Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 6 of 2018

Date of Decision: 06.10.2023

Smti. Pharmon Dohling Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. Syngkon, Adv.

For the Respondent(s) : Mr. S. Sahay, GA
Mr. E.R. Chyne, GA (For R 1 & 2)
Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv. (For R 3)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

J U D G M E N T

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has sought to highlight the alleged deplorable state of the Public Health System in the State of Meghalaya and in particular, the failure of the system in providing timely and adequate medical assistance to her daughter who was brought to Nongpoh Civil Hospital for emergency treatment following complications which occurred after

the delivery of her child on 30.01.2016 but due to the negligence of the medical officer and nursing staff, she died on the same day itself as a consequence of placenta retention.

2. The prayer made in this petition is reproduced as under:

> *a) For a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondents to provide a compensation of Rs. 500000/- (Rupees Five Lakhs Only) or any amount as your Lordship may deem fit and proper to the mother of the deceased for the failure of the state public health system to protect the life of her daughter and the subsequent trauma caused to the petitioner and her family.*
>
> *b) For an order to respondents to issue directions for the constitution of a committee of doctors including a paediatrician and a dietician for charting out the nutrition dietary plan for the grandchildren of the petitioner for the next three years and to issue directions for the provision of the nutritional requirements of the grandchildren of the family through the next three years.*
>
> *c) For an order to ensure free and compulsory education for all the children of Melina Dohling.*
>
> *d) For an order to ensure that every health centre has the complete Home Delivery Kit as per the IPHS guidelines.*
>
> *e) For an order to the immediate appointment of a permanent Anaesthetic at the Nongpoh District Hospital.*
>
> *f) For an order to carry out a Disciplinary action against the doctor on-duty in the emergency / maternity ward during the time of the maternal death.*"

3. Heard Mr. N. Syngkon, learned counsel for the petitioner who has submitted that the history of this case is that the deceased daughter of the petitioner aged about 30 years old was married and had four children

out of the said wedlock, the eldest boy being 7 years, the second, a girl, is 5 years and third who is also a boy is 3 years old. The youngest who was given birth on 30.01.2016 as a result of a delivery at home, survived, but the mother developed complications soon after giving birth apparently due to placenta retention, was immediately taken to Nongpoh Civil Hospital in an auto-rickshaw. However, on arrival, she was made to wait for about 20-25 minutes and by the time she was attended to by the medical officers and nursing staff, she could not be saved and soon after she passed away on the same day itself, that is, on 30.01.2016.

4. The main grievance of the petitioner is that there was abject negligence on the part of the medical staff at the said hospital inasmuch as when the patient was brought in with heavy bleeding (hemorrhage) and low blood pressure, she should have been given immediate attention even to the extent of being administered injection of ergometrine and oxytocin or oxytocin alone which would have helped the womb to contract and push out the placenta and membrane.

5. However, the said procedure which could even be carried out by the ASHA worker was not followed as the hospital was not equipped with adequate supply and storage of the required drug to administer the injection. Even otherwise, the absence of a regular Anesthetist at the hospital to administer anesthetics to the daughter of the petitioner at the crucial period has also resulted in her death, submits the learned counsel.

6. The learned counsel went on to submit that there are myriad government schemes which guaranteed minimum entitlement of maternal healthcare to the deceased daughter of the petitioner but the respondents have violated their obligation to implementation of these

programmes.

7. The learned counsel has listed some of such programmes like the National Rural Health Mission (NRHM), 2005, Janani Suraksha Yojana (JSY), 2005, Janani Shishu Suraksha Karyakram (JSSK), 2011, The National Food Security Act, 2013, Indian Public Health Standards (IPHS) and also the relevant provisions of the Constitution of India including Article 21 and 47.

8. The learned counsel has emphasized on the fact that in India, the Maternal Mortality Ratio is about 174 per 1,00,000 live births. About 800 women still die today of preventable causes related to pregnancy and childbirth. In Meghalaya, the maternal and infant mortality rates are higher than the rest of the country with reports of non-functional Public Health Centres (PHCs) and Community Health Centres (CHCs) due to non-availability of doctors and basic health infrastructure.

9. However, even while referring to the various programmes and statutes including what is provided under the Constitution, the main thrust of the submission of the learned counsel is that this Court may cause an enquiry to be conducted into the cause of death of the deceased daughter of the petitioner to find out the lapse in the system and the negligent act on the part of the medical staff on duty on that particular day, that is, 30.01.2016.

10. Mr. S. Sahay, learned GA, appearing on behalf of the respondents have resisted the submission and contention made by the petitioner through her counsel by raising, at the first instance, the issue of maintainability of this petition on the ground that the case of the

petitioner is one of grievance over inadequate or poor or lack of medical assistance or medical services and in particular, in the area of maternal health services which has resulted in the death of the daughter of the petitioner. This being a case of alleged medical negligence, a writ petition will not be maintainable in this respect.

11. The learned GA has further emphasized on this aspect of the matter by submitting that by their very nature, allegations of medical negligence can suitably be dealt with by experts having working knowledge of the subject matter, for instance, committees like the Ethics Committee of the Medical Council, the Consumer Forum and also a Civil Court can be best suited for this purpose and exercise.

12. In support of this contention, the learned GA has referred to the following authorities:

i. Kamla Devi v. Union of India, 2015 SCC Online Del 7109;

ii. Neelu Sarin v. Union of India, 1991 Supp (1) SCC 300;

iii. Rashmi Dixit v. Medical Council of India, 2016 SCC Online Del 5980;

iv. State of Punjab v. Shiv Ram, (2005) 7 SCC 1;

v. Lalita Devi v. State of Rajasthan, 2015 SCC Online Raj 11565.

13. According to the learned GA, another area where a writ petition is not maintainable is in cases involving disputed questions of facts.

From the pleadings of the parties what could be seen is that there are many areas of disputed facts brought about in these proceedings which could not have been adequately answered by way of an affidavit-in-opposition, evidence both ocular and material required to be produced can only be done so before the appropriate forum but could not be done so in a writ proceeding.

14. In view of the above, the petitioner having other efficacious alternative remedy to seek legal redress for her alleged grievance, she is therefore, at liberty to approach the appropriate forums even to the extent of filing a suit before the Civil Court or to file a complaint before the concerned Medical Council.

15. The authorities cited in this regard are:

i. Arun Kumar Manglik v. Chirayu Health & Medicare (P) Ltd., (2019) 7 SCC 401;

ii. Kismat v. State of U.P., 2014 SCC Online All 15990.

16. On the factual aspect of the matter, the learned GA has submitted that the deceased daughter of the petitioner, an inhabitant of Mawdiangum Village had come for an Antenatal Care checkup at Nongpoh National Sub-Centre on five occasions that is, (i) 25.09.2015, (ii) 23.10.2015, (iii) 20.11.2015, (iv) 18.12.2015 and (v) 15.01.2016. During such visits, she was given iron and calcium and tetanus toxoid injection as well as she was counselled by PHN & ANM concerned who had requested her to come to Nongpoh Civil Hospital whenever she is due for delivery. However, she had delivered the baby at her own home on 30.01.2016 between 10 a.m. to 11 a.m. She was brought to Nongpoh

Civil Hospital at 1:50 p.m. on the same day only after complications of retained placenta arose.

17. Again, it is submitted that when the deceased daughter of the petitioner was brought to Nongpoh Civil Hospital on 30.01.2016 at 1:50 p.m. her relatives and an ASHA worker of Mawdiangum accompanied her where she straight away was taken to the labour room followed by the attending doctor, Dr. W. Nongpiur who immediately examined and assessed her condition and found that her pulse is not palpable, blood pressure is zero, no breathing, heart sounds inaudible and she was unconscious. The doctor resorted to the process of cardio-pulmonary resuscitation but unfortunately the patient could not be revived and she was declared dead at 1:55 p.m. Her case was classed as 'brought dead'. This fact was reinforced by the report filed by one Mr. Lawrence Nongrum, PHN Nongpoh National Sub-Centre on 08.02.2016 who has filed the format indicating this information as follows:

> *Sl. No. 9 – Place of Death – on the way to Civil Hospital Nongpoh*.

18. The respondent No. 3/Union of India has also filed its counter affidavit which in essence has reflected the role of the Union of India as far as the Health Sector is concerned. However, it is made clear at the outset that 'Public Health' is a State subject being placed at Entry 6 of List II of Schedule Seven of the Constitution of India and as such, it is the duty of the State Government to lead the process of health sector reforms and to protect the common individual citizen from health hazards. The various schemes as pointed out by the petitioner have also been highlighted by this respondent with relevant statistical information.

However, since no relief is sought for by the petitioner from this respondent, it is submitted that the name of this respondent may be deleted from this proceeding.

19. This Court having considered the submission and contention of the parties would deemed it proper for the issue of maintainability to be discussed and decided first.

20. The facts as stated above are not in dispute as far as the death of the deceased daughter of the petitioner is concerned, whose death has occurred soon after she gave birth to her fourth child and the manner whereby she has developed complications soon after, prompting those assisting her to immediately take her to Nongpoh Civil Hospital for the required medical treatment. What follows thereafter has been detailed by the respective parties hereinabove.

21. Before proceeding further, it would do well to understand the concept of 'Medical Negligence' and what would amount to the same under the given circumstances. It goes without saying that this would apply only in the realm of the medical profession including institutions such as hospitals with the main actors being the medical practitioners and staff thereof. Of course, incidents of medical negligence may not be confined only to medical institutions and the like but would be attributed wherever medical attention is found inadequate or not present at all or being administered irresponsibly.

22. To better understand how this concept is being handled in a judicial forum, a number of authorities is found present in a catena of cases where judicial pronouncements by the Hon'ble Supreme Court as

well as various High Courts of our country have more or less crystallized the subject matter. To name a few, in the case of *Jacob Mathew v. State of Punjab & Anr., (2005) 6 SCC 1* the Hon'ble Supreme Court dealing with the case of medical negligence has elaborately discussed the subject. Reference to relevant portions of the said judgment would be beneficial for this Court to come to a correct finding on the basis of the issues raised herein.

23. At para 31 it was observed as follows:

> "*31. The subject of negligence in the context of the medical profession necessarily calls for treatment with a difference. Several relevant considerations in this regard are found mentioned by Alan Merry and Alexander McCall Smith in their work Errors, Medicine and the Law (Cambridge University Press, 2001). There is a marked tendency to look for a human actor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. To draw a distinction between the blameworthy and the blameless, the notion of mens rea has to be elaborately understood. An empirical study would reveal that the background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with the medical practitioner and equally it may not. The inadequacies of the system, the specific circumstances of the case, the nature of human psychology itself and sheer chance may have combined to produce a result in which the doctor's contribution is either relatively or completely blameless. Human body and its working is nothing less than a highly complex machine. Coupled with the complexities of medical science, the scope for misimpressions, misgivings and misplaced allegations against the operator i.e. the doctor, cannot be ruled out. One may have notions of best or ideal practice which are different from the reality of how medical*

practice is carried on or how the doctor functions in real life. The factors of pressing need and limited resources cannot be ruled out from consideration. Dealing with a case of medical negligence needs a deeper understanding of the practical side of medicine."

24. At para 48(1) one of the conclusions reached at by the Hon'ble Supreme Court is that:

"*48.We sum up our conclusions as under:*

(1) Negligence is the breach of a duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage"."

25. In the case of *Martin F. D'Souza v. Mohd. Ishfaq, (2009) 3 SCC 1*, the Hon'ble Supreme Court has laid down the standard of proof of medical negligence by reiterating the general principle involved, inter alia with reference to the case of Jacob Mathew(supra). At paras 31 and 32 of the same wherein it was observed as follows:

"*31. As already stated above, the broad general principles of medical negligence have been laid down in the Supreme Court judgment in Jacob Mathew v. State of Punjab: (2005) 6 SCC 1. However, these principles can be indicated briefly here:*

The basic principle relating to medical negligence is known as the Bolam Rule. This was laid down in the judgment of McNair, J. in Bolam v. Friern Hospital: (1957) 1 WLR 582 as follows: (WLR p. 586)

> *"...where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art." (emphasis supplied)*

Bolam: (1957) 1 WLR 582 test has been approved by the Supreme Court in Jacob Mathew case: (2005) 6 SCC 1.

32. In Halsbury's Laws of England [Ed.: 4th Edn., Vol. 30, para 35], the degree of skill and care required by a medical practitioner is stated as follows:

> *"35. Degree of skill and care required.– The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.*

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.

(emphasis supplied)"

26. The authorities cited by the learned GA on behalf of the State respondents as far as the subject matter of medical negligence is

concerned are more or less in tune with whatever has been referred to hereinabove. As such, it may not be required to deal with such authorities individually.

27. From whatever is found from the pleadings of the parties, it is the assertion of the petitioner that because her deceased daughter when she was brought to Nongpoh Civil Hospital in a very critical condition, she was not attended to for about 20-25 minutes which aggravated the situation and eventually led to her death and as such, gross medical negligence can be attributed not only to the attending doctor but to the other medical staff and the failure of the system as a whole, for which adequate compensation and reliefs as prayed for is justified.

28. On the other hand, it is the consistent denial of the hospital authorities that the allegations of the petitioner are unfounded inasmuch as though the patient was brought to Nongpoh Civil Hospital on 30.01.2016, her condition was such that instantly she was rushed into the labour room where the attending doctor tried to revive the patient but unfortunately, it was found that she was already dead when she was brought to the hospital.

29. It would be relevant to refer to para 29 of the Martin F. D'Souza case which reads as follows:

> "*29. Before dealing with these principles two things have to be kept in mind: (1) Judges are not experts in medical science, rather they are laymen. This itself often makes it somewhat difficult for them to decide cases relating to medical negligence. Moreover, Judges have usually to rely on testimonies of other doctors which may not necessarily in all cases be objective, since like in all professions and services, doctors too sometimes*

have a tendency to support their own colleagues who are charged with medical negligence. The testimony may also be difficult to understand, particularly in complicated medical matters, for a layman in medical matters like a Judge; and (2) A balance has to be struck in such cases. While doctors who cause death or agony due to medical negligence should certainly be penalised, it must also be remembered that like all professionals doctors too can make errors of judgment but if they are punished for this no doctor can practise his vocation with equanimity. Indiscriminate proceedings and decisions against doctors are counterproductive and serve society no good. They inhibit the free exercise of judgment by a professional in a particular situation."

30. Obviously, in this case there is an element of disputed facts which requires determination but could not have been carried out by a writ court inasmuch as for the truth to be revealed, evidence has to be led and liability imposed, if so required, which could only be done so before an appropriate forum, as far as medical negligence is concerned, judicially or otherwise.

31. In this regard, in the case of *Balkaran Das Gupta v. Union of India Thru. Secy. Ministry of Railway, New Delhi & Ors., 2022 SCC Online ALL 909*, the Hon'ble High Court of Allahabad dealing with the issue of exercise of writ jurisdiction under Article 226 in the area of award of damages/compensation at paras 7 and 9 has observed as follows:

"*7.The first and foremost question, which falls for determination of this Court in these proceedings, is as to whether for the prayers made in the writ petition this Court ought to exercise its jurisdiction, which necessarily is discretionary, under Article 226 of the Constitution of India. In this regard, we find that there are two legal impediments before the petitioner which are to be sailed across by him if this*

petition is to succeed. The first such impediment is that any claim for damages/compensation for any damage caused to the property in question will necessarily require the Court to investigate various disputed facts, which, in our opinion, will not be permissible for the simple reason that such determination requires detailed examination of evidence which can better be made in a civil suit, which may be tried before a court of competent civil jurisdiction.

9. No doubt, this Court exercises very wide powers under Article 226 of the Constitution of India in the matter of issuing writs, however, there are well recognized limitations which the Court has to be conscious of while it is called upon to exercise its writ jurisdiction. One of the such limitations, which is rather self imposed limitation/restriction which needs to be observed by this Court while exercising its discretionary powers under Article 226 of the Constitution of India, is that it should not enter into an issue which for its determination requires the parties to adduce evidence. The disputed question of facts, thus, are not permissible to be delved into by this Court while exercising its jurisdiction under Article 226 of the Constitution of India for the reason that the writ petitions are generally decided on the basis of uncontroverted facts to be deduced from the affidavits which the parties to a dispute are called upon to file. It is well settled that relief under Article 226 of the Constitution of India is not available for deciding disputes for which a remedy under general civil law is available to a party approaching the Court."

32. As to the proper implementation of the various schemes in this regard as pointed out by the learned counsel for the petitioner, this Court hopes and trust that the State Government would ensure that there is no lapse on the part of those responsible to carry out such programmes for the general welfare of all concerned.

33. In view of the observations made hereinabove, under the peculiar facts and circumstances of this case, this Court need not go further but to come to the conclusion that firstly, an application for

issuance of an appropriate writ under Article 226 of the Constitution may not be proper since there are disputed issues of facts which could only have been resolved by the petitioner proceeding before an appropriate forum.

34. Accordingly, this petition is found to be devoid of merits, the same is hereby dismissed.

35. Before parting, without prejudice to the observations made hereinabove, this Court would opine that the petitioner is at liberty to pursue the matter before an appropriate forum, if so advised, for which the time spent before this Court would stand condoned.

36. Petition disposed of. No costs.

Judge

Meghalaya
06.10.2023
"Tiprilynti–PS"