



Udeni Renuka Gunwardena v. Dr. Gurugue L. Wimalasiri and others

S.C. (Special) No. 69/1999

Country: Sri Lanka

Region: Asia

Year: 2004

Court: Supreme Court

Health Topics: Health care and health services, Health information, Hospitals, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment

Facts

The Petitioner, the mother of twins who gave birth after a Caesarian operation, conceived for the second time after six years. The Respondent was the Consultant Visiting Obstetrician and Gynecologist of the Kandy General Hospital.

She received antenatal care at Hikkaduwa and later went to her sister's house in Kundasale. However before visiting her sister she had consulted the Respondent in the Kandy General Hospital.

The Petitioner claimed that the Respondent had refused to admit her to the Kandy General Hospital as she did not fulfill the required regulations. According to the regulations a patient must be admitted to a government hospital situated in the area where the patient attended clinics. She further claimed that the Respondent had agreed to treat her at a private hospital for a lesser sum. The Respondent claimed that she did not produce any pregnancy record or referral letter.

Allegedly, the date of her last menstrual period and the expected date of delivery were altered, in the note from the Doctor at Hikkaduwa. She was admitted to the Kandy general hospital. The Petitioner alleged that upon seeing her, the Respondent recalling her earlier refusal, ripped the saline tubes off and had ordered the Petitioner to walk back to the Ward. The next day the Respondent had shouted at the Petitioner, flung the documents at her and gone away.

When the Petitioner's husband was informed of the series of events that had taken place, he had made a brief note on the bed-head ticket of the Petitioner and had her discharged. She was later admitted to a private hospital in Kandy. However, the bed-head ticket did not contain the note made by the Petitioner's husband or any reference to her discharge. The baby was delivered in the private hospital following a Caesarian operation.

The Petitioner claimed that her fundamental right to equality under Article 12 of the Constitution had been violated on the grounds that she was denied treatment at the Kandy General Hospital. She claimed to have been neglected in her serious condition. She further claimed that Article 11 of the Constitution, which ensures freedom from cruel, inhuman and degrading treatment, was also violated.

The Respondent denied the charges leveled against him, claiming the baby was only due on a date later than that indicated in the official records, which were suspected to have been tampered with.

Decision and Reasoning

The Court concluded that the Petitioners' fundamental rights had not been violated, as she had not been denied medical treatment on the facts.

In reaching its decision, the Court took into consideration affidavits submitted by hospital employees confirming that the Petitioner showed no signs of onset labour, and that there was therefore no medical reason to undertake the Caesarian section procedure on her at that particular time. The affidavits also confirmed that the Respondent did not rip the saline tubes and throw documents at the Petitioner. The Court

found that, as the Petitioner had wanted a Caesarian section rather than a vaginal delivery, there was a likelihood that the Petitioner had altered the details of her medical history record to obtain a free Caesarian section she would not otherwise qualify for.

The Court held that there was no need to provide the Petitioner with a Caesarian section operation at that time. It considered that the Petitioner could have resorted to a normal delivery at the public hospital and that both the doctor at the private hospital and the Petitioner chose to undertake the Caesarian section for "selfish reasons". The affidavit produced by the doctor at the private hospital confirmed that the Petitioner was frightened of labour pains and preferred the induced delivery of the baby than allow a normal delivery.

The Court also considered that the Petitioner's complaint of scar tenderness over the earlier Caesarian section scar did not indicate the possibility of a uterine rupture that would have necessitated a forced delivery. Based on the affidavit by the Doctor who delivered the baby, the Court affirmed there was no scar tenderness even though the Petitioner was seemingly "interested in projecting a contrary view point." Several medical officers stated that even though the Petitioner complained of abdominal pain, there was no risk of uterine rupture, as there was no bleeding, she was regularly checked, and the reported tenderness was at best mild.

In light of this finding, even if the incident involving the ripping of the saline tubes had taken place and the Petitioner had been turned out of the hospital, which the Court doubted, the Petitioner was not in a "serious" condition that would cause her to be in any danger. The Petitioner would have suffered only mild discomfort from the removal of the tubes. Further, the medical records showed that the Petitioner had received routine treatment that morning, and contained notes that the Petitioner's discharge was against her doctor's advice, casting additional doubt on the assertion that the public hospital had denied treatment to the petitioner.

Decision Excerpts

"There is no reason to believe in this case that if the Petitioner had been permitted to reach the normal onset of labour she would not have had a normal delivery. It appears that selfish reason on the part of both the Doctor and the patient prompted induced delivery rather than any adverse conditions in the patient." Para. 11.

"In my view, it is more probable that, as averred by the 1st Respondent, that the Petitioner wanted a Caesarian section rather than a normal delivery, and had tried to manipulate details of her history to persuade the 1st Respondent to perform caesarian section at the Kandy Hospital (free of charge), which he refused. When this failed she had got herself admitted to a private nursing home where rules governing Caesarian section seem to have been less strict." Para. 19.

