For the Petitioner(s) : Mr. Sahay Gaurav Piyus, Advocate.
For the Resp.-State : Ms. Ruchi Rampuria, AC to Sr.S.C.II
For the Resp. No.7 : Mr. Bibhash Sinha, Advocate
For the Resp. No.8 : Mr. Manish Kumar, Advocate
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13 / 10.09.2021. Heard, learned counsel for the parties.

Mr. Sahay Gaurav Piyus, learned counsel for the petitioner has submitted that the petitioner has preferred the instant Writ Petition under Article 226 of the Constitution of India for issuance of a Writ in nature of Mandamus commanding upon the respondents to pay **adequate monetary compensation** to the petitioner for death of his wife caused due to negligence of respondents during Tubectomy operation and further for issuance of a Writ in the nature of Mandamus commanding upon the respondents to implement the promise made to the petitioner on 04.01.2008 after death of his wife regarding grant of license of P.D.S. Shop, pension, Indira Awas and Antyodaya card as well as such other relief/ reliefs to which the petitioner may be found entitled of the facts and circumstances of the case.

Mr. Sahay Gaurav Piyus, learned counsel for the petitioner has further submitted that under the Government Scheme, the wife of the petitioner, namely, Mani Devi underwent Tubectomy operation. But because of the negligence on the part of the respondent- State, the wife of the petitioner, namely, Mani Devi died during operation. Thereafter the Civil Surgeon-Cum-Chief Medical Officer, Ormanjhi, Ranchi, dated 04.01.2008 has assured the husband of the deceased for the following reliefs:-

- (1) Rs.1 Lac shall be paid to the dependents of the deceased within one week;
- (2) P.D.S. Licence shall be granted to the husband of the deceased;
- (3) Pension to the husband of the deceased;
- (4) House under Indira Awas Yojana shall be awarded to the husband;
- (5) Antodya card shall be given to the husband of the deceased;
- (6) A proposal for suspension of the Medical Officer, Smt. Kamini Burnwal lady Medical Officer who has performed this Tubectomy Operation, shall be forwarded to the Department; and
- (7) Such persons who have obstructed the traffic shall not be prosecuted under the law.

This undertaking of Civil Surgeon-Cum- Chief Medical Officer, Ranchi dated 04.01.2008 was duly signed by the Additional Chief Medical Officer, Ranchi, Officer-in-charge, Ormanjhi Police Station and Anchaladhikari, Ormanjhi.

Mr. Sahay Gaurav Piyus, learned counsel for the petitioner has further submitted that since this undertaking was given by the State Authorities, as such, this Hon'ble Court may issue Writ in the nature of Mandamus directing upon the State to implement the same.

Mr. Sahay Gaurav Piyus, learned counsel for the petitioner in support of his submission has relied upon Paras 19 and 23 of the counter-affidavit filed by the State, which may profitably be quoted hereunder :-

“19. That with regard to the statement made by the petitioner in Paragraph-15, in the instant writ petition under reply, it is humbly stated and submitted that it is incorrect to say that the petitioner's wife died due to negligence. It is true that the petitioner is entitled for compensation and several correspondences have been made in this regard to the Oriental Insurance Company, but all goes in vain.

23. That with regard to the statement made by the petitioner in Paragraph-23, in the instant writ petition under reply, it is humbly stated and submitted that the compensation amount has to be paid by the Oriental Insurance Company (As per contract with the Government with the said company) as per claim procedure claim has to be made before M/s Heritage Health Services Pvt. Ltd. NICCO House, 5th Floor, 2 Hare Street Kolkata-700001.”

Mr. Sahay Gaurav Piyus, learned counsel for the petitioner has thus, submitted that Writ of Mandamus may be issued in favour of the petitioner.

Ms. Ruchi Rampuria, learned AC to Sr. S.C.II has opposed the prayer vehemently and submitted that whatever undertaking has been taken by the petitioner (brought on record as Annexure-3), the same has been obtained by compelling the State officers to write such documents as they have blocked traffic on the main road i.e. Ranchi- Ramgarh main road, as such, such undertaking has been given by the State authorities under duress.

Ms. Ruchi Rampuria, learned AC to Sr.S.C.II has further submitted that adequate monetary compensation claimed by the Writ petitioner has to be examined by the competent Court of law and there is no circular which says that such award can be granted as stated in Annexure-3 of the Writ Petition.

Mr. Bibhash Sinha, learned counsel for the Respondent No.7 has submitted that from perusal of the prayer made in the Writ Petition, the same cannot be granted under Article 226 of the Constitution of India. If there is medical negligence on the part of State, the petitioner has legal remedy under the law, but the same cannot be granted in the manner agitated by the petitioner in this Writ Petition based on Annexure-3.

Mr. Manish, the learned counsel for the Respondent No.8 has reiterated the same argument as advanced by Mr. Bibhash Sinha, learned counsel for the Respondent No.7.

Having heard, the learned counsel for the parties and perusing the materials available on record, it appears that the petitioner has prayed for adequate monetary compensation for death of his wife caused due to medical negligence by respondents during Tubectomy operation. The promise was made by some of the officers, who are not even competent to provide compassionate appointment to any person.

This Court is serious about such issues that how such Civil Surgeon and other officers like Additional Chief Medical Officer, Officer-in-Charge and Anchala Adhikari can assure the petitioner for providing such benefits, which are not within their jurisdiction. Any undertaking on behalf of the State can only be given by the officers not below the rank of the Deputy Commissioner /Under Secretary after due permission and approval of the State Government and not by the Additional Chief Medical Officer, Officer-in-Charge, Anchaladhikari or Civil Surgeon-Cum- Chief Medical Officer.

It is true that if a person has died because of the negligence on the part of the medical agency, the person must be duly compensated, in accordance with law, but not in the manner by filing the writ petition where adequate monetary compensation cannot be adjudicated.

Accordingly, the Writ Petition being devoid of merit is hereby dismissed.

However, the petitioner is at liberty to avail legal remedy available under the law.

Before parting with this order, the Chief Secretary, State of Jharkhand, Ranchi is directed to look into such matters where officers are giving such undertaking

beyond their jurisdiction and competency in the present matter and after conducting inquiry shall report to this Court, that what action has been taken against those officers who have given such undertaking either to mislead the Court or to mislead the State or to mislead the petitioner.

The desired report must be submitted to this Court within a period of three month from the date of production/communication of a copy of this order.

Let a copy of this order be communicated through FAX to the Chief Secretary, State of Jharkhand, Ranchi at once.

(Kailash Prasad Deo, J.)

Sandeep/