

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7145 of 2013

R.Marimuthu

.. Petitioner

Versus

- 1 The Health Secretary,
Government of Tamil Nadu,
Department of Health,
Secretariat, Fort St. George.
Chennai 600 009.
- 2 The Director
Medical Education Board,
Kilpauk, Chennai 600 010.
- 3 The Deputy Director
Health Services,
Saidapet, Chennai 600 015.
- 4 The Hospital Superintendent,
Government Ophthalmic Hospital,
Egmore, Chennai 600 008.
- 5 The District Collector,
Kancheepuram,
Kancheepuram District 631 501. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 4/12/2012 within a reasonable period as may be fixed by this Hon'ble Court.

For Petitioner :Mr.P.Sam Japa Singh

For RR 1, 3, 4 & 5 :Mr.V.S.Ramesh,

Government Advocate

For 2nd Respondent :No appearance

O R D E R

The petitioner is an unfortunate victim of a negligent operation conducted on him by the Doctors / Hospital Staff of the Government Ophthalmic Hospital, Egmore, Chennai 600 008.

2. Heard Mr.P.Sam Japa Singh, learned Counsel appearing for the petitioner and Mr.V.S.Ramesh, learned Government Advocate

appearing on behalf of the respondents 1, 3, 4 & 5.

3. According to the learned counsel for the petitioner, the petitioner had visited the Government Ophthalmic Hospital, Egmore, for improvement of his eye sight and on the advise of the Doctors / Hospital Staff, he underwent an Eye Operation on 27.12.2007. However, the operation turned into a nightmare for the petitioner when he lost his eye sight owing to the negligence on the part of the surgery which was conducted on him. Since the petitioner lost his eye sight due to negligence of Doctors / Hospital Staff, who conducted the operation, he had written many letters to the respondents seeking for suitable compensation.

4. The learned counsel for the petitioner would also submit that the respondents had assured to give 50 cents of lands to the petitioner to compensate the loss of his eye sight. In spite of the promise, no positive action has been taken on the part of the respondents till date. All his representations in this regard proved futile. Left with no other options, the petitioner has filed the present Writ Petition seeking for the Mandamus directing the respondents to consider his representation dated 04.12.2012.

5. The learned Government Advocate would submit that the respondents have promptly attended to the representation of the petitioner, which is evidenced from the documents filed by the petitioner in the typed set of papers. Though the learned Government Advocate had sent a notice dated 13.10.2016 to the respondents by fax, no initiative has been taken by them to instruct him suitably on this case. Nevertheless, the learned Government Advocate, would submit that if a positive direction is given to the respondents to consider the petitioner's representation, the same would be promptly complied with.

6. I have given careful consideration to the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

7. At the outset and before going into the submissions made by the learned counsel for the petitioner, it is rather unfortunate that the petitioner, who is a victim of negligence, has been dragged from pillar to post for the purpose of obtaining a reply for the various representations sent by him. The petitioner had lost his eye sight in the operation that was performed on 27.12.2007. He had made a representation to the Chief Minister's Cell on 02.06.2010 venting out his grievance and seeking for a suitable compensation. The said letter was forwarded to the 5th respondent. The 5th respondent in turn forwarded the letter to the 4th respondent. The 4th respondent then forwarded the letter to the 3rd respondent on 22.07.2009. The 3rd respondent on receipt of the letter, had sent a letter to

the 5th respondent on 05.09.2009 affirming that the petitioner had lost his eye sight due to the eye operation performed by the Government Ophthalmic Hospital at Egmore and advising the 5th respondent to compensate the petitioner by assigning a land in his favour. The 5th respondent in turn forwarded the letter to the Tahsildar, Tambaram on 13.11.2009. The Tahsildar, Tambaram, in turn forwarded the letter to the Tahsildar, Alandur. The Tahsildar, Alandur, in turn forwarded the letter to the Tahsildar, Sriperumbudur on 18.02.2010 directing him to assign 50 cents of land in favour of the petitioner. In spite of these "forwards" no positive action has been taken by the respondent to even identify the land or give an assertive reply to the petitioner. There is nothing on record to show that the Chief Minister's Cell, which is established to redress the grievance of the general public and which cell had duly forwarded the same to the 5th respondent, has not been informed of the follow up action taken on the petitioner's representation.

8. Every time the petitioner's representation was forwarded to one authority or another, the petitioner has been following it by personally visiting them and requesting them to take a decision on his request. The inaction on the part of the respondents in giving a reply to the representation from the year 2009 onwards amounts to clear dereliction of the duty on the part of all the respondents.

9. It is pertinent to mention here that when the Authority receives the representation from any member of the public, he does not get absolved of his liability by just forwarding it to another Authority, but should keep himself informed on the action taken on the representation that was forwarded by him. The Authority who receives the representation cannot also keep the same in slumber without acting upon it at the earliest. The petitioner has been unnecessarily forced to file a Writ Petition by engaging a private counsel and incurring legal fees and expenses for obtaining a direction to the respondents to perform the ordinary duties of their office. If the representation is not disposed of within a reasonable time, by a Government Authority, the Authority who has contributed to the delay is answerable to the same. Taking into consideration, the various responsibilities of a Government Servant, the reasonable time to consider any representation application can be specifically determined as "3 months".

10. In the present case, the receipt of the petitioner's representation by the respondents 2 to 5 is not in dispute. Apparently no action has been taken by them on the petitioner's representation till date. In this regard it would be appropriate to direct the first respondent to appoint a suitable officer to enquire into cause of the delay by the respective respondents 2 to 5 in giving a reply to the petitioners

representation which was given to the Chief Minister's Cell on 02.06.2010. The enquiry should be completed within a period of 12 weeks from the date of receipt of this order and a copy of the report should also be marked to the petitioner.

11. With regard to the negligence on the part of the Doctors/Hospital Staff of Government Ophthalmic Hospital, Egmore, the petitioner had sent a letter dated 01.08.2013 to the 4th respondent under the Right Information Act seeking for details of the Doctor who had conducted surgery on him for the purpose of impleading the Doctor as a party/respondent in this Writ Petition. Even that information has not been furnished by the 4th respondent to the petitioner till date. This fact should also be taken into account by the first respondent when he directs the enquiry against the other respondents. The first respondent is also directed to identify the concerned doctor/hospital staff who had contributed to the negligence and seek for written explanations from them. On receipt of such explanation, if the 1st respondent is of the view that there is a prima facie negligence on the part of any Doctor/ Hospital staff, necessary action should be initiated against them.

12. The fact that the petitioner was promised 50 cents of land is admitted by the 3rd respondent in his letter dated 05.09.2009. While that being so there is no justification on the part of the respondents in not acting upon the decision till date. The petitioner had given another comprehensive representation on 04.12.2012 to all the respondents and the same has been acknowledged by them. In view of the inaction on the part of the respondents to consider the representation, this Court deems it fit and proper that suitable directions may be issued directing them to pass orders.

13. In this back ground, there shall be a direction to the 1st respondent herein to take up the case of the petitioner on priority basis and consider his claim for the loss of his eye sight owing to the negligence of the Doctors/Hospital Staff of Government Ophthalmic Hospital, Egmore and award suitable compensation. The petitioner shall give a fresh representation to the 1st respondent, in this regard and on receipt of the same, the 1st respondent shall take positive steps to consider the representation and pass necessary orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. The 1st respondent while disposing of the case shall also bear in mind that the petitioner is now aged about 75 years and has been knocking the doors of the respondent for compensation, for the past 9 years.

14. With the above observation the Writ Petition stands disposed of. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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