

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Writ Appeal No. 56 of 2018

Ref :- W.P.(C) No. 998 of 2015

1. The State of Manipur through the Commissioner (Health), Government of Manipur, Imphal, Manipur-795001;
2. The Director of Health Services, Government of Manipur, Imphal, Manipur -795001;
3. The Medical Superintendent, Thoubal District Hospital, Government of Manipur-795138.
4. The J.N. Institute of Medical Sciences through the Director, JNIMS, Porompat, Imphal, Manipur – 795005.

.....Appellants

-Versus-

Smt. Nongthombam (N) Samadram (O) Chaoba Devi,
aged about 45 years, W/o (L) Samadram Khogen Singh,
resident of Waithou Bazar, PO, PS & District: Thoubal,
Manipur-795138.

..... Respondent

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the Appellants	::	Mr. N. Kumarjit, AG Mr. P. Tamphamani, Jr. GA to AG.
For the Respondent	::	Mr. Kh. Tarunkumar, Advocate, Ms. Th. Rebati, Advocate.
Date Hearing and Judgment & Order	::	28.02.2019.

JUDGMENT AND ORDER
(ORAL)

R.S., CJ

[1] Heard Mr. N. Kumarjit, learned AG assisted by Mr. P. Tamphamani, learned Jr. GA to AG for the Appellants. Heard also Mr. Kh. Tarunkumar, learned counsel for the respondent.

[2] The present appeal is filed against the order of the learned Single Judge challenging the direction issued to the State Government to pay Rs. 2 (two) lakhs as compensation for failure to give proper medical care and treatment to the respondent/writ petitioner's husband.

[3] Brief facts of the case as recorded in the order of the learned Single Judge is as follows :-

"[3] It is the case of the petitioner that the petitioner's husband was earning his livelihood by driving an auto rickshaw. On 28.08.2013, her husband was hit by a truck while he was returning home in his auto rickshaw and thereafter, he was brought in an unconscious state with severe head and abdominal injuries in the Thoubal District Hospital at around 10:00 p.m. According to the petitioner, the officials of the said Thoubal District Hospital without giving proper medical service to her husband, referred him to the Regional Institute of Medical Sciences (RIMS)/ Jawaharlal Nehru Institute of Medical Science (JNIMS). She alleged that in the Thoubal District Hospital only some stitches were given on the injured areas though her husband was found to be suffering from serious lacerated injuries over head/mouth with bleeding. She also claimed that no CT Scan for the head injury nor

Ultra sound for the abdominal injury was done at the Thoubal District hospital.

According to the petitioner, though the doctors at the Thoubal District Hospital knew that her husband was suffering from serious head injuries, they did not provide proper medical services nor they provided any ambulance after her husband was referred to RIMS/JNIMS and accordingly, she was compelled to take her husband by hiring a non-ambulance private vehicle.

[4] Thereafter, the petitioner's husband was brought to JNIMS Hospital and was given an OPD ticket at 11.55 p.m. and was admitted to the MSW-III at 1:20 a.m. of the next day. There he was advised to take CT Scan and other tests. However, since there was no provision for CT Scan in JNIMS, the petitioner did all the necessary tests including CT Scan in a private laboratory. According to the petitioner, the condition of her husband deteriorated steadily as no proper medical service was given and accordingly, being unsatisfied with the medical service given at the JNIMS, she requested the officials of JNIMS to discharge her husband. Her husband was thereafter, discharged from JNIMS on 29.08.2013 at 5:15 p.m. and she rushed her husband to a private hospital, namely, Shija Hospitals and Research Institute where he was kept in ICU. However, he expired on 06.09.2013 and the petitioner incurred expenditure of over Rs. 3 lakh for his treatment.

[5] The petitioner, being not well off and being dependent on the income of her husband earned from the running the auto rickshaw, submitted a representation to the state respondents for granting compensation for the negligence on the part of the officials of the Thoubal District Hospital, which however, was not attended to. Having obtained no response from the authorities, the petitioner has filed this petition."

[4] Since the representation of the widow was not considered the writ petition was filed seeking compensation for

negligence on the part of the State for having failed to provide proper medical services to the injured citizen.

[5] The State Appellants/respondents No.1 and 3 in the writ petition have filed affidavits-in-opposition. Respondent no. 4 in the writ petition did not file objection. In the affidavits-in-opposition filed by respondents no. 1 and 3 in the writ petition, it is stated that after the accident, the injured person was brought to the Thoubal District Hospital, Thoubal. He was given first aid/emergency services including stitching, dressing of wounds and I.V. fluids. It is also stated that the injured person suffered major head injuries and there was no Neuro Surgeon in the said District Hospital and other facilities like CT Scan, Ultrasound and ICU was not available and therefore, he was referred to the JNIMS/RIMS for further treatment but while directing further treatment at the JNIMS/RIMS, the State could not provide the ambulance service for the admitted reason that the ambulance was not functional due to defect.

This forced the family members of the injured person to take the injured by private vehicle and even after treatment by the JNIMS he did not get any proper results and therefore, the injured was shifted to Shija Hospitals & Research Institute, Langol, Imphal where he died.

[6] The learned Single Judge after considering the rival contentions placing much emphasis on the decision of the Hon'ble Supreme Court in **Paschim Banga Mazdoor Samity and Others Vs. State of W.B. and Another, (1996) 4 SCC 37** was of the view that the right to life guaranteed under Article 21 of the Constitution of India can be invoked by the person when there is a failure on the part of the Government hospital to provide timely medical treatment. The learned Single Judge also relied upon the decision of the Hon'ble Supreme Court in **CESC Ltd. Vs. Subhas Chandra Bose, (1992) 1 SCC 441** which held that right to health is a fundamental human right. The learned Single Judge also relied upon the decision of the Hon'ble Supreme Court in **State of Punjab & Ors. Vs. Mohinder Singh Chawla, (1997) 2 SCC 83** to emphasize the responsibility of the State to provide adequate medical facilities to the citizens and also holding that it is an obligation of the State to ensure proper medical health care and treatment. The learned Single Judge also relied upon the **Paschim Banga Mazdoor Samity** case in para 12 of the Single Judge order to hold that non-availability of facilities for treatment in Government hospital would be a denial of the fundamental right of the citizen guaranteed under Article 21 of the Constitution. In the above case, the Hon'ble Supreme Court emphasized the obligation of the State to safeguard the right to life of every person and the role of the

State Government to provide proper hospital and medical care. Para 12 of the single judge order reads as follows :-

"[12] In **Paschim Banga Mazdoor Samity** (supra), the Hon'ble Supreme Court was dealing with the issue of non availability of facilities for treatment of serious injuries in various Government Hospitals in Kolkata which resulted in denial of fundamental right of the patient guaranteed under Article 21 of the Constitution. Hon'ble Supreme Court held that Article 21 imposes the obligation on the State to safeguard the right to life of every person and accordingly, the Govt. hospitals run by the State are duty bound to provide proper medical assistance and failure to do so would result in violation of the right to life guaranteed under Article 21. Accordingly, it was held in para 9 as follows:-

"9. The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. In the present case there was breach of the said right of Hakim Sheikh guaranteed under Article 21 when he was denied treatment at the various Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Hakim Sheikh guaranteed under Article 21 was by officers of the State in hospitals run by the State, the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Sheikh. In respect of

deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution. (See : Rudal Sah v. State of Bihar⁴; Nilabati Behara v. State of Orissa⁵; Consumer Education and Research Centre v. Union of India⁶). Hakim Seikh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution. Having regard to the facts and circumstances of the case, we fix the amount of such compensation at Rs. 25,000/-. A sum of Rs. 15,000/- was directed to be paid to Hakim Seikh as interim compensation under the orders of this Court dated 22-4-1994. The balance amount should be paid by respondent No. 1 to Hakim Seikh within one month."

4 : (1983) 4 SCC 141 : 1983 SCC (Cri) 798 : 1983 (3) SCR 508

5 : 1993 (2) SCC 746: 1993 SCC (Cri) 527

6 : 1995 (3) SCC 42 : 1995 SCC (L & S) 604"

In **Paschim Banga Mazdoor Samity's** case certain observations and guidelines have been given by the Supreme Court as to how the State should provide medical care facilities at the primary health centre, district level and sub-division level and how ambulance service is a necessity for providing immediate health care. Para 15 and 16 of the judgment reads as follows :-

"15. We have considered the aforesaid submissions urged by Shri Dhavan. A part from the recommendations made by the Committee in that regard and action taken by the State Government in the memorandum dated 22-08-1995 on the basis of the recommendations of the Committee, we are of the view that in order that proper medical facilities are available for dealing with emergency cases it must be that :

1. Adequate facilities are available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stabilize his condition;

2. Hospitals at the district level and Sub-Division level are upgraded so that serious case can be treated there;

3. Facilities for giving specialist treatment are increased and are available at the hospitals at District level and Sub-Division level having regard to the growing needs.

4. In order to ensure availability of bed in an emergency at State level hospitals there is a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment which is required.

5. Proper arrangement of ambulance is made for transport of a patient from the Primary Health Centre to the District hospital or Sub-Division hospital and from the District hospital or Sub Division hospital to the State hospital.

6. The ambulance is adequately provided with necessary equipment and medical personnel.

7. The Health Centres and the hospitals and the medical personnel attached to these Centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.

16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See : Khatri (II) v. State of Bihar⁷, SCC at p. 631]. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the

recommendations made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated 22-8-1995 and the further directions given herein."

(emphasis added)

7: (1981) 1 SCC 627 : (1981) SCC (Cri) 228

[7] The learned Single Judge also relied upon another decision of the Hon'ble Supreme Court in **Ashok Kumar Thakur Vs. Union of India, (2011) 12 SCC 787** which followed the **Paschim Banga Mazdoor Samity's** case. In the case of **State of Jammu and Kashmir Vs. Vichar Kranti International & Anr., (2016) 16 SCC 290** the Hon'ble Supreme Court also dealt with the issue of medical care in Government hospital in the State of Jammu and Kashmir and has given certain directions there at para 16 of the order which reads as follows :-

*"[16] In **State of Jammu and Kashmir Vs. Vichar Kranti International & ANR.**, reported in **(2016) 16 SCC 290**, the Hon'ble Supreme Court while dealing with quality of medical care in Government Hospital across the State of Jammu & Kashmir commended the High Court of Jammu & Kashmir for constituting a committee of experts to scrutinise conditions of public government hospitals in the State so that proper medical care of a requisite standard can be provided to the poorest strata of the society, and accordingly observed that following issues need to be addressed :-*

- (i) availability of adequate infrastructure in government hospitals;*
- (ii) availability of essential equipment for treatment;*
- (iii) availability of staff-medical, para medical and of a supporting nature;*
- (iv) enforcement of conditions of hygiene to secure proper medical treatment facilities; and*
- (v) availability of essential medicines.*

This Court is of the view that the aforesaid concern expressed by the Hon'ble Supreme Court for providing proper medical treatment facilities to the State of Jammu and Kashmir will also be equally applicable to the State of Manipur."

This applies to all States including Manipur.

[8] The view expressed by the Hon'ble Supreme Court in **Paschim Banga Mazdoor Samity and Others Vs. State of W.B. and Another, (1996) 4 SCC 37** has been reiterated by the Supreme Court in **Union of India Vs. Moolchand Kharaiti Ram Trust, (2018) 8 SCC 321** wherein the Supreme Court observed in paragraphs 67 and 68 as follows :-

"67. In Paschim Banga Khet Mazdoor Samity²⁷, this Court has observed that the Constitution envisages the establishment of a welfare State. In a welfare State, the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities. Preservation of human life is thus of paramount importance. Government is duty-bound to provide timely care to persons in serious conditions. Medical facilities cannot be denied by the Government on the ground of non-availability of bed. Denial of medical assistance on unjust ground was held to be in violation of right to life under Article 21 and the State was directed to pay the compensation of Rs.25,000 to the petitioner and requisite directions were issued by this Court. The State cannot avoid its constitutional obligation in that regard on account of financial constraints and was directed to allocate funds for providing adequate medical infrastructure.

68. *In our opinion, the State can also impose such obligation when the government land is held by such hospitals and it is the constitutional obligation imposed upon such hospitals. Under Article 47, State has to make constant endeavor to raise the level of nutrition and the standard of living and to improve public health. It is also one of the fundamental duties enshrined in Article 51-A(h) to develop the scientific temper, humanism and the spirit of inquiry and reform. It would be inhuman to deny a person who is not having sufficient means or no means, the life-saving treatment, simply on the ground that he is not having enough money. Due to financial reasons, if treatment is refused, it would be against the very basic tenets of the medical profession and the concept of charity in whatever form we envisage the same, besides being unconstitutional would be violative of basic human rights. In our opinion, when the State largesse is being enjoyed by these hospitals in the form of land beside it is their obligation by the very nature of the medical services to extend the reciprocal obligation to the public by providing free treatment as envisaged in the impugned order. In case they want to wriggle out of it and not to comply with it, they have to surrender the land and orge out the benefit which they have received by virtue of holding the government land in an aforesaid manner."*

27 *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37

[9] Coming to the present case, we find that on the basis of the admitted pleadings by the petitioner as well as the State, the learned Single Judge has clearly held that there is no material filed by the State to show that proper and adequate medical treatment was given to the injured person at the Thoubal District Hospital, Thoubal and JNIMS Hospital. The findings are at paragraph 20 and 21. In the absence of material to contradict the said finding which stands un rebutted. The plea of the State that non availability of the

ambulance and non availability of the CT scan is not a ground for compensation has to be rejected in the light of the decisions of the Supreme Court which have clearly emphasized the role of the State in providing adequate medical care.

[10] In view of the undisputed fact of lack of adequate medical facility at the Thoubal District Hospital, Thoubal as well as the JNIMS which the State failed to provide we have no hesitation to hold that the learned Single Judge was justified in granting the relief sought for by the respondent/writ petitioner. No other plea was argued by the learned Advocate General. We find no merit in the appeal and accordingly, the same is dismissed.

JUDGE

CHIEF JUSTICE

FR/NFR

Sushil