



Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors

[2010] INDLHC 2983

Country: India

Region: Asia

Year: 2010

Court: High Court - Delhi

Health Topics: Child and adolescent health, Diet and nutrition, Health care and health services, Health systems and financing, Hospitals, Poverty, Sexual and reproductive health

Human Rights: Right to food, Right to health, Right to life

Facts

This case deals with two petitions, Laxmi Mandal v. Deen Dayal Hari Nagar Hospital and Jaitun v. Maternity Home, MCD, Jungpura. Shanti Devi, Laxmi Mandal's (the Petitioner) sister, died shortly after giving birth to a premature baby. This was her sixth pregnancy. The previous pregnancy ended in miscarriage. Shanti Devi was not provided with any benefit of the schemes during that pregnancy either. The primary cause of her death was postpartum hemorrhage due to retained placenta. No assistance was given to her by the hospitals since she did not have a (BPL) card and therefore not eligible for the relevant schemes. In the second case, Jaitun's (the Petitioner) daughter gave birth to a baby in full view without any access to health care during her pregnancy and negligible care was provided to her after she gave birth.

Both the women and their children were entitled to benefits under many central schemes put in place to assist poor women during and after the pregnancy, such as the Janani Suraksha Yojana (JSY), National Maternity Benefit Scheme (NMBS), Integrated Child Development Scheme (ICDS), etc. In short, the schemes were aimed at improving maternal and child health including by providing food and nutrition to the mother and child alike. The petitions resulted from the "systemic failure resulting in denial of benefits to two mothers below the poverty line (BPL) during their pregnancy and immediately thereafter."

The petitions were filed in the Delhi High Court under Article 226 of the Constitution (original jurisdiction of High Courts). The issues to be decided by the High Court were about the "protection and enforcement of the basic, fundamental and human right to life under Article 21 of the Constitution."

Decision and Reasoning

On the importance of schemes floated by the State, the Court held that these schemes must be implemented properly including those dealt with in these petitions. The Court placed reliance on PUCL v. Union of India, (2009(6) SCR 812), (PUCL) and held that the schemes demonstrated the "indivisibility of human rights as enshrined in the Constitution of India." The Court also held that these schemes were a response by the state in keeping with its constitutionally envisaged role of a welfare state.

On the issue of quality of service provided, the Court held that the schemes were not being implemented properly by either the state or the central government. It further held that there was a "complete failure" of the scheme and the referral system. The Court held that even though the schemes were implemented under the National Rural Health Mission, a "poor person who is sent to a private hospital cannot be assured of quality and timely health services." The Court held that the primary function of public health services "no woman should be denied treatment at any stage irrespective of her social and economic background." The Court also held that cash assistance under JSY and NMBS were exclusive of each other and that assistance under NMBS or any other scheme should be continued irrespective of the number of births.

As to the right to health under the Constitution, the Court held that the right to health has been established as an integral part of the right to life under Article 21 of the Constitution of India. Placing reliance on PUCL, the Court held that the right to health, reproductive health and right to food of mothers and children were encompassed within the ambit of the fundamental right to life.

Regarding the right to health of the mother and child under international law, the Court referred to India's international law obligation including Article 25 of the Universal Declaration of Human Rights (right to health), Article 24 of the Convention on the Rights of the Child (right to health of a child) and Article 12 of the

Convention against Elimination of Discrimination against Women (duty of state to eliminate discrimination against women in healthcare and the right to health of pregnant women). The Court also held that India was bound by its international obligations unless they were contrary to domestic law. It also held that the above mentioned conventions were binding on India as per the Protection of Human Rights Act, 1993.

As to compensation for deficiency in service, the Court held that none of the schemes provided for compensation of any kind for losses suffered by beneficiaries or their family. It, therefore, directed the state to provide compensation to Shanti Devi's family by way of reimbursement, scholarships for the baby. The Court directed the state to release Rs. 2.4 Lakhs for Shanti Devi's husband and each of her children. The Court also directed the state to provide Fatima and her baby with all the benefits they were entitled to under the scheme. It also directed the Court to provide scholarships for the baby and to pay compensation of Rs. 50,000 to Fatima for the violation of her fundamental rights in giving birth under a tree.

Decision Excerpts

The right to health would include the right to access government (public) health facilities and receive a minimum standard of treatment and care. In particular this would include the enforcement of the reproductive rights of the mother and the right to nutrition and medical care of the newly born child and continuously thereafter till the age of about six years. The other facet is the right to food which is seen as integral to the right to life and right to health. Para. 19.

The orders in the PUCL Case implicitly recognize and enforce the fundamental right to life under Article 21 of the Constitution of the child and the mother. This includes the right to health, reproductive health and the right to food. In effect, the Supreme Court has spelt out what the minimum core of the right to health and food is, and also spelt out, consistent with international human rights law, the obligations of conduct and the obligations of result of the Union of India, the States and the UTs. Para. 27.