Summary of the decision which will be discussed by Justice Muralidhar

Laxmi Mandal v Deen Dayal Harinagar Hospital
172 (2010) DLT 9

The New Delhi High Court recognized a constitutionally and internationally protected right to maternal healthcare and ordered compensation for rights violations experienced by two impoverished women and their babies during and related to childbirth. Shanti Devi, a poor migrant woman, died as a result of her ordeal in what the Court termed a "clearly avoidable" death and Fatema, a severely anaemic and epileptic urban poor woman, was forced to deliver her child under a tree due to denial of maternal health services. Both cases, the Court found, were essentially about the protection and enforcement of the basic, fundamental and human right to life under the Constitution and the two inalienable survival rights that form part of the right to life: the right to health, in particular reproductive rights of the mother, and the right to food.

The Court noted that both cases concerned the systemic failure of government schemes meant to reduce maternal mortality resulting in denial of benefits to two mothers below the poverty line, and ultimately the death of one of these women. The State and its entities were ordered to substantially financially compensate the women and their families and to ensure the provision of food and medication to the two babies. The State and its entities were also specifically directed to remedy deficiencies in, and improve monitoring of, public health programs.

Facts

Government Schemes

The Government of India had introduced a cluster of schemes aimed at reducing infant and maternal mortality and in particular schemes addressed at benefitting mothers below the poverty line during their pregnancies and thereafter. Among the services offered by this cluster were the following: providing cash benefits to poor women at certain stages of pregnancy, providing immunization and supplementary nutrition services, health education, providing basic food rations, counselling, family planning and sexually transmitted disease services, identification of high risk pregnancies and appropriate and prompt referral services, treatment for anaemia, antenatal checkups, promoting institutional delivery amongst poor pregnant women and providing medical cards identifying poor women as eligible for the various benefits available under the scheme. The Supreme Court of India had, in 2001, recognised the interrelatedness of the schemes and made certain mandamus orders in relation to the schemes.[1] It had thereafter time and time again emphasised the importance of the effective implementation of these schemes meant for the poor.

[1] *People's Union for Civil Liberties v Union of India*, Writ Petition No. 196 of 2001, 28 November 2001, hereinafter *PUCL Case*.

First Petition on behalf of Shanti Devi and Archana

Shanti Devi, an Indian woman living below the poverty line, died as a result of being refused adequate maternal healthcare, despite the fact that she qualified for the free services under the existing state-sponsored schemes. Ms. Devi was generally of poor health and suffered from anaemia and tuberculosis. Two of her four previous pregnancies had resulted in the death of the foetus or the child. In 2008 during her fifth pregnancy, Ms. Devi was forced to carry a dead foetus in her womb for five days after being denied medical treatment at several hospitals because her husband did not have an appropriate medical card to prove she was below the poverty line.[2] The Court had intervened at this point in 2009 and ordered that she be admitted and treated free of cost.

The following year Ms. Devi became pregnant for the sixth time and died after giving birth to a premature baby, Archana, delivered at home without the attendance of a skilled birth attendant. The Court made a series of order to ensure the care of Archana and ordered a maternal audit of her death. The audit highlighted serious shortcomings in her care. On foot of this, the Court found that the direct cause of her death was extensive haemorrhage (PPH) with retained placenta. However, it continued that there were many indirect and contributing factors to her death broadly including her dismal socio-economic status which denied access to needed resources and services, and her poor health condition which is a culmination of anaemia, tuberculosis and repeated unsafe pregnancies.

Second Petition on behalf of Fatema and Alisha

Fatema, a poor uneducated woman suffering from epilepsy fits, was homeless and living under a tree. Her husband abandoned her after she became pregnant. She attended at a maternity home in her area inquiring about vaccinations and benefits available under the public health programmes but received no response or assistance from the authorities. In June 2009, she delivered her child, Alisha, under a tree, in full public view, without access to skilled health care and medical guidance. Despite informing the maternity home no visit was made by the staff. The Court had intervened in January 2010 to make various orders, including the provision of a medical card, medical assistance to both mother and child, the payment of the appropriate cash benefits available under the appropriate government schemes. They sought compensation, proper implementation of the schemes and the provision of nutrition to Fatema and her daughter.

Government Misuse Argument

As well as a variety of fact based objections, the government had argued, *inter alia,* that there was an apprehension that the benefit under the scheme would be misused. The Court found this

[2] Her family had moved from another area for better means of employment for her husband and lacked the appropriate documentation for prove that she was "below the poverty line" for their present area.

argument to be misplaced, noting that given the status of the facilities available in public hospitals and primary health centres across the country, it was very unlikely that any person who could otherwise afford health care was going to misuse those facilities.

Analysis of the Court

The Court noted that the two petitions were essentially about the protection and enforcement of the basic, fundamental and human right to life under article 21 of the Constitution and highlighted the indivisibility of basic human rights as enshrined in the Constitution.[3] Both cases concerned the "two inalienable survival rights that form part of the right to life." The first, the right to health, includes the right to access and receive a minimum standard of treatment and care in public health facilities and in particular includes 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 until the age of about six years. The second right, the right to food, is seen as integral to the right to life and health. Both rights call for immediate protection and enforcement in the context of the poor.

The right to health as an inalienable component of the right to life was reiterated by the Court and noted as consistent with international human rights law. In an extensive analysis of international human rights law, the Court pointed to article 25 of the Universal Declaration of Human Rights, which it noted as having the force of customary international law. It states, in relevant part, "[everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, housing and medical care and necessary social services [...] Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection."[4] The Court thereafter referred to the International Covenant on Economic, Social and Cultural Rights (ICESCR) as spelling out in greater detail the various facets of the broad right to health. In particular it cited in full articles 10, which relates to family and the special protection to be accorded to mothers, children and young persons, and article 12 which details the elements of the right to health. [5] It further cited three paragraphs from General Comment No. 14 of 2000 of the Committee on Economic Social and Cultural Rights as explaining the scope of the aforementioned rights. Those paragraphs refer, broadly to the right to control one's health and body, including sexual and reproductive freedom, outlines the underlying determinants of the right to health and notes that the reduction of infant mortality requires measures to improve child and maternal health and 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. [6]

[3]Article 21, "Protection of life and personal liberty", of the Indian Constitution states that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law." Full text of Constitution available at http://indiacode.nic.in/coiweb/welcome.html

[4] See Appendix below for full text cited by the Court.

[5] See Appendix below for full text cited by the Court.

[6] See Appendix below for full text cited by the Court.

It continued its examination of international law with the Convention on the Elimination of Discrimination Against Women (CEDAW) citing in full articles 12 and 14 which detail the obligation of States to eliminate discrimination against women in the field of health care in order to ensure access to health care services and family planning and highlights the particular problems faced by rural women and outlines obligations of the State.[7] Thereafter it referred to the Convention on the Rights of the Child (CRC) articles 24 and 27 outlining States' progressively realizable obligations, *inter alia,* to ensure the highest attainable standard of health for every child, ensure pre and post natal health care for mothers, a standard of living adequate for the child's physical, mental, spiritual, moral and social development, and to develop preventative health care, guidance for parents and family planning education and services.[8]

Referring again to the *PUCL case* the Court stated that in effect the Supreme Court had in that case spelt out what the "minimum core" of the right to health and food is and also spelt out, in line with international human rights law, the "obligations of conduct" and the "obligations of result" of the Union of India and States. Recognizing the indivisibility of civil rights and social and economic rights the Supreme Court made them enforceable via a "continuing mandamus" which mandate the High Courts are obligated to carry forth.

Drawing on international law, the Court explained that women have the right to control their body and decide when they wish to conceive. The Court clearly held that healthcare systems should ensure that "no pregnant women be denied access to medical treatment regardless of her socioeconomic status."

The Court noted that both cases pointed to the complete failure of the implementation of the schemes. Neither woman received attention or care in the critical weeks preceding the expected dates of delivery and both were deprived of accessing minimum health care at homes and public health institutions. Shanti, during her lifetime, did not get the benefit offered under two of the schemes which is a "major failure which aggravated the causes that ultimately led to her death." Fatema did finally receive benefits under the schemes but only after the intervention of the courts. The Court noted that it was well possible that without its intervention both mother and baby might have been denied benefits which could have caused irreparable injury and possibly loss of life.

With regard to public health it held that "no woman, more so a pregnant woman should be denied the facility of treatment at any stage irrespective of her social and economic background." This it stated, is the primary function in public health services: "[t]his is where the inalienable right to health which is so inherent in the right to life gets enforced." There cannot be a situation where a pregnant woman in need of care is turned away from a public health facility only on the basis that she has not been able to demonstrate her eligibility status: that she is below the poverty line. The approach of the Government, according to the Court, should be to ensure that as many

[7] See Appendix below for full text cited by the Court.
[8] See Appendix below for full text cited by the Court.

people as possible get covered by the scheme not insisting on such documentation as they appeared to be doing. This "onerous burden" to prove that they are persons in need of urgent medical assistance constitutes a major barrier to their availing of services.

Reparations and Relief

With regard to Shanti's "clearly avoidable" maternal death, the Court made a series of orders benefitting her daughter and family including the refund of monies paid for treatment which should have been free, the cash benefits available under the various schemes, the provision of the appropriate cards to Archana's family so that she may avail of benefits, as well as a fixed amount of compensation to be paid by the State to Shanti's husband, her two sons and her Archana each. Significantly, it recognised Shanti as a "primary bread winner" under the scheme thus entitling her husband and children to a further lump sum.

With regard to Fatema and Alisha, the Court ordered that Fatema and Alisha receive all appropriate benefits under the various schemes, including basic food stuffs and provided a scheme and location for Fatema to receive treatment and be monitored regarding her epilepsy. For the violation of the fundamental rights of Fatema by being compelled to give birth to Alisha under a tree the Court awarded her a lump sum.

Additionally the Court detailed various shortcomings of the relevant schemes and stated that the present case afforded to the Central and State governments an opportunity to put in place corrective measures. Finally, it made specific directions in relation to the organisation and implementation of the schemes which it deemed necessary to ensure that the benefits contained therein are not denied to the beneficiaries and that assistance is provided promptly and at the nearest accessible point.

Points to Note:

- The Court emphasised the indivisibility of civil rights and social and economic rights.
- Further it consistently underlined the indivisibility of basic human rights and particularly highlighted the interrelatedness of the rights to life, health and food.
- It stated that the inalienable right to health is inherent in the right to life and observance of this right is the means of enforcing the right to life.
- The Court relied extensively on international law and documents combined with national jurisprudence to support its findings.
- The Court made orders and directions in relation to the improvement and management of the government schemes.

Appendix: International Law and Text Cited in Full by the Court

Universal Declaration of Human Rights, Article 25

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.

International Covenant on Economic, Social and Cultural Rights

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.

Committee on Economic, Social and Cultural Rights, General Comment No. 14 of 2000 on the right to health:

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.

Convention on the Elimination of Discrimination against Women:

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.

<u>Convention on the Rights of the Child</u>

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.