



W.P.(MD) No.21616 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	05.04.2024
Pronounced On	18.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.21616 of 2018

T.Karthikeyan

... Petitioner

Vs.

1.The Director,
Public Health and Preventive Medicine,
Director of Medicine,
No.359, Annasalai,
Chennai.

2.The Deputy Director,
Primary Health Department,
Pudukkottai District,
Pudukkottai.

3.Dr.Raja,
Primary Health Centre,
Koppanampatti,
Vengalamedu,
Ponnamaravathy Taluk,
Pudukkottai.

4.Kalaiselvi,
Working as Nurse,
Primary Health Centre,



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Koppanampatti,
Vengalamedu,
Ponnamaravathy Taluk,
Pudukkottai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take appropriate legal action against the respondents 3 and 4 responsible for the death of the petitioner's wife namely, Subatha at Koppanapatti, Vengalamedu Primary Health Centre, Pudukkottai, based on the petitioner's representation, dated 19.09.2018.

For Petitioner : Mr.A.Arul Jenifer

For R1 & R2 : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to take appropriate legal action against the respondents 3 and 4, who are responsible for the death of the petitioner's wife namely, Subatha at Koppanapatti, Vengalamedu Primary Health Centre, Pudukkottai, based on the petitioner's representation, dated 19.09.2018.



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2. The petitioner claims that the respondents 3 and 4 were negligent, due to which, the petitioner's wife Mrs.Subatha died in the hospital.

3. The specific case of the petitioner is that his wife conceived for the second time and was taking treatment in the Primary Health Centre at Koppanapatti, Vengalamedu, Pudukkottai and that she had no health issues and that she being taken to the said hospital as she developed severe pain.

4. It is submitted that the petitioner's wife was not satisfied with the treatment given in the said hospital and was given improper treatment by the fourth respondent and the doctors wanted her to be discharged and taking to some other hospital. However, the fourth respondent forced the petitioner's wife to co-operate for further treatment.

5. It is the further case of the petitioner that his wife was given incorrect treatment and eventually fainted and had later to be shifted to the private hospital namely, Sri Durga Surgical Clinic and Research Centre at Ponnamaravathy, where the procedure was carried out, resulting in the



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death of the fetus. It is the further case of the petitioner that the fourth respondent gave unauthorized treatment, as a result of which, the petitioner's wife suffered and was bleeding profusely. The petitioner's wife was shifted to Meenakshi Mission Hospital and Research Centre, Madurai, where she suffered cardiac arrest and was revived twice. Later, she was discharged against the medical advice for further treatment in a Government Hospital.

6. It is submitted that but for the negligence of the respondents 3 and 4, the petitioner's wife Subatha, aged about 29 years, would not have died. Hence, it is prayed that the petitioner's representation dated 19.09.2018 be suitably considered by punishing the respondents 3 and 4.

7. A specific reference was made to the summary of the medical report given by the third respondent, dated 25.02.2018, wherein the third respondent has blamed the fourth respondent for the medical complication during the labour.

8. The learned counsel for the petitioner has placed reliance on the decision of this Court in **T.Rajagopal vs. State of Tamil Nadu and**



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others, 2021 (6) MLJ 470. A reference is made to Paragraphs 16 and 17

of the said order, which read as follows:-

"16. In view of the above, even though this Court does not find any negligence on the part of the fourth respondent insofar as the treatment that was given to the petitioner's wife, there was definitely a delay in shifting the petitioner's wife from the Primary Health Centre to the Medical College, Asaripallam. Since the petitioner's wife was suffering from heavy bleeding, this delay had ultimately proved to be fatal resulting in her death. In Medical Parlance, it is referred to as golden hour. R. Adams Cowley who came up with this term called this time as the time between life and death.

17. It is for this purpose, G.O.Ms.No.395, dated 04.09.2018, was brought into force by the Government by creating a Corpus fund. The Government Doctors contribute a certain amount towards this Corpus Fund and whenever a case arises for payment of compensation, the amount can be paid from this Corpus fund without unnecessarily burdening any Doctor or Government Institution. Considering the entire facts and circumstances of the case, this Court is of the considered view that the case of the petitioner will fall within the requirements of Sub Clause II of Clause 4(G). Hence, the petitioner is entitled to be paid compensation under this Government Order to tune of Rs.5,00,000/- (Rupees Five Lakhs Only)."

9. There is no response from the respondents 3 and 4.



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10. The second respondent has filed counter affidavit on behalf of the first respondent, wherein the respondents have denied the negligence on the part of the third respondent or on the part of the fourth respondent. A reference is made to the report submitted by the first respondent vide his proceedings in R.No.326/A3/18, dated 18.09.2018. It is submitted that the explanation was called for from the fourth respondent, wherein the fourth respondent has stated that the petitioner's wife came to the Primary Health Centre on 20.02.2018 and the Medical Officer examined her, ultra sonogram was taken and that the Medical Officer clearly explained to the petitioner's wife that she should be referred to the Medical College Hospital at Pudukkottai and therefore, the fourth respondent was instructed to call 108 Ambulance Service. It further records that the petitioner's wife was not prepared to get herself admitted at the Medical College Hospital and that she has to collect things from the house and will thereafter, get admitted in the Medical College Hospital at Pudukkottai and that in the evening when she enquired whether the petitioner's wife had gone to the Medical College Hospital, the fourth respondent was informed that the family members had taken her to Team Hospital, Pudukkottai. It is therefore submitted that the allegations in the affidavit filed by the petitioner are false.



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11. In the counter affidavit, it is further submitted that even on 20.02.2018 *i.e.*, the day prior to her admission, the petitioner's wife was advised by the third respondent to get herself admitted in the Government Medical College Hospital at Pudukkottai. However, suppressing the same, bald allegations have been made by the petitioner in the affidavit filed in support of the present Writ Petition.

12. The learned Special Government Pleader has further drawn the attention of this Court to the explanation given by the third respondent to the second respondent, wherein it is stated that without the knowledge of the third respondent, the Staff Nurse had administered Valethamate injunction and gave enema and kept some tablets (Misoprostol) vaginally at 05.00 p.m. according to the petitioner's wife's sister, who is a staff nurse working in a Private Hospital.

13. The report further states that on 22.02.2018 at 02.30 a.m., membrane ruptured. At 03.00 a.m. cervix fully dilated and found to have fetal distress. The staff nurse informed the Medical Officer of Government Primary Health Centre, Koppanapatti, about fetal distress which delayed progression of labour. The Medical Officer advised her to refer the patient to cemonc centre, Pudukkottai.



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14. The learned Special Government Pleader has also drawn the attention to the report of the second respondent, wherein it has been stated as follows:-

"மேலும் திருமதி.சுபேதா என்பவர் பிரசவத்திற்கு அனுமதிக்கப்பட்டது முதல் மகப்பேறு மரணம் நடைபெற்றது வரையிலான நிகழ்வுகள் குறித்து கொப்பனாபட்டி ஆரம்ப சுகாதார நிலைய மருத்துவ அலுவலர், செவிலியர், கிராம சுகாதார செவிலியர் மற்றும் தூர்கா தனியார் மருத்துவமனை மருத்துவர், செவிலியர் ஆகியோரிடம் நேரடி விசாரணை மேற்கொள்ளப்பட்டது. விசாரணையில் கார்ப்பிணித்தாய்க்கு உரிய மருத்துவ சிகிச்சை முழுமையாக அளிக்கப்பட்டும், தவிர்க்க முடியாத சூழ்நிலையில் பிரசவ சிக்கல் ஏற்பட்டதன் காரணமாக மகப்பேறு மரணம் நடைபெற்றது என்றும், மருத்துவக் குழுவின் தவறு இல்லை என்றும் தெரியவருகிறது.

கார்ப்பிணித்தாய்க்கு சுகப்பிரசவம் நடைபெறுவதற்கும், தாயையும் சேயையும் காப்பாற்றுவதற்கு கடைசி வரையிலும் மருத்துவக் குழுவால் தீவிர மருத்துவ சிகிச்சை மேற்கொள்ளப்பட்டும் தவிர்க்கமுடியாத சூழ்நிலையில் கடைசி நேர பிரசவ சிக்கல் ஏற்பட்டதன் காரணமாக மகப்பேறு மரணம் ஏற்பட்டது என்றும், மருத்துவக் குழுவின் தவறு இல்லை என்றும் மகப்பேறு மரணம் குறித்த தணிக்கை ஆய்வில் தெரிவிக்கப்பட்டது என்ற விவரத்தை பணிவுடன் தெரிவித்துக்கொள்கிறேன்."

15. It is submitted that the above report of the second respondent clearly exonerates the respondents 3 and 4. It is submitted that the death of the petitioner's wife was primarily on account of complication during the labour. A reference was also made to another report dated 18.09.2018 of the second respondent, bearing reference No.R.No.326/A3/2018,



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wherein it has been stated as follows:-

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"6. Village Health Nurse Kalaiselvi said that she did not administer T.Misoprostol and she did not give Inj.Oxytocin during enquiry by special Maternal death audit Team. When Medical Officer, Primary Health Centre enquired the relative the next day after death, Subetha's Sister said that T.Misoprostol was inserted by Village Health Nurse. Medical Officer has recorded that in his statement. Whereas Subetha's Sister did not come to Primary Health Centre, Koppanapatti from the time of Admission till referral.

In spite of Medical Officers advise to refer the mother to Medical College Hospital, Village Health Nurse and Staff Nurse did not do that Staff Nurse repeatedly told Village Health Nurse that Subetha has to be referred. Whereas Village Health Nurse Overlooked Staff Nurse and Prevented her referring the mother for which Village Health Nurse was called for explanation and deputed from her original station to another HSC."

16. A further reference was made to the letter of the first respondent to the Registrar (Law), State Human Rights Commission, Thiruvaramangam, in response to the complaint filed by the State Human Rights Commission in Case No.3698 of 2018. The relevant portion of the said report reads as under:-

"மேலும் திருமதி.சுபேதா என்பவர் பிரசவத்திற்கு அனுமதிக்கப்பட்டது முதல் மகப்பேறு மரணம் நடைபெற்றது வரையிலான நிகழ்வுகள் குறித்து



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கொப்பனாபட்டி ஆரம்ப சுகாதார நிலைய மருத்துவ அலுவலர், செவிலியர், கிராம சுகாதார செவிலியர் மற்றும் துர்கா தனியார் மருத்துவமனை மருத்துவர், செவிலியர் ஆகியோரிடம் நேரடி விசாரணை மேற்கொள்ளப்பட்டது. விசாரணையில் கர்ப்பிணித்தாய்க்கு உரிய மருத்துவ சிகிச்சை முழுமையாக அளிக்கப்படும், தவிர்க்க முடியாத சூழ்நிலையில் பிரசவ சிக்கல் ஏற்பட்டதன் காரணமாக மகப்பேறு மரணம் நடைபெற்றது என்றும், மருத்துவக் குழுவின் தவறு இல்லை என்றும் தெரியவருகிறது."

17. Thus, the report of the District Collector, Pudukkottai, addressed to the Registrar (Law), State Human Rights Commission, in Case No.3698 of 2018, makes it clear that due to complication, which has led to the death of the fetus, the petitioner's wife died. The death is not solely on account of the fourth respondent's negligence, as the third respondent had clearly stated that the petitioner's wife should be admitted and referred to the Government Medical College Hospital. However, the petitioner's wife had refused to accede to the same and later developed complications in the evening and therefore, called the fourth respondent over phone for help. It is in this background, the fourth respondent has given first aid to the deceased wife of the petitioner at the Primary Health Centre, Koppanapatti.

18. The family was divided as to whether the petitioner's wife



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should be referred to Government Hospital or to a private hospital. After, it became clear that the Primary Health Centre, Koppanapatti, was not having adequate facility to deal with the complication during the delivery, the petitioner himself drove his wife from the Primary Health Centre and got her admitted in Sri Durga Surgical Clinic and Research Centre. Though the petitioner's sister-in-law [sister of the deceased wife of the petitioner] wanted the petitioner's wife should be admitted in the Team Hospital, where the petitioner's wife appears to have undergone procedure and shifted to Sri Durga Surgical Clinic and Research Centre, where a stillborn child was born after the petitioner's wife developed labour complications. She was thereafter discharged against the medical advice and was taken to Meenakshi Mission Hospital, Madurai, where she suffered cardiac arrest. It is, at this stage, the petitioner's family members wanted to discharge her and she was discharged against the medical advice and taken to the Government Hospital, where she declared dead on arrival.

19. The petitioner's case for taking action against the respondents 3 and 4 is therefore unwarranted, as there have been multiple reasons, which have led to the complications during labour pain and the same had



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eventually led to the death of the petitioner's wife. The petitioner's wife herself had delayed in getting admitted in the hospital, despite the advice of the third respondent and since she developed labour pain at a later point of time, she went to the Primary Health Centre, where she was given treatment by the third respondent and the nurse, who was attending the night duty. It is evident that the fourth respondent has gone beyond the call off duty and wanted to comfort the petitioner's wife, who had already suffered complications at home when she was brought to the Primary Health Centre at Koppanapatti.

20. The petitioner's sister-in-law [sister of the deceased wife of the petitioner] has also delayed in shifting the petitioner's wife to the Government Hospital and precious time was lost in shifting her and was eventually shifted in Sri Durga Surgical Clinic and Research Centre, Ponnamaravathy.

21. Therefore, the case of the petitioner for punishing the respondents 3 and 4 cannot be countenanced. That apart, question of taking action against the respondents 3 and 4 will arise only if there is gross negligence. It appears no F.I.R. has been filed or criminal case has been instituted against the respondents 3 and 4. In the absence of any



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direct material, to take action against the respondents 3 and 4, this Writ

Petition cannot be ordered.

22. In the result, this Writ Petition is dismissed. No costs.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

18.04.2024

To

1.The Director,
Public Health and Preventive Medicine,
Director of Medicine,
No.359, Annasalai,
Chennai.

2.The Deputy Director,
Primary Health Department,
Pudukkottai District,
Pudukkottai.



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C.SARAVANAN, J.

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