

Gyanadutta Chouhan

....

Petitioner

In Person

-versus-

**The Additional Chief Secretary to
Government, Health and Family
Welfare Department**

....

Opposite Party

Mr. M.S. Sahoo

Additional Government Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE SAVITRI RATHO**

**ORDER
07.07.2021**

Order No.

04. 1. This matter is taken up by video conferencing mode.
2. A letter sent by e-mail to this Court on 23rd May, 2021 by the Petitioner who is a resident of Kendbahal in Bargarh District, Orissa highlighting, *inter alia*, the health crisis and Covid-19 mismanagement in western Orissa was registered as the present petition. In particular, the letter drew attention to the lack of proper medical facilities at the Veer Surendra Sai Institute of Medical Sciences and Research (VIMSAR), Burla, Sambalpur. It was alleged, *inter alia*, that the medical professionals and authorities in charge of VIMSAR's management had behaved irresponsibly and displayed insensitivity to the plight of the Covid-19 victims.

3. The Registrar (Judicial) of this Court, on the directions of this Court, served a copy of the letter and its enclosures on the Office of the Advocate General asking for the comments of the Government of Odisha. In response thereto, on 25th May 2021 the Additional Chief Secretary, Health and family Welfare department, Government of Odisha, sent a letter to the Collector & District Magistrate, Sambalpur, asking him to “make a discreet inquiry into the matter and furnish a report” to the Department by 28th May, 2021.

4. By an order dated 26th May, 2021, the Collector & District Magistrate, Sambalpur constituted a three-member Committee comprising the CDM & PHO, Sambalpur, the Commissioner Sambalpur Municipal Corporation (SMC) and the ADM, Revenue, Sambalpur to hold an inquiry and submit a report.

5. The aforesaid three-member Committee submitted a report on 26th May, 2021 itself where it was broadly stated that there was no shortage of medicine and no lack of proper treatment or facilities. By an order dated 2nd June, 2021, this Court directed that a copy of the said report be furnished to the Petitioner to enable him to make submissions on the next date.

6. Thereafter on 8th June, 2021 the following order was passed by this Court:

“1. This matter is taken up by video conferencing mode.

2. In response to the inquiry report submitted by the three Senior Medical Professionals, Mr. Chouhan

who appears in person states that he has filed a reply disputing their findings.

3. While a direction is issued to the Registry to place the said reply on record, it is important for the Petitioner, if he seeks to dispute the correctness of the inquiry report, to place on record the affidavits of at least five persons who have themselves or whose close relatives or friends have been victims of either medical negligence or lack of timely medical treatment during the relevant period of the second resurgence of the COVID-19 pandemic.

4. Mr. Chouhan states that he will try and file the affidavits before the next date and seeks some time.

5. At his request, list on 7th July, 2021.

6. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021."

7. Pursuant to the above directions, Mr. Gyanadutta Chouhan, the Petitioner in person, has filed nine affidavits of persons whose close relatives purportedly suffered on account of lack of proper or timely treatment at the Veer Surendra Sai Institute of Medical Sciences and Research (VIMSAR), Burla, Sambalpur during the Covid-19 pandemic.

8. The copies of the affidavits be made available to Mr. M.S. Sahoo, learned Additional Government Advocate and a second set be prepared for the Court's record.

9. At this stage, the Court would like to observe that each of the nine affidavits reveal prima facie that the victims did not receive the requisite medical treatment at VIMSAR and that needless deaths had occurred as a result thereof. These are only *prima facie* conclusions and the proof of the averments would require to be established by a proper inquiry and by giving VIMSAR an opportunity of presenting its version.

10. The issues raised in the letter of the Petitioner as well as the affidavits of the nine deponents raises serious questions involving the fundamental right to health which is an inherent part of right to life under Article 21 of the Constitution. VIMSAR is one of the premier medical institutions of the State catering to the medical needs of the population of western Odisha. It has to function in the manner befitting its status of providing the highest standard of care and treatment to everyone for that purpose.

11. While during COVID-19 times all resources were indeed stretched and many medical personnel and nursing staff went beyond the call of duty to render tireless service, it is entirely possible that there were lapses. Whether this was for the reasons beyond the control of the doctors, nurses and staff of VIMSAR and whether it was avoidable, can properly be established only in a detailed enquiry which should be held in an impartial manner to ensure that justice is done in accordance with law.

12. Considering that the deponents of the affidavits submitted are located in and around the districts of Bargarh, Jharsuguda and Sambalpur and had approached VIMSAR for treatment of their

relatives, the Court considers it appropriate to direct that an independent inquiry by a retired District Judge be held in Sambalpur itself to elicit the complete facts and submit a report to this Court on completion of such inquiry. Accordingly, the Court issues the following directions:

(i) Mr. A.B.S. Naidu, a former District Judge is appointed as Inquiry Officer to examine the instances set out in the nine affidavits filed in this Court by the Petitioner and in particular whether there was medical negligence in the treatment of the victims of those cases.

(ii) Registry is directed to provide a copy of the complete set of record of this writ petition including the nine affidavits to Mr. Naidu at the earliest.

(iii) The Government of Odisha shall take immediate steps for completion of necessary formalities by publication of the Notification within a week from the date of receipt of the order. The Inquiry Officer within a period of one week from the date of publication of the Notification will initiate the process of inquiry by giving a public notice both electronically as well as in the print media inviting affidavits of the persons (other than those nine who have already submitted affidavits) who have been victimized by lack of proper treatment and care at VIMSAR and fixing an outer limit for receiving such affidavits which in any event should not be more than 15 days from the date of publication of such notice.

(iv) The place of enquiry shall be the premises of the District Court at Sambalpur. The District Judge, Sambalpur shall provide the space in the premises of the District Court for holding such

enquiry. The Opposite Party-Government through the local administration shall provide all necessary infrastructure as well the Secretarial Staff and other support services as would be required by the Inquiry Officer without any delay to enable him to function and conduct the enquiry as quickly as possible.

(v) The Superintendent of Police, Sambalpur will also ensure the safety, security of the Inquiry Officer, his records and generally the premises where the enquiry shall be held by deploying sufficient police personnel as may be determined by the SP, Sambalpur on an assessment of the situation.

(vi) The Inquiry Officer will be paid an honorarium of Rs. 2.00 (two) Lakh per month by the Government of Odisha for the enquiry which will be concluded within a period of 3 months from the date of commencement of such enquiry. In any event, the enquiry report should be made available to this Court by the Inquiry Officer not later than 1st November, 2021. The incidental expenses of the Inquiry Officer in conducting the enquiry and his functioning shall be borne by the Government of Odisha as per the bills raise on actual basis without any delay. The Government of Odisha will also provide the Inquiry Officer, the transport and conveyance facility besides his temporary accommodation.

(vii) Full cooperation be extended to the Inquiry Officer by the local administration and in particular by the Management, medical personnel, staff and workers of VIMSAR.

(viii) The Inquiry Officer will ensure that the relevant records for treatment of the victims available in VIMSAR is immediately

secured and kept in a sealed cover with the custody of the Inquiry Officer.

(ix) The Inquiry Officer will draw up the procedure for conducting enquiry, and the schedule for completion of the pleadings, receipt of affidavits and examination of witnesses, within a week of taking over the inquiry, and give it wide publicity in the print media and on the internet. He may create a website for the office of the inquiry. The Inquiry Officer is at liberty to devise a flexible procedure consistent with the needs of the situation without overlooking the basic requirement of the rules of natural justice so as to subserve the ends of justice.

(x) It will be open to the Petitioner to participate in the enquiry proceedings and place the necessary documents and further information before the Inquiry Officer. In particular he should provide forthwith the Inquiry Officer the original of affidavits of nine individuals filed by him in this Court.

(xi) The Inquiry Officer will in his report also give suggestions, after consulting expert witnesses, on the steps taken to improve the existing medical infrastructure and the standard of medical treatment and care provided at VIMSAR and generally in other government medical/health facilities. He will give his suggestions regarding payment of compensation where the allegation of lack of proper medical treatment and care and/or medical negligence stands established.

13. It may be mentioned at this stage that Mr. Chouhan, the Petitioner in person, also adverted to his coming across several instances of lack of proper medical care and treatment of victims in

other parts of Odisha and prayed that such instances should also be enquired into. While appreciating the above submission, this Court would at this stage like to take up the issue of the care and treatment provided at VIMSAR during the relevant period so that concrete directions can be issued in that regard. The question whether the other instances referred to should also asked to be investigated will be considered after receipt of the report of the Inquiry Officer.

14. If there is any difficulty in carrying out the above directions, it will be open to the Petitioner, the Opposite Parties as well as to the Inquiry Officer to apply to this Court for directions.

15. List on 8th November, 2021 for further directions.

16. The Registry is directed to provide a copy of this order to Mr. M.S. Sahoo, learned Additional Government Advocate for communication to the Opposite Parties forthwith.

17. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

(Dr. S. Muralidhar)
Chief Justice

(Savitri Ratho)
Judge