

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.9594 of 2017
(Through hybrid mode)**

Shriya Chhanchan

....

Petitioner

Mr. Arjuna Ch. Behera, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Sailaja Nanda Das, Advocate
(Additional Standing Counsel)

CORAM: JUSTICE ARINDAM SINHA

**ORDER
24.06.2022**

Order No.

07. 1. Mr. Behera, learned advocate appears on behalf of petitioner and submits, his client underwent sterilization procedure conducted by the State. In spite thereof, she conceived and delivered a child. She is in involved financial condition, unable to meet expenses of the child and hence has claimed compensation. The sterilization procedure was undertaken by petitioner on 2nd January, 2014.

2. On earlier date of hearing Mr. Behera had relied on Standards for Female and Male Sterilization Services issued in October, 2006 by Research Studies and Standards Division, Ministry of Health and Family Welfare, Government of India. Under Standards for Female sterilization there is sub-heading 1.4.2 on Clinical Assessment and Screening of Clients, to be made

prior to the operation. Clause-b under the sub-heading has entry-v, which says as under.

“Menstrual history: Date of last menstrual period and current pregnancy status.”

He submits, this procedure must have been followed before the operation. Having done that State cannot turn around and say that the child was born on a full term delivery, to allege that his client was pregnant at the time sterilization operation was done. He relies on manual for family planning indemnity scheme issued in October, 2013 by Family Planning Division, Ministry of Health and Family Welfare, Government of India, in which available benefit include and provide for limit of Rs.30,000/- cover on failure of sterilization.

3. Mr. Das, learned advocate, Additional Standing Counsel appears on behalf of State. He submits, clinical assessment and screening of petitioner revealed that she had her last menstrual cycle on 22nd December, 2013. The sterilization operation was conducted, as aforesaid, on 2nd January, 2014. On query from Court he submits, there is no record regarding current pregnancy status as on date of sterilization operation.

4. Mr. Das submits, petitioner did not follow up after the sterilization operation. She had given undertaken that if she missed her menstrual cycle immediately after the operation, she was to report to the clinic and, in the

circumstances, obtain Medical Termination of Pregnancy (MTP). Not having done so, petitioner now cannot allege failure of the procedure nor claim compensation. Mr. Behera in reply refers to paragraphs 4 in the petition, in which, inter alia, following has been stated.

“That is submitted that after the sterilization the petitioner felt herself uneasy and went to the hospital opp. Party the No.5 in where the said opp. Party No.5 examined the petitioner and suggested to take rest for some days. Though the petitioner disclosed before him regarding stoppage of her regular menstruation cycle. ”

On behalf of State counter has been filed. Paragraph 6 from the counter is reproduced below.

“ 6. That the averments made in Para-4 of the writ petition are not correct. As ascertain from O.P. No.5 this deponent humbly submits that the allegations made by petitioner in this para are all false and fabricated.”

5. There appears to have been omission by the State in obtaining current pregnancy status before conducting sterilization operation on petitioner. Furthermore, paragraph 6 in the counter is not a specific denial on averments made by petitioner in paragraph 4 of the petition. The counter has been affirmed as an affidavit by Chief District Medical Officer. The vague denial in paragraph 6 on behalf of the doctor is insufficient basis to disbelieve petitioner's averments in paragraph 4.

6. State not having itself followed the procedure to the letter cannot turn around and say that petitioner had omitted to act as per undertaking given by her, to report that she missed menstrual cycle after the operation. As aforesaid analysis of pleadings in paragraphs 4 and 6, respectively of the petition and counter, do not support this contention of State.

7. It appears, the sterilization operation resulted in failure to prevent the pregnancy. Petitioner is entitled to compensation at par with limit of aforesaid indemnity of Rs.30,000/-. Petitioner will also get cost of Rs.20,000/-. The compensation and cost are to be paid within three week of communication. Court expects, the money will be spent by petitioner for benefit of the child.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant