'Acute Failure Of Doctors, Shocks Judicial Conscience': Orissa High Court Awards ₹10 Lakh Compensation To Family Over Woman's Maternal Death

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IN THE HIGH COURT OF ORISSA AT CUTTACK
DR. S. MURALIDHAR; CJ., M.S. RAMAN; J.
W.P. (C) No.11860 of 2015; 03.11.2022
Sambara Sabar *versus* **State of Odisha and Others**

For the Petitioner: Mr. Omkar Devdas, Advocate

For the Opposite Parties: Mr. Debakanta Mohanty Addl. Govt. Advocate

J U D G M E N T

Dr. S. Muralidhar, CJ.

1. Aggrieved by the avoidable 'maternal death' of his daughter-in law Martha Sabar, who died after delivering a dead female child, the Petitioner has approached this Court with the present petition praying *inter alia* for the appointment of a Maternal Death Review Board comprised of independent members and for this Court to thereafter direct payment of compensation by the State. The Petitioner has also prayed for disbursal to the family of the deceased, her financial entitlements under the National Maternity Benefit Scheme (NMBS). General directions are also sought for the proper implementation of the various schemes of the central and state government including the Janani Suraksha Yojana (JSY) in the village Labanyagada, Gajapati District, where the Petitioner resides and in the whole of Odisha.

2. Enclosed with the petition is the enquiry report of Dr. P.L.N. Patro, the Additional District Medical Officer (ADMO), FW, Gajapati which concluded that there was no medical negligence at any stage in the treatment of deceased. It was opined therein that the cause of death may be "due to severe sepsis with pulmonary embolism". Enclosed with the petition is also the report of an independent fact-finding enquiry undertaken by a human rights organization, which has come to the opposite conclusion after interviewing those involved and examining the available records.

3. On 17th May, 2022 this Court passed the following order in this petition:

"1. The present petition is by the father-in-law of an unfortunate woman, who not only lost her baby due to an intra uterine death but herself died while receiving treatment on 25th March, 2015.

2. The case of the Petitioner is that the death of the baby as well as the woman was due to medical negligence and was avoidable. The pleadings in the present petition present disputed questions of fact with the Opposite Parties claiming that there was no medical negligence.

3. The Opposite Parties appear to have conducted an enquiry into the maternal death of the woman in question. The enquiry report of the ADMO (FW), Gajapati dated 10th April, 2015 is enclosed with the petition.

4. With a view to obtaining an objective assessment of the materials on record the Court requests the State Commission for Women, Odisha (SCWO) to assist it in the task. Accordingly, the following directions are issued:

(i) A complete set of papers will be made available by the Registry of this Court to the Secretary, SCWO, Toshali Plaza, Satyanagar, Bhubaneswar not later than 1st June, 2022;

(ii) The SCWO will constitute an appropriate enquiry team to examine the papers and also visit and record statements of the Petitioner and his family members, the concerned treating doctors, the place of treatment, the medical case record and make an assessment as to the veracity of

the claims of either party on the basis of the materials gathered. The SCWO can also take the assistance of a qualified medical professional for making its assessment.

(iii) The report of the SCWO pursuant to the above directions be made available to this Court not later than 1st July 2022.

5. As far as the connected matters are concerned, wherever replies/counter affidavits have not yet been filed they be filed positively one week prior to the next date with copies to learned counsel for the Petitioner, who is permitted to file a rejoinder thereto before the next date.

6. List on 1st August, 2022 along with the connected cases listed today. A copy of this order be delivered forthwith to the Secretary, SCWO through a Special Messenger."

4. Pursuant to the above order, the Odisha State Commission for Women (OSCW) under cover of a letter dated 8th July, 2022 has submitted the report of the Enquiry Committee (EC) in a sealed cover. The report was perused by the Court at the hearing on 1st August, 2022 and copies thereof were directed to be supplied to both learned counsel for the Petitioner as well as learned counsel for the State of Odisha to enable them to make their submissions on the report.

The report of the Enquiry Committee

5. At the outset, the Court would like to set out the factual background as can be gleaned from the report of the EC of the OSCW. The Petitioner, the father-in-law of the deceased, who appeared before the EC and was examined as ECW 16 informed the EC that he had taken the deceased to the Garabandha Primary Health Center (PHC) for her health check-up on 18th March, 2015. The Pharmacist on duty there was Mr. Kishore Chandra Panigrahi (ECW 19). Dr. Sunil Kumar Shukla was the Medical Officer (MO). ECW 16 informed the EC that the deceased was complaining of chest and abdominal pain during pregnancy as was noted in the entry made in the OPD register. Dr. Shukla was not present. ECW 16 called Anjali Bala Swain, who was the Auxiliary Nursing Midwife (ANM) but since her arrival was delayed, ECW 16 referred the deceased to the District Health Hospital (DHH), Paralakhemundi.

6. The EC concluded that since no MO and ANM were available at Garabandha PHC (New), no treatment was given to the deceased on 18th March, 2015 although she was nine months pregnant. The EC concluded that this failure to provide treatment to the deceased on 18th March, 2015 had a direct nexus with her death one week later at the DHH on 25th March, 2015.

7. On 18th March, 2015 the deceased returned to her house. On 24th March 2015, she again developed labour pain at 11.45 am and came to the DHH for an ANC check-up. She complained the foetus was not moving. Dr. V. Sarojini Devi (ECW 2), who was the MO of DHH, Paralakhemundi, found some swelling on the face and legs of the deceased. After examining the abdomen of the deceased, ECW 2 could not detect any foetal movement. She opined that if a dead child remains in the uterus, it would cause complications.

8. The finding of the EC in regard to the conduct of ECW 2 was: "strangely she did not prescribe any medicine even after knowing that the patient was suffering from sepsis. She also did not refer the patient to the O & G Specialist forthwith." Save and except the bed head ticket, there was no other document in support of the nature of diagnosis, treatment and medicine prescribed to deceased. In the bed head ticket (Ext. 4) dated 24th March, 2015 there was an endorsement to the effect of "loss of foetus movement since five days."

9. It appeared from the evidence of Pramod Chandra Sahoo (ECW 1), who was the laboratory technician at the DHH, that on 24th March, 2015 he collected the blood samples

of the deceased for testing, blood grouping, Hepatitis B, Haemoglobin, BT CT etc. on payment of money.

10. The EC examined Dr. Suchitra Kumari Sahoo (ECW 4), who was the O&G Specialist at DHH, Paralakhemundi. She examined the deceased on 24th March, 2015 at her residence. On perusing the Ultrasound report brought to her by the deceased, ECW 4 found Intra Uterine Death (IUD) with severe Oligohydramnios and with high BP. She advised admission of the deceased in the DHH. She stated before the EC that "she was also in a mood to refer the patient to MKCG for better treatment as her BP was high with IUD." These facts were mentioned by ECW 4 in the bed head ticket at 9.20 pm on 24th March, 2015. Despite the above reports being available by 4 pm, the EC found that "there was none in the hospital to take care of her to admit in Female O & G Ward. She was loitering in the hospital of DHH with pain having IUD." Due to the non-cooperation of the hospital authorities, "she took ultrasound test after making necessary payment to a private radiologist."

11. The EC found that the evidence of Dr. Sarojini Devi (ECW 2) was "shrouded with suspicion". The Medicine Specialist at DHH, Dr. Anil Kumar Acharya (ECW 3) was on duty at the Casualty Department of the DHH on 24th March, 2015 from 5 to 9 pm. At 8 pm he examined the deceased. He suspected IUD and toxemica. He found non-movement of foetus associated with foetal heart sound. ECW 3 then called ECW 4 who was the O & G Specialist. After giving the deceased some primary treatment, they admitted her to the O & G Department. ECW 4 informed the EC that on 25th March, 2015 at 2.30 pm a macerated female child was delivered by the deceased followed by placenta and membranes with no tear and haemorrhage. Around 5.30 pm on 25th March, 2015 on receiving calls from the nurses of the O & G, ECW 4 arrived at 6 pm and found the deceased with severe pain in the abdomen. ECW 4 then called ECW 3.

12. According to Baby Radharani Jena (ECW 7), who was on duty at the DHH as a health worker on 24th and 25th March, 2015, between 2 and 9 pm on 25th March, 2015 she, other nurses and the ward attendant R. Anusuya, were present. She failed to recollect if any O & G Specialist had visited the ward and labour room during that period.

13. Tikili Panigrahi (ECW 8), the Counsellor at DHH stated that on 25th March, 2015 at 11 am she was present in the labour room with a staff nurse and at that time "no doctor was present in the labour room." She recalled ECW 4 informing her on 24th March, 2015 itself about the presence of a dead child in the uterus of the deceased. However, neither was the deceased admitted to the ICU nor was oxygen provided to her on that date.

14. Although Dr. Uma Kanta Baskey (ECW 10) claimed before the EC that on 25th March, 2015 he received an emergency call at 6.35 pm from the attending sister of IPD as to the deterioration of the health condition of the deceased and that he immediately rushed to the deceased and found her "gasping with low condition".

15. Further, although he claimed that he had prescribed oxygen inhalation with injection, the EC found that "there was no endorsement in the bed head ticket about providing oxygen etc." ECW 10 further stated before the EC that at 7.15 pm he declared the deceased dead.

16. B. Shakuntala (ECW 15) was the Accredited Social Health Activist (ASHA) of village Deopur. Her evidence revealed that although the deceased informed her when she was one month and fifteen days pregnant, ECW 15 did not verify or check the health condition of the deceased on any occasion or even visited the house of the deceased. ECW 15 also never took the deceased to Garabandha PHC or Labanyagada PHC, Ayush or Sub-

Centre. She did not take the deceased to any hospital for a health check up. Although ECW 15 claimed that she had taken the deceased on 24th March, 2015 to the DHH, Paralakhemundi for scanning, this claim was negative by the evidence of ECW 4 and Punya Chintal (ECW 12), ASHA, Labanyagada PHC. ECW 12 stated that ECW 15 requested ECW 12 to take the deceased to the DHH. In turn, ECW 15 claimed that she was busy in her daughter's marriage and she could not accompany the deceased.

17. The EC found the presence of ECW 3 Medicine Specialist and his admitting the deceased in the OPD to be doubtful. In the same registration number i.e. 16362 two patients were shown admitted i.e. the deceased and one A. Trinath, who was a male. The EC queried: "it is not known how a male person was admitted in a female ward".

18. Sometime during the counseling on 25th March, 2015 the deceased disclosed that this was her second pregnancy and that she had lost the first child in an institutional delivery for which she was paid money under the Mamata Scheme. The EC concluded that "the medical authorities right from ASHA to DHH, Paralakhemundi had made no effort to ascertain the reason of loss of the first child and no treatment was also afforded to the mother on that score." The EC noted that with the deceased having lost her first child, the second pregnancy was to be treated as a "high risk pregnancy."She was not given any treatment as such for that vulnerable condition. The EC then made the following observations:

"16…The doctors of DHH did not direct their diagnosis to know the reason of abdominal pain, non-movement of the baby in the womb since 18.03.2015. Consequences of presence of a dead child in mother's uterus, reasons for the loss of the first pregnancy and as stated by ECW2 whether due to presence of dead foetus sepsis had generated resulting infection in the uterus while Martha was under high risk pregnancy due to dead child and why her baby was not removed by cesarian. On 24.03.2015 if she died due to severe sepsis with pulmonary embolism why she was not provided with oxygen and inhalation and she being a BPL category lady why she was not shifted to MKCG for better treatment."

19. The report of the EC also quotes the following comment of the enquiry team member Dr. Mamata Oram, Asst. Professor, O & G, MKCG, Berhampur:

"as patient was suffering from severe pre-eclampsia. She needed to be treated at higher centre with ICU setup as this kind of patient have high mortality rate".

20. The other specific findings of the EC as regards ECW 4 Dr. Suchitra Sahoo were as under:

"ECW-4 Dr. Suchitra Sahoo has proved Ext.-6 entries in the Bed head ticket made at 9.00 pm on 24.03.2015 where there is a endorsement regarding referral of Martha on MKCG. She stated that she was in mood to refer the patient to MKCG for better treatment. When the O&G specialist felt to refer the patient to MKCG for better treatment as the BP of the patient was high with a dead baby inside the uterus why she did not refer the patient to MKCG by 108 or 102 Ambulance with supporting staff and ASHA as free medical service was available to BPL patient as per the guidelines. It was her bounden duty to refer the BPL patient to save her life Guaranted under Article 21 of the Constitution of India. Consent was necessary in case of major operation not for referral to higher hospital for better treatment."

21. The EC found the "functionality and responsibility of DHH" to be questionable. The specific findings of the EC were as under:

"20. In the instant case lapses, laches, disinterestedness to treat a poor tribal BPL woman efficiently and negligence on part of District Head Quarter doctors are apparent on the face of record. When the state authorities in order to safeguard the life of a richest or influential person are providing green-corridor for transportation of patients to airport to fetch flight, the poor are

deprived of. The hazardous dealing with deceased was of such a degree was most likely eminent. It is not a case of individual negligence but omission of entire team of doctors to provide adequate essential and timely treatment to Martha Sabar who even spent money in the hospital for blood test and for Ultrasound test through Private Radiological Centre. Delegation of responsibility to Emergency MBBS Doctors, Staff Nurses, Counsellors and medicine specialist in case of a critical pregnant woman with IUD abdominal pain is condemnable. In bed-head ticket, the cause of death is shown to be due to severe sepsis with pulmonary embolism but no oxygen was provided. The maternal Audit report marked as Ext. 16 for the period January 2015 to May 2015 shows that deceased Martha Sabar died due to "Cardio respiratory failure".

21. On an in-depth consideration of oral, documentary evidence and surrounding circumstances, the Enquiry Team is of considered view that the deceased Martha Sabar died due to combined negligence of doctors un duty of DHH, Paralakhemundi in the district of Gajapati and Garabandha PHC (New), ASHA, ANM and AWW. Adequate financial assistance to the victim for untimely death of deceased due to medical negligence is not the solution specifically when the husband of deceased is an irresponsible person and habitual drunkard having no care and affection towards old father and ailing mother. Efforts should be made by Highest Hon'ble Court to penalize erring doctors/DHH who have betrayed the faith of a tribal illiterate poor woman and to issue instructions to ensure timely availability of all schemes to poor persons in true sense of the action and not by paperwork.

22. In the instant case, on the basis of statement of AWW, ANM, ASHA, PHC record and on the basis of medical record it is evident that the patient was not kept under care and standard protocol was not monitored."

22. The next issue that the EC took up for consideration was whether various schemes for reducing infant and maternal mortality were implemented in Gajapati District. The EC discussed the evidence of Dr. Pramod Kumar Panda, District Medical Officer-cum-Medical Superintendent, DHH, Paralakhemundi (ECW 20) and Miss Soumya Rani Gouda (ECW 11) who happened to be the District Programme Officer, Gajapati since August, 2018. The earlier JSY was currently known as the National Family Benefits Scheme (NFBS). According to ECW 11, the programmes under the National Health Mission (NHM), the Reproductive, Maternal, Newborn Child and Adolescent Health (RMNCAH) + A Programme and the quality certification of health institution were managed by her in the Gajapati District. It was claimed by her that in Gajapati District they were implementing the JSY Scheme, the Sishuabong Matru Mrityuhara Purna Nirakarana Abhiyaan (SAMMPURNA); Surakshit Matritava Aashwasan (Suman); Social Awareness and Action to Neutralize Pneumonia Successfully (SAANS); Labour Room & Maternity OT Quality Improvement Initiative. She also spoke of the functional first referring unit (FRU) which was functioning at the level of the sub-divisional hospital since 1994 and at the DHH since 2000. It was stated that the FR wing was not available at the CHC and PHC of the district. Since 2018, they were operating the Dakshata Model to improve the standard of labour room services.

23. However, the EC found that "the district authorities are also doing more paper work and less field work" on the schemes. The EC has made recommendations in this regard as under:

"An Impartial Committee should be formed in the district under the Chairmanship of District Collector/ Chairman, D.L.S.A. to monitor implementation of all schemes aimed to reduce infant and material mortality and care. Massive awareness camps should be organized in every Gram Panchayat to highlight all the schemes of Central Government and State Government. Life-saving procedure i.e. emergency obstetric hysterectomy (EOH) should be implemented in each DHH and SHH to prevent postpartum haemorrhage, rapture uterus, morbed-adhesions of placenta and uterine sepsis. It is pertinent to note that, regular antenatal care, identification of high-risk factors,

close monitoring of labour, and to avoid difficult vaginal delivery the timely decision to do cesarean can reduce the incidence of EOH."

24. The findings of the EC in the above report have not been challenged by the counsel for the State. This Court, therefore, proceeds on the basis of the conclusion reached by the EC that the death of Martha Sabar was due to the collective negligence of the treating doctors both at the Garabandha PHC (New) and the DHH, Parlakhemundi. The extent of negligence is palpable in the finding: "In bed-head ticket, the cause of death is shown to be due to severe sepsis with pulmonary embolism but no oxygen was provided." This Court also notes that not only did the deceased not receive the benefits under the various schemes, but she even "spent money in the hospital for blood test and for Ultrasound test through Private Radiological Centre."

25. The victim was a poor tribal woman whom the State health care system failed. Despite so many schemes on paper, meant to deliver benefits to her, she died due to the sheer callousness of the State authorities, doctors, para-medical workers and staff. Even the basic first-level care and treatment at the level of the ASHA and ANM under the NHM were not provided to the deceased in the present case. She was never given advice although hers was a high-risk pregnancy. She was carrying a dead foetus for a week and received no treatment. This was despite the revised guidelines, drawn up separately for the sub-centers, the CHCs and DHHs, being operational since 2012. It is indeed extremely unfortunate that the benefit of the multifarious schemes which are meant to cater to the needs of the poor and vulnerable like the deceased in the present case do not reach them in time.

The governing legal regime

26. At this stage, the Court would like to refer to the existing legal regime. The implementation of the NMBS and JSY was considered by the Supreme Court in W.P.(C) No.196 of 2001 (***People's Union for Civil Liberties v. Union of India***) [hereafter 'the ***PUCL Case***'] in which an order was passed way back on 20th November, 2007 directing all the State Governments and the Union Territories to continue to implement the NMBS and ensure that "all BPL pregnant women get cash assistance eight-twelve weeks prior to delivery." It was specifically directed that "the amount shall be Rs. 500/- per birth irrespective of number of children and the age of the woman." It was further directed by the Supreme Court in the ***PUCL Case*** that:

"It shall be the duty of all the concerned to ensure that the benefits of the scheme reach the intended beneficiaries. In case it is noticed that there is any diversion of the funds allocated for the scheme, such stringent action as is called for shall be taken against the erring officials responsible for diversion of the funds".

27. In its various orders in the ***PUCL Case***, the Supreme Court issued specific directions on the implementation of the Integrated Child Development Services Scheme (ICDS) as well as the Antodaya Anna Yojana (AAY) which was meant for the "poorest of the poor".

28. The Delhi High Court in ***Laxmi Mandal v. Harinagar Hospital2010 SCC OnLine Delhi 2234*** dealt with the issue of maternal deaths and discussed the above orders of the Supreme Court of India. The Delhi High Court noted in the above judgment as under:

"20. A conspectus of the above orders would show that the Supreme Court has time and again emphasized the importance of the effective implementation of the above schemes meant for the poor. They underscore the interrelatedness of the "right to food" which is what the main PUCL Case was about, and the right to reproductive health of the mother and the right to health of the infant child. There could not be a better illustration of the indivisibility of basic human rights as enshrined in the Constitution of India. Particularly in the context of a welfare State, where the

central focus of these centrally sponsored schemes is the economically and socially disadvantaged sections of society, the above orders of the Supreme Court have to be understood as preserving, protecting and enforcing the different facets of the right to life under Article 21 of the Constitution. As already noted, these petitions focus on two inalienable survival rights that form part of the right to life. One is the right to health, which 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.

21. 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 v. Union of India (1989) 4 SCC 286* and *Paschim Banga Khet Majoor Samiti v. State of West Bengal (1996) 4 SCC 37*. The orders in the *PUCL Case* 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 interrelatedness of those rights with the right to food. This is consistent with the international human rights law which is briefly discussed hereafter."

29. The Delhi High Court in ***Laxmi Mandal*** *(supra)* went on to discuss Article 25(1) of the Universal Declaration of Human Rights, Articles 10 and 12 of the International Covenants on Economic Social and Cultural Rights (ICESCR) and the following observations of the Committee on Economical and Social and Cultural Rights in its 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."

30. The Delhi High Court in ***Laxmi Mandal*** *(supra)* thereafter noted the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) which is an international convention ratified by India. Specific to the rights of women in rural areas Article 14 of CEDAW reads as under:

"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."

31. The Delhi High Court in ***Laxmi Mandal*** *(supra)* also discussed the provisions of the Child Rights Convention (CRC) ratified by India which delineated the rights of the newly born and young child. The Delhi High Court, thereafter, observed as under:

"27. 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.

28. 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. While recognizing the indivisibility of civil rights and social and economic rights, the Supreme Court has made them enforceable in courts of law by using the device of a "continuing mandamus." On their part, the High Courts in this country would be obligated to carry forth the mandate of the orders of the Supreme Court to ensure the implementation of those orders within the States and UTs."

32. In the present case, there has been an acute failure of the entire teams of doctors at each level of the health care system in Odisha to provide timely and adequate care and treatment to the deceased as pointed out by the EC. It shocks the judicial conscience that a poor tribal woman had been carrying a dead foetus for a week prior to her death with not one person in the health care system being able to provide her the needed care and treatment and which neglect resulted in her inevitable death. There has been a clear violation of the fundamental right to health of the deceased which constitutes an integral part of the right to life guaranteed in Article 21 of the Constitution of India.

Directions as to payment of Compensation

33. This Court, therefore, has no hesitation in directing that for the avoidable death of the deceased, the Government of Odisha should pay the family members the sum of Rs.10 lakhs within a period of six weeks from today. The compensation amount will be kept in fixed deposits (FDs) as directed hereafter. FDs for Rs.3,50,000/- each will be made in favour of the mother-in-law and the father-in-law of the deceased Martha Sabar and an FD for Rs.3,00,000/- in favour of her husband Ganpati Sabar. The FDs will be initially for a period of one year each and will not be permitted to be encashed during that period. The interest therefrom will be credited on a quarterly basis to the respective savings bank accounts of the aforementioned three persons. The Collector, Gajapati will ensure that if they do not already have them, bank accounts will be opened in a nationalized bank in favour of each of the aforementioned three persons. After the first year, it will be open to the aforementioned three persons to encash part or whole of their respective FDs as per their choice. Although the EC has commented adversely on the habits of the husband of the deceased, this Court is of the view that such conduct by itself cannot be a ground to completely deprive him of any compensation.

34. The State Government will file a compliance affidavit in this Court as regards the above directions within a period of eight weeks from today, failing which the Registry will place the matter before the Court for directions.

Action against the errant doctors, health workers and staff

35. As far as the negligence of the doctors and the health workers medics and staff is concerned, in view of the factual findings by the EC, the following directions are issued:

(i) The State Government will immediately issue show cause notices (SCNs) to each of the doctors, health workers and staff whose conduct has been adversely commented upon by the EC of the OSCW in its report;

(ii) A copy of the report will be enclosed to the SCN so issued;

(iii) After receiving their replies to the notices, and following the due process of law, if so warranted, disciplinary action will be taken against each of the said persons in accordance with law. The Court clarifies that nothing stated in this order or the report of the EC will be construed as the final opinion as regards the individual conduct of such persons. The entire exercise as above will be endeavoured to be completed within a period of six months from today;

(iv) The State Government will file a compliance affidavit as regards the above directions along with the reports of the inquiry and/or the action taken thereon within a period of seven months from today. If there is a failure by the State Government to do so, the Registry will list the matter before the Court for directions.

Directions as to a Comprehensive Action Plan and Policy

36. This Court is constrained to note that Martha Sabar's death is not an isolated instance as far as Odisha is concerned. The number of women in the tribal belts, in the rural and semi-urban areas, who have lost lives during pregnancy and as a result of unsafe deliveries is a matter for deep concern. Today in 27 separate writ petitions this Court is issuing orders for a detailed enquiry by the OSCW into the maternal deaths of the wives or close relatives of the respective Petitioners and for remedial measures to be taken. Again, it would be safe to assume that only a small fraction of those whose wives have died on account of denial of proper health care during pregnancy have been able to seek redress in Courts and elsewhere. The increasing numbers of maternal deaths in Odisha

point to a systemic failure of the health care system which appears to have failed the poorest and the weakest at a time when they need it the most.

37. As the present case shows, the extant instructions on conduct of maternal death audits by in-service medical professionals is unlikely to unearth the correct facts for remedial action and fixing of responsibility on errant doctors, para medics and staff. This exercise must be performed by an independent set of medical professionals. Further, there is an urgent need for proper orientation, training and sensitisation of support workers including the ASHAs, ANMs and Anganwadi Workers whose role is crucial for the proper delivery of the range of health measures in the various schemes floated by the state and central governments. If unfortunate maternal deaths like Martha Sabar's must be avoided, then the State must move from a post-event reaction mode to a preventive mode. Therefore, the need for a Comprehensive Action Plan.

38. This Court while endorsing the suggestions made by the OSCW in its enquiry report on strengthening the system for better delivery of the large number of welfare-oriented health related schemes for women and children in general and pregnant women in particular, directs the State Government through its Additional Chief Secretary (Health) Government of Odisha to immediately constitute an Advisory body of health care experts to draw up a Comprehensive Action Plan which will contain both preventive and remedial action points in the short and medium term to address the issue of maternal deaths. The State Government must separately come up with a Scheme or Policy to address the need for providing redress including award of compensation for every needless maternal death, the fixing of responsibility on errant doctors, para medics and staff in a time-bound manner, which will obviate the need for every individual case to be taken to either the OSCW or the Odisha Human Rights Commission (OHRC) or even this Court for remedial measures. The State Government in drawing up such Scheme/Policy will consult both the OSCW as well as the OHRC. The exercise of drawing up a Comprehensive Action Plan and formulating a Scheme/Policy for providing compensation as directed above be completed within a period of four months from today. A compliance affidavit in that regard shall be filed in this Court by the Additional Chief Secretary (Health), Government of Odisha within five months from today, failing which the Registry will place the matter before this Court for directions.

39. Before concluding, the Court would like to place on record its appreciation of the effort made by the OSCW in undertaking an enquiry and submitting a comprehensive report which has been of great assistance to this Court in preparing this judgment.

40. The writ petition is disposed of in the above terms. A copy of this judgment be delivered through a Special Messenger forthwith to the OSCW, the OHRC, the Additional Chief Secretary (Health), Government of Odisha and the Collector, Gajapati.