



2025:CGHC:53691

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

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ZAMIR ALI

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WPC No. 2177 of 2024

1 - Mrs. Shobha Sharma W/o Mr. Ritesh Sharma Aged About 40 Years Shiv
Mandir, Bhadorapara Nariyal Kothi, Dayalband, Bilaspur C.G.

... Petitioner

versus

1 - State Of Chhattisgarh Through- The Secretary Department Of Health And
Family Welfare Department Of Chhattisgarh Mahanadi Bhawan,, Nava Raipur
Atal Nagar, Raipur, C.G.

2 - Director Of Medical Education, Raipur C.G. North Block Sector- 19,
Swasthya Bhawan, 2nd Floor, Nawa Raipur, Atal Nagar, Chhattisgarh.

3 - Commissioner Of Medical Education, Raipur C.G. North Block Sector-19,
Swasthya Bhawan, 2nd Floor, Nawa Raipur, Atal Nagar, Chhattisgarh.

4 - Collector Cum Supervisory Authority Clinical Establishment Act District-
Bilaspur Chhattisgarh.

5 - Joint Dirctor And Superintendent Of Chhattisgarh Aayurvigyan Sansthan (
Cims) Bilaspur C.G.

6 - Chief Medical And Health Officer Bilaspur (Cims). Bilaspur C.G.

7 - Enquiry Committee Through- Its President Of Enquiry Committee Namely Dr. O.P. Raj Assistant Professor Department Of Surgery Cims Bilaspur Chhattisgarh.

8 - Director Kims Super Speciality Hospital Agrasen Square Bilaspur C.G.

9 - Director Aarbee Institute Of Medical Science Swarnjayanti Nagar Ring Road-2 Bilaspur Chhattisgarh

10 - Lalchandani Hospital Through- Dr. Lalchandani,- Main Road Dayalband Bilaspur Chhattisgarh.

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Respondents

For Petitioner	:	Shri Anand Mohan Tiwari, Advocate
For State	:	Ms. Upasana Mehta, Deputy Government Advocate
For Respondent No.8	:	Ms. Pallavi Das, Advocate on behalf of Shri Yashwant Singh Thakur, Advocate
For Respondent No.9	:	Shri Manoj Paranjpe, Senior Advocate with Shri Arpan Verma, Advocate
For Respondent No.10	:	Shri Sunil Otwani, Senior Advocate with Shri Rohan Shukla, Advocate

Hon'ble Shri Parth Prateem Sahu

Order on Board

03/11/2025

1. Petitioner has filed this petition seeking following reliefs:

"10.1 That the Hon'ble Court may graciously be pleased to allow the writ petition.

10.2. That the Hon'ble Court may graciously be pleased to call for entire records pertaining to the impugned report dated 1.12.2023 & 18.01.2024 (Annexure P-1).

10.3 That the Hon'ble Court may graciously be pleased to hold and quash the impugned reports dated 1.12.2023 & 18.01.2024 (Annexure P-1) as illegal, unfair, and perverse.

10.4. That the Hon'ble Court may graciously be pleased to direct respondents no.1 & 4 to constitute a fresh expert committee for inquiry of the complaint and further may be directed them to conduct such inquiry qua the petitioner within the stipulated time frame fixed by this Hon'ble Court.

10.5. That the Hon'ble Court may graciously be pleased to pass suitable directions to respondents no. 1-4 to take strict action against respondent No.5-7 for abusing powers to cover up negligence committed by respondent no.9 & 10 in accordance with law.

10.6. That the Hon'ble Court may graciously be pleased to pass suitable direction to respondents no. 1-4 to take strict action against respondent no.9-10 for the commission of negligence in accordance with law.

10.7. That the Hon'ble Court may graciously be pleased to pass suitable direction to the respondents (except R-8) for appropriate compensation which the Hon'ble Court deemed fit and proper in the facts and circumstances of the case.

10.8. That this Hon'ble Court may graciously be pleased to

granted any other relief/s in favour of the petitioner which may deem fit and proper in the interest of justice.”

2. Learned counsel for petitioner submits that petitioner was suffering from knee joint pain and he took treatment earlier from different hospitals, however, when her ailment and sufferings could not be cured properly, she approached to respondent No.10 hospital and on aid, advice and recommendation made by respondent No.10, petitioner got admitted with hospital of respondent No.9. He contended that petitioner was having difficulties with her left knee, however, her right knee was operated and upon objection raised by her, left knee was also operated. During period of her admission in hospital, she made complaint to different authorities including Chief Medical and Health Officer, Collector, and Superintendent of Police, Bilaspur regarding medical negligence of respondent No.10 during treatment of petitioner. Pursuant thereto, a committee was constituted to inquire into complaint of petitioner. The said Committee after conducting inquiry, submitted its report Annexure P1. He submits that constitution of said Committee is not as per provisions of the Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam, 2010 (for short 'Adhiniyam, 2010'), in particular Section 18 which envisages that complaint so received shall be examined through a committee formed by the Supervisory Authority. Chairperson of the said committee shall be of a rank of higher or equivalent to a Deputy Collector. Inquiry report, as submitted, is not headed by an administrative officer like Deputy

Collector, therefore, inquiry which is said to be conducted on complaint of petitioner is not in accordance with provisions and procedures as prescribed under Adhiniyam, 2010.

He further submits that said Committee in its enquiry report, Annexure P-1, has not dealt with any of the allegations which were made against respondent No.9 and 10. From the documents dated 4.9.2023 issued by respondent No.10, sanction letter dated 5.9.2023 issued by ESIC and report issued by respondent No.8-KIMS, it is appearing that left knee of petitioner was to be treated, however, the Committee overlooking the said fact has erroneously opined that there was no medical negligence on the part of the doctors. He submits that the petitioner is suffering great hardship and mental agony due to medical negligence committed by respondents No.9 and 10. Hence, a direction be issued to conduct an inquiry against erring doctors and to take appropriate action against respondents No.9 & 10 as also appropriate compensation for medical negligence be granted to petitioner.

- 3.** Learned counsel for respective respondents opposes submission of learned counsel for petitioner and submit that after receipt of complaint of petitioner, it was inquired into by a team of four doctors and they submitted their report that petitioner was suffering problems in both of her legs and operation of both legs was done upon consent given by patient/petitioner and her family members. From report, it is apparent that grievance as raised by petitioner has been properly

considered and dealt with.

- 4.** Learned Senior Counsel for respondent No.10 makes a further submission that there is no pleading as to violation of provisions contained in Adhiniyam, 2010 and Rules, 2013 as argued by learned counsel for petitioner.
- 5.** I have heard learned counsel for parties and also perused documents enclosed with this writ petition and with reply submitted by respective parties.
- 6.** With regard to objection raised by learned Senior Counsel for respondent No.10 that there is no specific pleading or relief for re-enquiry, therefore, no relief for re-inquiry into complaint of petitioner can be granted. Petitioner is a patient, who took treatment from concerned hospitals, i.e., respondents No.10 and 9, and immediately after operation allegedly of wrong leg, has forwarded an application in form of complaint to respondent No.4-Collector who is competent authority being Supervisory Authority under Adhiniyam, 2010 and Rules, 2013. Therefore, submission of learned Senior Counsel for respondent No.10 that no relief can be granted is not sustainable.
- 7.** Pleadings made in writ petition that petitioner had taken consultation and treatment from respondents No.10 and 9 is not in dispute. Operation of both knees of petitioner after her admission with respondent No.9 is also not in dispute. Grievance of petitioner primarily is that her right knee was also operated in respondent No.9

hospital, in which there was no sufferings and ailment, regarding which she made a complaint to Collector. Petitioner submitted an application/complaint dated 6.10.2023 and reminder letter is also written by petitioner forwarded through registered post dated 26.12.2023. Submission of learned counsel for petitioner is that complaint submitted by petitioner is to be considered in accordance with provisions as provided under Adhiniyam, 2010.

- 8.** Section 2(b) of the Adhiniyam, 2010 defines "Clinical establishment", Section 2(d) defines "Hospital" and Section 2(o) defines "Supervisory Authority", which read as under:

"2(b) "clinical establishment" means a medical laboratory, a Physiotherapy establishment or clinic or a Hospital or any other establishment analogous to any of them, by whatever name called."

(d)"Hospital"means any premise having facilities for treatment of sick and used for their reception and not stay.

(o)"Supervisory Authority" means the person or authority appointed by the State Government by notification to perform all or any of the functions of the supervising authority as specified under this Act."

Section 13(B) of Adhiniyam, 2010 talks of raising grievance by a person aggrieved by act of willful negligence by Nursing Home/Clinical Establishment in manner as prescribed under Section 1 of Chhattisgarh

Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2010 (for short 'the Act of 2010'). The Act of 2010 came to be amended vide Act of 2016 and accordingly, Adhiniyam, 2010 is governed by Chhattisgarh State Upcharyagriha Tatha Rogopchar Sambandhi Sthapanaye Anugyapan Adhiniyam, 2010 (for short 'Niyam, 2010'). 'Supervisory Authority' is defined under Rule 3(1), which reads as under:

"3. Supervisory Authority (1) The District Collector of the concerned district shall be the Supervisory Authority under these rules and shall be assisted by a District Committee in discharge of the function assigned to it under the Act."

9. District Collector of concerned district has been nominated as Supervisory Authority and Rule 4 talks of functions of Supervisory Authority. Rule 4(f) provides for functions of Supervisory Authority to investigate complaints related to willful (shallful) negligence with the provisions of the Act, as required under Rule 13 and 14 of the Act along with other functions as provided under Rule 4. Rule 18 deals with procedure of receipt and registration of complaint (grievance redressal) at level of Supervisory Authority. Rule 18(6) envisages that complaints received in respect of Chhattisgarh Upachar Tatha Rogopachar Anugyapan 2013 shall be examined through a committee formed by Supervisory Authority of concerned district. It further envisage that chairperson shall be a higher rank of Deputy Collector

and shall include specialist doctor of concerned discipline.

- 10.** Grievance of petitioner in this petition is that inquiry report (Annexure P1) is submitted by the committee of four members, who all are doctors, and one Dr. O.P. Raj, Assistant Professor, Surgery Department, CIMS, Bilaspur has been appointed as Chairman of committee. Rule 18 of the Rules, 2013 prescribed the constitution of a committee headed by an officer not below the rank of Deputy Collector and include specialist doctor of discipline. From perusal of inquiry report, Annexure P-1, it is clear that the constitution and composition of the Committee which has conducted the inquiry on the complaint of petitioner, is not as provided under Rule 18 of the Rules, 2013 and therefore, inquiry report submitted by the Committee which is not constituted in accordance with provisions of Rules, 2013 cannot be considered to be a valid report on complaint submitted by petitioner and, hence, in opinion of this Court, this inquiry report is having no force in eyes of law.
- 11.** Indisputably, complaint was lodged by petitioner to the Collector, who is Supervisory Authority under the Adhiniyam, 2010 and the Rules framed thereunder, i.e., Rules, 2013. From report it is not appearing that Committee was constituted by Supervisory Authority and therefore, I find it appropriate to dispose of this writ petition at this stage directing Supervisory Authority/Collector to consider complaint of petitioner afresh and constitute a committee in accordance with provisions contained in Adhiniyam, 2010 and Rules, 2013.

- 12.** For foregoing discussion, this writ petition stands disposed of with a direction to respondent No.4 to consider complaint of petitioner afresh and to get it inquired in terms of provisions of the Adhiniyam, 2010 and Rule 18 of Rules, 2013.
- 13.** At this stage, learned Senior Counsel for respondent No.10 submit that as this Court has directed re-inquiry into complaint of petitioner, respondent No.4 be directed to grant opportunity of hearing to respondents before making any recommendation in inquiry report or at time of conducting inquiry. This submission is not opposed by learned counsel for petitioner and it is submitted that Section 13 (c) of the Adhiyam, 2010 specifically provides for an opportunity to be granted to both sides.
- 14.** In view of aforementioned facts, it is directed that the Committee to be constituted by Supervisory Authority will grant opportunity of hearing to both sides during inquiry. Respondent No.4 is directed to get inquiry completed expeditiously, preferably within a further period of four months from date of receipt of this order strictly in accordance with law. It is also made clear that this Court has not expressed any opinion on merits of claim of either party.
- 15.** Writ petition stands disposed of with above observations and directions.

Sd/-
(Parth Prateem Sahu)
JUDGE