



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 8155/2016

Phoolmati W/o Shri Avdhesh

-----Petitioner

Versus

1. The State of Rajasthan through Principal Health Secretary, Government of Rajasthan, Government Secretariat, Jaipur (Rajasthan).
2. Director, Child Health, Directorate of Medical Health Services, Swasthaya Bhawan, Tilak Marg, Jaipur (Rajasthan).
3. Chief Medical and Health Officer, Bharatpur, District Bharatpur (Rajasthan).
4. Chief Medical and Health Officer, Alwar, District Alwar (Rajasthan).
5. Govt.Community Health Centre (CHC), Khedli, District Alwar through its head.
6. Govt.Mahila Zila Hospital, Bharatpur through its head.
7. Union of India through its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi – 110 108.

-----Respondent

For Petitioner(s) : Mr.Sudhindra Kumawat, Advocate.
For Respondent(s) : Mr.R.D.Rastogi, Addl.Socilitor General
assisted by Mr.C.S.Sinha, Advocate
for UOI.
Mr.Bharat Saini, Addl.Govt.Counsel
for the State.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 12/02/2024
PRONOUNCED ON : 20/02/2024

Order

REPORTABLE



**“Sarve Bhavantu Sukhinah
Sarve Santu Nirāmayāh
Sarve Bhadrāni Pashayantu
Maa Kaschiddukhbhāg Bharete”**

It is believed worldwide that the above verse belongs to Brihadaranyaka Upanishad. The above Shalokā means:-

**May all be prosperous and happy,
May all be free from infirmities and illness.
May all see good,
May no one suffer in any way.**

But the above verse of **Upanishad** has been grossly violated in this case. The instant case is a classic example of death of humanity on the part of the erring officials of the respondents.

1. A heart breaking, nerve cracking, conscious shocking and society rocking, tragic, pathetic incident occurred when the welfare State and the Union of India failed to discharge their duties and the petitioner was forced to deliver twin children in the middle of the road in the market on 07.04.2016 and due to reckless and negligent behaviour of the officials of the staff posted at the Community Health Centre (for short “the CHC”) at Khedli, District Alwar, the newly born twin children lost their life in absence of required urgent medical attention. This incident shows death of humanity.

2. On the fateful day i.e. on 07.04.2016, the petitioner suffered labour pain and she was taken to the CHC, Khedli. The staff posted there asked her about the ‘MAMTA Card’ for providing



treatment to her but in absence of the same, the treatment was not provided to her. Only certain medicines were prescribed on a paper and that too was not provided to her at the CHC. Under these compelling circumstances, husband of the petitioner brought the medicines from the shop situated outside the CHC. In the meantime, labour pain of the petitioner was increased and no one provided her the required medical attention, hence, the petitioner had to leave the premises of the CHC. In absence of any transport facility, the pregnant petitioner had to walk towards bus stop and while crossing the road, the pain of the petitioner became unbearable & intolerable and she delivered twin children in the middle of the road in the market at around 11:30 AM. Upon seeing the heart breaking incident, the women present nearby gathered there and covered the whole tragic scene by sarees, dupattas and bed-sheets. Immediately, thereafter the petitioner and her newly born twin children were taken to the CHC, Khedli but looking to their critical condition, they were referred to the higher centre i.e. Mahila Zanana Hospital, Bharatpur. One child died on the way to the hospital and another child was admitted to the hospital but a huge amount of money was demanded from the family members of the petitioner, which they could not be able to arrange and around 11:00 PM the second child of the petitioner also died for want of medical attention and required treatment.

3. In spite of having several schemes like Janani Suraksha Yojna (JSY), Pradhan Mantari Surakshit Matritva Abhiyan (PMSMA) and Janani Shishu Suraksha Karyakaram (JSSK), etc., the



petitioner did not get free treatment, medicines and unfortunately she lost her newly born twin children due to grave negligent act of the respondents. Hence, under these circumstances, the petitioner has been compelled to knock the doors of this Court by way of filing this writ petition, invoking the extra-ordinary jurisdiction of this Court, contained under Article 226 of the Constitution of India, with the following prayer:-

"It is therefore, most humbly and respectfully prayed that Hon'ble Court may kindly be pleased to call for the entire record pertaining to the case and further be pleased:-

1. By issuing an appropriate writ, order or direction in the nature thereof directing the Respondents to ensure effective implementation of the Janani Shishu Suraksha Karyakaram (JSSK) and Janani Suraksha Yojana (JSY) as also ensure safe institutional deliveries because due to untimely medical attention petitioner had to deliver her twins on road in middle of the market and both of her new born have died.
2. Respondents be directed to take appropriate action against the guilty persons in order to ensure that these kinds of medical negligence do not happen and also pleased to conduct a detailed enquiry by constituting a high level committee into the matter and further pleased to take complete reformative steps to prosecute the responsible persons.
3. By issue an appropriate writ, order or direction in the nature thereof directing the Respondents to compensate the petitioner with an amount of Rs.2 lakhs for infant death of her each newborn child.
4. Respondents be directed to reimburse the petitioner with an amount of Rs.25000 for any expenditure incurred in violation of the JSSK and JSY scheme.
5. Respondents be directed to strictly monitor the working of ASHAs and ANMs at the brick kilns as also monitoring for registering the pregnant women at their nearest Anganwadi Centre.
6. Respondents be directed to make special provisions for migrant workers, especially brick kiln workers to



receive free health care services by the Government health facilities without hassles as also to ensure the proper implementation of Indian Public Health Standards and spread awareness about JSSK and JSY scheme.

Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of the present case may kindly be passed in favour of the petitioner."

4. By way of filing this petition, the petitioner is seeking directions against the respondents for effective implementation of the JSSK and JSY Schemes and conducting enquiry against the delinquents and payment of compensation of Rs.2 Lakhs for the death of each newborn baby.

5. Clusters of Schemes i.e. National Maternity Benefit Scheme (NMBS), National Family Benefit Scheme (NFBS), National Rural Health Mission (NRHM), Janani Suraksha Yojna (JSY), Janani Shishu Suraksha Karyakaram (JSSK), etc. are framed and funded by the Government of India and the same are meant to reduce infant and maternal mortality. Following Schemes have been formulated by the Government of India and the Government of Rajasthan for reducing maternal and infant mortality:-

“(i) **Janani Surksha Yojna (JSY)**

The Janani Suraksha Yojana (JSY) is a centrally sponsored Scheme which is being implemented with the objective of reducing maternal and infant mortality by promoting institutional delivery among pregnant women. Under the JSY, eligible pregnant women are entitled for cash assistance irrespective of the age of mother and number of children for giving birth in a government or accredited private health facility.



The scheme focuses on poor pregnant woman with a special dispensation for states that have low institutional delivery rates, namely, the states of Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Odisha, and Jammu and Kashmir. While these States have been named Low Performing States (LPS) under the scheme, the remaining States/UTs have been named High Performing States (HPS).

The scheme also provides performance based incentives to women health volunteers known as ASHA (Accredited Social Health Activist) for promoting institutional delivery among pregnant women.

Cash entitlement for different categories of mothers is as follows:

Cash Assistance for Institutional Delivery (in Rs.)

| Category | Rural Area | | Urban Area | |
|----------|------------------|-----------------|------------------|-----------------|
| | Mother's package | ASHA's package* | Mother's package | ASHA's package* |
| LPS | 1400 | 600 | 1000 | 400 |
| HPS | 700 | 600 | 600 | 400 |

Cash assistance for home delivery

BPL pregnant women, who prefer to deliver at home, are entitled to a cash assistance of Rs. 500 per delivery regardless of the age of pregnant women and number of children.

(ii) **Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA)**

- Pradhan Mantri Surakshit Matritva Abhiyan has been launched by the Ministry of Health and Family Welfare, Government of India aiming to provide assured, comprehensive and quality antenatal, free of cost to all pregnant women on the ninth of every month.
- PMSMA guarantees a minimum package of antenatal services to women in their second/third trimesters at government health facilities
- The program was launched to lower the Maternal Mortality Ratio (MMR)
- The program is based on the premise that if ever pregnant women in India is examined by a physician and appropriately investigated at least once and then appropriately followed up the



process can result in reduction of maternal and neonatal deaths in the country.

- It is done on every ninth day of the month in both urban and rural areas
- To stickers are issued for condition and risk factors in no risk (Green Sticker) and high risk pregnancy (red sticker).
- A national portal for PMSMA and mobile application have been developed for easy excess.

(iii) **Pradhan Mantri Matru Vandhana Yojna (PMMVY)** (earlier known as conditional maternity benefit- Indra Gandhi MatritvaSahyog Yojna)

- This is a cash incentive policy wherein rupees 5,000/- in three installments is paid directly to pregnant women and lactating mothers for first living child of the family.
- The scheme partially compensated for the wage loss to the women so that they can take adequate rest before and after delivery.
- The scheme sharing pattern center and state is 60:40

(iv) **Janani Shishu Suraksha Karyakram (JSSK)**

Janani Shishu Suraksha Karyakaram (JSSK) has been launched with the objective to eliminate out of pocket expenses for both pregnant women and sick infants accessing public health institution for treatment.

The initiative was estimated to benefit more than 1 crore pregnant women access public health institutions every year in both urban and rural areas.

Entitlements for Pregnant Women under JSSK:

Free and zero expense Delivery and Cesarean Section.

Free Drugs and Consumables.

Free Essential Diagnostics (Blood, Urine tests and Ultra sonography etc.)

Free Diet during stay in the health institutions (up to 3 days for normal delivery and 7 days for cesarean section)

Free Provision of Blood.

Free Transport from Home to Health institutions.

Free Transport between facilities in case of referral.

Drop Back from institutions to home after 48 hrs stay.





Exemption from all kinds of User Charges.

Entitlements for Sick infants under JSSK till one year after birth:

Free and zero expense treatment.

Free Drugs and Consumables.

Free Diagnostics.

Free Provision of Blood.

Free Transport from Home to Health institutions.

Free Transport between facilities in case of referral.

Drop back from institutions to home.

Exemption from all kinds of user chargers.

(v) **Indira Gandhi Matritva Poshan Yojna (IGMPY)**

The IGMPY is a conditional cash transfer scheme in the five most vulnerable districts in Rajasthan ie for Udaipur, Pratapgarh, Bhilwara, Banswara and Dugarpur.

The Scheme Provides Financial Assistance of Rs. 6,000/- in 5 Instalments are provided to Pregnant Women with Second Child under Indira Gandhi Matritva Poshan Yojana :-

| Instalments | Stage | Amount |
|---------------------|--|-------------|
| First | At the Time of first Anti Natal Checkups. | Rs. 1000/- |
| Second | Upon Completion of 2 Anti natal Checkups. (Within 6 Months) | Rs.1000/- |
| Third | At the time of Child Birth. (In Hospital) | Rs.1000/- |
| Fourth | Upon Completion of all Vaccine to Child | Rs.2000/- |
| Fifth | On taking Permanent Family Planning | Rs.1000/- |
| Total Amount | | Rs. 6,000/- |

(vi) **Rajasthan Janani-Shishu Suraksha Yojna (RJSSY)**

The state formulated and implemented scheme Assures NIL out of pocket expenses in all Government Health Institution for pregnant women and new born.

Entitlements for Pregnant Women

Free delivery Free caesarian section Free drugs & consumables Free diagnostics (Blood, Urine tests & Ultra





sonography etc.) Free diet during stay (up to 3days for normal delivery & 7 days) Free provision of blood Free transport from home to health institutions, between health institutions in case of referrals and drop back home Exemption from all kinds of user charges

Entitlements for Sick Newborn till 30 days after birth

Free and zero expense treatment Free drugs & consumables Free diagnostics Free provision of blood Free transport from home to the health institutions, between health institutions in case of referrals and drop back home Exemption from all kinds of user charges."

6. In spite of having the aforementioned several beneficial Scheme for the welfare of pregnant females and infants, the respondents have miserably failed to discharge their duties in providing the benefits of these Schemes to the petitioner and her newly born infants. On account of gross and unwarranted act of the officials of the respondents, the petitioner has been made to suffer and she has lost her two newly born babies.

7. Right to life under Article 21 of the Constitution of India (hereinafter shall be referred to as "the Constitution") includes the right to lead a dignified and meaningful life and right to health is an integral facet of this right. In **C.E.S.C. Ltd. & Ors. Vs. Subhash Chandra Bose & Ors.** reported in **(1992) 1 SCC 441**, while dealing with right to health of workers, it was held by the Hon'ble Apex Court that right to health must be considered as an aspect of social justice inferred by not only Article 21 of the Constitution but also the Directive Principles of State Policy and International Conventions to which India was a party.



8. Similarly, the bare minimum obligation of the State is to ensure the preservation of the right to life and health, as the right to health is an integral part of right to life.

9. In **Bandhua Mukti Morcha Vs. UOI & Ors.** reported in **(1984) 3 SCC 161**, the Hon'ble Supreme Court underlined the obligation of the State to ensure that the fundamental rights of the weaker section of the society are not exploited owing to their position in the society.

10. But, in the present case, this right of the petitioner has been grossly violated by the respondents merely because she belongs to the weaker section of the society and she was working in a brick kiln at the relevant time when this unfortunate incident has occurred.

11. The right to health forming an inalienable component of the right to life under Article 21 of the Constitution has been settled in two important decisions of the Supreme Court: **Pt.Parmanand Katara Vs. Union of India** reported in **(1989) 4 SCC 286** and **Paschim Banga Khet Majoor Samiti v. State of West Bengal** reported in **(1996) 4 SCC 37**. The orders in the case of **PUCL Vs. UOI** in **WP (C) No.196/2001** are a continuation of the efforts of the Supreme Court at protecting and enforcing the right to health of the mother and the child and underscoring the inter-relatedness of those rights with the right to food. This is consistent with the international human rights law which is briefly discussed hereafter.



12. Article 25 of the Universal Declaration of Human Rights, which is considered as having the force of customary international law, declares:

"Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

13. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by India, spells out in greater detail the various facets of the broad right to health. Articles 10 and 12 of the ICESCR which are relevant in this context, read as under:

"Article 10

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their





morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

14. The Committee on Economic Social and Cultural Rights has in its General Comment No. 14 of 2000 on the right to health under the ICESCR explained the scope of the rights as under:

"8. The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health....

11. The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right





extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels....

14. "The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (Art. 12.2 (a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information."

15. The reproductive rights of women have been accorded recognition, and the obligations of States have been spelt out in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which is another international convention ratified by India. The relevant provisions of the CEDAW in this context are:

"Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14





1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."



16. The Child Rights Convention (CRC) which has also been ratified by India delineates the rights of the newly born and the young child thus:

"Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in





the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements."

17. International human rights norms as contained in the Conventions which have been ratified by India are binding on India to the extent they are not inconsistent with the domestic law norms. The Protection of Human Rights Act, 1993 (PHRA) recognises that the above Conventions are now part of the Indian human rights law. Section 2(d) PHRA defines "human rights" to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India" and under Section 2(f) PHRA "International Covenants" means "the International Covenant on Civil and Political Rights and the





International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966.

18. In spite of recognizing the right to health as right to life under Article 21 of the Constitution, the respondents have failed to discharge their obligations and provide the benefits of the above beneficial Schemes to the petitioner and her two infant children, who lost their lives due to gross negligent act of the officials of the respondents and forced the petitioner to suffer such a grave physical and mental agony which cannot be compensated in any terms.

19. For the name sake, an enquiry was conducted by the Chief Medical and Health Officer (CMHO), Alwar and negligence of two nursing staff namely Smt.Mitilesh and Dhannalal and one Dr.Ramavtar Bansal was found vide Enquiry Reports dated 13.04.2016 and 18.05.2017 and the same were forwarded to the Joint Director, Medical and Health, Jaipur (Zone), Jaipur for necessary action. But no documents have been placed on the record to show as to whether any action has been taken against the delinquent persons who are/were responsible for the unfortunate incident occurred on 07.04.2016. Such inaction on the part of the respondents is liable to be deprecated and Departmental Enquiry is required to be undertaken against each and every delinquent persons strictly in accordance with law after providing them adequate opportunity of hearing and appropriate orders be passed accordingly.



20. Our Constitution envisages the establishment of a welfare state at the Federal Level as well as 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 Community Health Centres which provide medical care to the persons seeking to avail these facilities. Article 21 of the Constitution imposes an obligation on the part of the State to provide a safeguard for right to life of every person. Preservation of human life is of paramount importance of every welfare state. The Government Hospitals run by the State and the Medical Officers and the Staff employed therein are duty bound to extend medical assistance for preserving human life in all possible manner. Failure on the part of a Government Hospital and the Staff deputed therein to provide timely medical treatment to a person, who is in need thereof, results in gross violation of his/her right to life guaranteed under Article 21 of the Constitution. Here in the instant case, this right to life of the petitioner and her newly born infant babies has been grossly violated by the respondents as they have miserably failed to give effective implementation of these beneficial Schemes which are meant to save pregnant women and infants from mortality.

21. In spite of formulating several Schemes for the welfare of the pregnant females and their infants, the Government of India is



escaping itself from its liability only on a technical count that 'Health' is a subject of 'State List' and the same does not fall in the 'Union List' and 'Concurrent List' enumerated in Schedule-VII of the Constitution of India. Right to Health is a national campaign initiated by the Government of India under its various beneficial Schemes over the last so many decades. Therefore, the responsibility for maintaining good health must rest squarely on the shoulders of the Union of India. It is for this reason that the Union of India has been taking so much interest in promoting it and has been spending huge amount over the years in encouraging it. It is rather unfortunate that now the Union of India is treating the subject 'Health' as a public health issue and making it the concern of the State Governments. This is simply not permissible and appears to be a case of passing the buck.

22. When the Union of India formulates Schemes of the national importance such as Janani Suraksha Yojna (JSY), Janani Shishu Suraksha Karyakram (JSSY), Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA), Pradhan Mantri Matru Vandhana Yojna (PMMVY), Indira Gandhi Matritva Poshan Yojna (IGMPY), etc., their implementation undoubtedly depends on the State Governments since they have the requisite mechanism for implementing the Schemes and can also take into account the needs that are particular to the State and its people. In this manner, the cooperation of the Union of India and the State Government is indispensable to the success of such national programmes.



23. In the same manner, it is important for both the Union of India and the State Governments to implement the Schemes announced by the Union of India in a manner that respects the fundamental rights of the beneficiaries of the Schemes. In the given structure of cooperative federalism, the Union of India cannot confine its obligation to mere enactment of a Scheme without ensuring its realization and implementation.

24. Medical profession is a very respectable profession. Doctors and medical staff, posted at a hospital, are looked upon by a common man as the only hope & as a face of God, when a person is hanging between life and death. There can be no second opinion that preservation of human life is of paramount consideration. This is so on account of the fact that once life is lost, the *status quo ante* cannot be restored as resurrection is beyond the capacity of man.

25. Article 21 of the Constitution of India casts an obligation on the State to preserve life of its people. The provision, as explained by this Court as well as by the Hon'ble Apex Court in scores of decisions, has emphasised and reiterated with gradually increasing emphasis that position. The Doctors and the medical staff, posted at the hospital, have been positioned to meet this State obligation, therefore, are duty bound to extend the medical assistance for preserving life. Every Doctor and medical staff, whether at a Government Hospital or otherwise, have the professional obligation to extend their services with due expertise for protecting life. No law or State action can intervene to avoid/delay



the discharge of the paramount obligation, casted upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained.

26. In utter violation of the fundamental right of leading a healthy life, the petitioner was compelled by the respondents to give birth to twin children in middle of a market road, which highlights a situation of gross negligence and failure on the part of the respondents in discharging their duties and providing the bare minimum benefits of the various Schemes i.e. JSY, JSSY, etc. to the petitioner. Therefore, on account of denial to provide the minimum benefits of the aforementioned Schemes to the petitioner, the Union of India and the State Government would be jointly and severely liable to pay her compensation in the sum of Rs.4 Lakhs within a period of three months. The said amount will be deposited in a Fixed Deposit in the name of the petitioner for a period of three years in an account to be opened in a nearby Nationalized Bank with the facility of transferring the interest accrued thereon every quarter to her savings account which can be withdrawn by her. The petitioner would also be able to encash the Fixed Deposit only after the completion of the period of three years.

27. This Court notices that there are several shortcomings in the various Schemes of the Union of India and the Government of Rajasthan and the same are liable to be rectified and addressed at



their own level by taking appropriate and adequate steps by constituting a Joint High Powered Committee. Hence, the following directions are issued to the respondents:-

- (i) These Schemes like JSY, JSSK, PMSMA, PMMVY, IGMPY and RJSSY are not widely circulated in the public domain and the common people at large are not aware of the benefits of these Schemes. Therefore, the respondents are directed to advertise these Schemes in public places commonly used by the public at large by putting hoardings, posters and banners. Awareness about the above Schemes for the pregnant females through television, radio, newspapers, social media, etc. should be widely circulated. Effective implementation of these Schemes would save the women and infants from mortality.
- (ii) The cash amount given to the pregnant females before and after delivery is quite inadequate, looking to current dearness and the same is liable to be increased by the respondents by taking a policy decision.
- (iii) The respondents are directed to ensure that the benefits of the various Schemes like JSY, JSSK, PMSMA, PMMVY, IGMPY and RJSSY are not denied to the beneficiaries and the assistance is provided promptly at the nearest point it can be accessed.
- (iv) The Health Department of the Union of India and the Government of Rajasthan will devise the formats of registers to be maintained by the Medical Officers and Nursing Staff posted in the Government Hospitals, CHCs and various Health Centres, who are supervising the work of the above Schemes. Each Medical Officer and Nursing Staff and other officials would maintain a proper log book of all the pregnant females and have a check-list of the various benefits to be given in terms of the services guaranteed by JSY, JSSK,



PMSMA, PMMVY, IGMPY, RJSSY and NRHM including ante natal care, child health and family planning.

- (v) Every nursing and other staff will report to the Medical Officer, if any beneficiary is declining the assistance provided or refusing to take medicines or is reluctant to go in for institutional delivery and a record be maintained in this regard and necessary medical assistance be provided to the beneficiary as and when required.
- (vi) A review be undertaken of the issuance of any Medical Cards getting the benefits of these Scheme and it should be ensured that every eligible person/family/child is granted the benefits of such Medical Cards.
- (vii) Special (Dedicated) Cells be set up within the Health Department of the Central and State Government for monitoring the implementation of the Schemes on a regular basis.
- (viii) Mobile Apps for immediate assistance of pregnant females should be introduced and effectively maintained. The Medical Officers, Nursing Staff and other Staffs posted in the Hospitals and Health Centres ought to be sensitised by proper and adequate training to take special care of pregnant females before and after their delivery. These staff members should be directed to apprise all pregnant females about the benefits of these Schemes.
- (ix) The Government of India as well as the Government of Rajasthan on their part will immediately issue corrective directions in relation to increase of cash amount to the beneficiaries of the various Schemes.
- (x) The respondents are directed to conclude the Departmental Enquiry against the delinquent persons in accordance with



law and pass appropriate order after affording them opportunity of hearing.

(xi) The respondents are further directed to pay compensation of Rs.4 Lakhs to the petitioner by way of depositing the same in Fixed Deposit and quarterly interest accrued thereon be paid to her.

28. The Secretary, Ministry of Health and Family Welfare, Government of India as well as the Chief Secretary of the State of Rajasthan is directed to constitute a Joint High Powered Committee including Secretary of the Department of Medical and Health of the Center as well as the State to make necessary amendments in the above Schemes of the Government for effective implementation of the same.

29. The respondents are directed to pay a cost of Rs.25,000/- to the petitioner within a period of three months from today and submit the payment of receipt on the record of this case.

30. The respondents would submit the affidavits by way of compliance with respect to above directions issued by this Court within three months from the date of receipt of the certificate copy of this order.

31. The instant writ petition stands disposed of with the above directions.

32. Stay application and all the applications (pending, if any) also stands disposed of.



33. Office is directed to send a copy of this order to the Secretary, Ministry of Health and Family Welfare, New Delhi and Chief Secretary of the State of Rajasthan for necessary action and compliance of this order.

(ANOOP KUMAR DHAND),J



Solanki DS, PS