

MOOT PROBLEM

FIRST ROUND

In 2012 the Government of Zindia launched a National Population Policy, with the purpose of reducing the birth rate to control the population explosion which was becoming a serious menace as it was putting a lot of pressure on the existing resources. Under the Policy one of the measures taken by the Government was to designate a government hospital in each district for encouraging and promoting the people to undergo vasectomy and tubectomy.

In the city of Jurat in State of Tujarat, Spice Galore Hospital was designated for the said purpose. Mr. OkurSen, a diamond merchant, had a family comprising of his wife, Mehant and one son. He was not interested in having another child. In pursuance of that, Mehant agreed to tubectomy operation in the Spice Galore Hospital.

On 08th February 2013, Mehant underwent sterilisation. The couple entered into a contract with the hospital in which few terms were as follows-

- That 100 % success was assured in the sterilization operation.
- That the hospital would be liable for damages for any injury caused to the mother during the operation.

Soon the couple discovered that Mehant has become pregnant. She later gave birth to a disabled girl child on 20th January 2014.

On 03rd February 2014, Mr. OkurSen filed a civil suit in the District Court seeking damages for the unwanted pregnancy, mental pain and the cost of upbringing the disabled child till her puberty and later her marriage. Mr. Sen

also sued the hospital for the breach of contract on the ground that the hospital had ensured a cent percent success. The lower court rejected his claims and ruled in the favour of the hospital. On appeal the High Court of Tujarat upheld the decision of the lower court. Aggrieved by the decision of the High Court, the claimant approached the Supreme Court under Article 136 of the Constitution of Zindia.

A 3- Judge bench of the Supreme Court granted leave to appeal and initially heard the matter. In the course of the hearing it was felt that the matter raises questions of public importance and therefore it would be appropriate that the matters be heard by a 5 Judge Bench. Accordingly, all the matters are now posted for hearing before a 5 Judge Bench on September 07, 2014.

Draft the Issues and submit the memorial for both sides.