



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Writ Petition No. 2482/2016

CNR: RJHC010302682016 | URN: CW / 5554U / 2016

State And Ors

-----Petitioner

Versus

Smt. Fefli Bai @ Fefi Bai And Ors

-----Respondent

Connected With

S.B. Civil Writ Petition No. 2480/2016

CNR: RJHC010295272016 | URN: CW / 5550U / 2016

State And Ors

-----Petitioner

Versus

Smt. Devli And Ors

-----Respondent

For Petitioner(s) : Mr. Tanuj Jain
For Respondent(s) : Mr. Manish Pitaliya

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

26/10/2026

1. By way of present writ petition, the petitioners have sought following reliefs :-

“ It is, therefore, most humbly and respectfully prayed that this Hon'ble Court be pleased to allow this writ petition and by an appropriate writ, order or direction:-
a. be please to quash and set aside order dated 03.05.2013 (An.3), passed by the learned Permanent Lok Adalat, District Legal Service Authority, Udaipur (Raj.) in Case No. 28/2011 P.L.A. (Smt. Fefli Bai & Another Vs. Dr. V.S. Rao & Others; [Case No.17/2011 P.L.A. (Smt. Devli & Another Vs. Dr. Madhu Bansal & Others) in S.B. Civil Writ Petition No.2480/2016]
b. be also please to dismiss the application (An.1) filed by the applicants/respondents No.1 & 2;
c. any other appropriate order(s) which this Hon'ble Court deems just and proper in the facts and circumstances of the case may kindly be also passed; and
d. the petitioners may kindly be allowed the cost of writ petition.”



2. At the outset, learned counsel for the parties submit that the controversy involved in the present writ petition has already been decided by a Division Bench of this Court in the case of **Smt. Ramila v. Chief Medical & Health Officer & Ors. ; D.B. Civil Special Appeal (Writ) No.1155/2013**, decided on 15.01.2014. Therefore, it is jointly prayed that the present writ petition may be disposed of in the same terms.

3. In the case of **Smt. Ramila** (supra), the Division Bench of this Court had passed following order :-

“ The learned Single Judge found the award so made by the Permanent Lok Adalat not sustainable for the same having been made without recording any finding that the sterilization operation had failed on account of negligence on the part of the doctor concerned. The learned Single Judge also referred the decision of Hon'ble Supreme Court in the case of State of Punjab vs. Shivram & Ors : (2005) 7 SCC 1 and proceeded to set aside the impugned award dated 19.10.2011 but then, observed that if any compensation was payable for failure of sterilization operation in terms of the Scheme notified by the State Government, the present appellant would make a representation in that regard, which shall be considered by the State Government expeditiously. The learned Single Judge disapproved the award made by the Permanent Lok Adalat, inter alia, with the following observations:

“A bare perusal of the material on record goes to show that the allegations of negligence on the part of the doctor performing the sterilization operation were not proved by the respondent no. 1 by producing any cogent evidence on record. There is no finding recorded by the Permanent Lok Adalat that the sterilization operation has failed on account of negligence on the part of the doctor performing the sterilization operation. There is nothing on record to show as to what prevented the respondent no. 1 to act promptly and go for abortion if she was not desirous of having yet another child. In these circumstances, without there being any evidence, the Permanent Lok Adalat has seriously erred in holding that the petitioners are liable for deficiency in public utility services rendered by them.”



Seeking to question the order so passed by the learned Single Judge, learned counsel for the appellant has strenuously argued that the appellant is a poor Adiwasi not possessed of sufficient means to support a larger family. It is submitted that on the admitted fact situation that the appellant had undergone sterilization operation and had thereafter, conceived the child being indisputable, the award made by the Permanent Lok Adalat called for no interference in the writ jurisdiction. The learned counsel has also referred to the decision of Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs Raj Rani : (2005) 7 SCC 22 and submitted that therein, the Hon'ble Supreme Court, despite proceeding on the basis of Shiv Ram's case (supra), protected the concerned claimants by directing that any amount paid by the appellant State to the decree-holders would not be liable to be refunded. Thus, the learned counsel prayed in the alternative that such a course may be approved in the present case too, particularly in view of the poor financial condition of the appellant. In this regard, on being queried if the amount has indeed reached the appellant, the learned counsel for the appellant could only submit that it had 'almost' reached inasmuch as it had been sanctioned by the authorities concerned. However, the learned counsel candidly admitted that actual payment was not received by the appellant.

So far the merits of the case are concerned, we are at one with what has been observed by the learned Single Judge in this case. A bare look at the award impugned makes it absolutely clear that on the core issue relating to the negligence of the doctor concerned, Permanent Lok Adalat made rather an assumptive award and, without there being any cogent and specific evidence, it was concluded that there had been want of proper care and caution on the part of the doctor concerned; and thereafter, the Permanent Lok Adalat proceeded to award the amount towards the so-called financial support.

With respect, we are unable to approve the approach of the Permanent Lok Adalat in this matter from any stand-point. The learned Single Judge has rightly taken into the comprehension the fact situation of the case as also the law applicable; and has rightly set aside the baseless award made by Permanent Lok Adalat while pointing out that a case of medical negligence cannot be assumed





by a mere reference to the allegations of failure of the operation, as was laid down in no uncertain terms by the Hon'ble Supreme Court in Shiv Ram's case (supra). The principles were again reiterated in Raj Rani's case (supra), as referred by the learned counsel for the appellant in the following:-

“A three-Judge Bench of this Court has held in State of Punjab v. Shiv Ram that childbirth in spite of a sterilisation operation can occur due to negligence of the doctor in performance of the operation, or due to certain natural causes such as spontaneous recanalisation. The doctor can be held liable only in cases where the failure of the operation is attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognised the percentage of failure of the sterilisation operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognised by medical science. Thus, the pregnancy can be for reasons dehors any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable also would not arise. The decrees cannot, therefore, be upheld.”

In view of the above, we are satisfied that the order, as passed by the learned Single Judge calls for no interference.

So far the other part of the submission is concerned, it is but apparent that in Raj Rani's case (supra), it was conceded on behalf of the appellant State that they would not interested in depriving the decree-holders of the payment already made in satisfaction of the decrees in question. It was in view of such a concession on the part of the State that the Hon'ble Supreme Court, in the given case, ordered that the decree-holder would not be liable to refund the amount by way of restitution. It is also but apparent that the Hon'ble Supreme Court has not laid down the law of universal application in Raj Rani's Case that in every such matter, despite not approving the award or decree as the case may be, the State shall yet be obliged to make the payment to the claimants. Moreover, in the present case, admittedly, the State has not released the payment to the appellant.





Therefore, the observations as made in the Raj Rani's case (supra) do not even remotely apply to the present case.

It is also noticed that the learned Single Judge has otherwise left it open for the appellant to make a representation in terms of the Scheme floated by the State Government for payment in case of failure of sterilization operation; and has expected of the State Government to take a decision on such a representation expeditiously.

It is needless to say that when we are not inclined to interfere with the order passed by the learned Single Judge, obviously the parties would be expected to take appropriate steps for payment under the applicable Scheme but, of course, in accordance with law.

Subject to the observations foregoing, the appeal stands dismissed.”

4. In view of the submissions made by learned counsel for the parties and having regard to the judgment passed by the Division Bench of this Court in Smt. Ramila (supra), the present writ petition is allowed in the same terms mutatis mutandis. Accordingly, the impugned order dated 03.05.2013 passed by the learned Permanent Lok Adalat, District Legal Services Authority, Udaipur, is set aside. The respondents shall, however, be at liberty to take appropriate steps for seeking payment, if any, under the applicable Scheme floated by the State Government, in accordance with law.

5. The stay application and all pending application(s), if any, also stand disposed of accordingly.

(MUKESH RAJPUROHIT),J

Crt_17 (1962)
D-A/3 & 4
Mrityunjay Singh Rathore

