

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.4781 of 2007

Dated 29-06-2007

Between:

Kathula Upendra and another

...Petitioner

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary, Medical & Health
Department, Hyderabad, and others

...Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.4781 of 2007

JUDGMENT:

The 1st petitioner is a resident of Somaram Village of Thorur Mandal, Warangal District. Ramulu is her husband. They are working as Agricultural Labourers. They were blessed with two male children, by the year 2002. On an advice tendered to them by the Local Health Assistant, the 1st petitioner had undergone tubectomy operation at the Government Hospital, Torur, on 11-02-2002. However, about two years thereafter, she became pregnant. Petitioner No.1 alleges that she tried to contact the Doctor at the Local Primary Health Centre, and since no medical assistance was extended, the pregnancy could not be terminated and ultimately, she had to give birth to a child, who is the 2nd petitioner herein; on 08-01-2005.

Petitioner No.1 contends that her family is below poverty line, and they were finding it difficult to maintain even two children. She alleges that the birth of the third child had resulted in huge burden to the family. She contends that the situation is brought about, on account of the failure of the operation, and prays for awarding a sum of Rs.3 lakhs to her, and Rs.5 lakhs to the 2nd petitioner.

The 3rd respondent filed counter-affidavit, admitting the factum of the petitioner, having been conducted Tubectomy operation, and birth of a child thereafter. However, he denied the obligation to pay any amount, and pleads that the State cannot be held liable to pay the compensation. Reliance is placed upon the judgment of the Supreme Court in ***State of Punjab v. Shiv Ram and others***^[1].

Heard the learned counsel for the petitioner and learned Government Pleader for Medical and Health.

The fact that the petitioner has undergone sterilization operation on 11-02-2002, is not disputed. In fact, the respondents have filed the extract of the family planning register, which discloses that the petitioner hails from a family, below poverty line, and that she had two children by that time. The 2nd petitioner was born to the 1st petitioner after the operation. Soon after that delivery, Tubectomy operation was conducted on the 1st petitioner, for the second time, on 27-01-2005. Extract of the register for this operation is also filed.

It is no doubt true that the Supreme Court held in ***State of Punjab v. Shiv Ram and others*** (1 *supra*), that the Doctor who performed the operation of sterilization cannot be held liable. Detailed discussion is undertaken with reference to the decided cases and study material and it was observed that failure of operation is not a rare phenomena.

It however, needs to be noticed that the judgment of the Supreme Court arises out of a suit, where a specific declaration was sought, as to the negligence on the part of the State, and Doctor, who conducted the operation.

In the instant case, the emphasis of the petitioner is more upon her plight, which is reflected from the fact that her family is below poverty line. Whether or not there was any negligence on the part of the Doctor, the petitioner is subjected to a situation where she had to pool the resources, to bring up the third child, i.e. the 2nd petitioner. The very fact that the State encouraged and promoted family planning, discloses that it recognized the burden for the family, to maintain the children, beyond a point. If the matter is viewed with the same spirit, the State can also endeavour to share the burden of the family, in a

particular way, to alleviate the condition to which it pushed to. Though the petitioners claimed huge sums, this Court is of the view that ends of justice would be met, if a sum of Rs.1,00,000/- (one lakh) is awarded to the petitioners.

For the foregoing reasons, the writ petition is partly allowed, directing the respondents to deposit a sum of Rs.60,000/ (sixty thousand) in the name of the 1st petitioner, and Rs.40,000/- (forty thousand) in the name of the 2nd petitioner, in a Nationalised Bank, to be kept in a fixed deposit, for a period of ten years for the 1st petitioner, and till the age of the majority of the 2nd petitioner. They shall be entitled to withdraw the periodical interest.

There shall be no order as to costs.

Dt.29-07-2007
REDDY, J.
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L. NARASIMHA

[\[1\]](#) Appeal (Civil) No.5128 of 2002, dt.25-8-05= (2005) 7 SCC 1