

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34402 of 2003
and
W.P.M.P.No.41761 of 2003

Dr.Prema Rajagopalan

.. Petitioner

Vs.

1. The Director of Medical Services,
Government of Tamil Nadu,
258-261, Anna Salai,
Chennai-600 006.
2. The Superintendent,
Government Kasturba Gandhi Hospital
for Women and Children,
Triplicane,
Chennai-600 005.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the proceedings in Ref.No.2771/P&D/99, dated 31.10.2003 of the second respondent and quash the same.

For Petitioner : Mrs.V.J.Latha
For Respondents : Mr.Akhil Akbar Ali, Govt. Advocate

ORDER

The petitioner has come forward with this Writ Petition challenging the recovery order passed by the second respondent on 31.10.2003 ordering recovery of a sum of Rs.75,000/- out of Rs.1 lakh awarded to a patient, namely Saraswathi, wife of Arumugam.

2. According to the petitioner, she was Assistant Professor working in the second respondent's Hospital (Government Kasturba Gandhi Hospital for Women and Children) and she was there between 06.06.1983 and 06.05.1988. The petitioner applied leave for 12 days from 02.06.1986 to 13.06.1986 and reported for duty on 14.06.1986. The said patient Saraswathi was admitted to the said hospital on 13.06.1986 and treated for tube-pregnancy and

it was found that while performing the surgery, there was a lapse on the part of the Surgeon(s), due to which, the forceps were left in the abdomen of the said patient. Aggrieved by the deficiency made by the hospital/Doctors, the petitioner approached this Court and filed W.P.No.205 of 1993, and by order dated 07.02.2000, this Court awarded compensation of Rs.1 lakh to the victim-patient. The Government has decided to investigate into the issue of deficiency in service and decided to recover the amount from the persons responsible for the said deficiency. However, a sum of Rs.1 lakh had been paid to the patient Saraswathi. By the impugned order, after the retirement of the petitioner, the Government has decided to recover the amount from the petitioner in a sum of Rs.75,000/-, for which, according to the petitioner, she is no way responsible for the deficiency. According to the petitioner, she was on leave till 13.06.1986 and reported for duty only on 14.06.1986. Going by the affidavit of the petitioner, it is seen that one Dr.Janaki has performed the surgery on the said patient. It is submitted that the action of the second respondent in imposing the recovery by the impugned order, is arbitrary and illegal and the same is liable to be interfered with.

3. Per contra, learned Government Advocate appearing for the respondents, by filing counter affidavit, submitted that the relevant records were not available and after detailed enquiry, it was found that several persons numbering 14 were held responsible for their dereliction of duty/deficiency in service with regard to the performance of the aforesaid tube-pregnancy-surgery on the petitioner and after paying compensation of Rs.1 lakh to the affected person, namely the patient, it has been decided by the Government to recover the said amount from the staff nurse, Doctor who performed the surgery, etc. It is found that Dr.Prema Rajagopalan, the petitioner herein had performed the surgery on the patient and hence, the second respondent passed the impugned order of recovery of Rs.75,000/- from her.

4. Heard both sides and perused the materials available on record.

5. The impugned order and the other materials placed before this Court clearly shows that there are no records including the case sheet and that the liability has been foisted/fastened on 14 persons and based on the statement of the Superintendent of the Hospital, the details have been culled out and the impugned order of recovery was passed by the second respondent, which is the subject matter of the Writ Petition.

6. It is the main stand of the respondents that having committed deficiency in service and that leaving the forceps in the abdomen of the patient, cannot be taken lightly and that the Government has fixed the liability on the petitioner and other persons who assisted the Doctor(s) including the petitioner.

7. It is an admitted case that the tube-pregnancy-surgery was conducted on the patient Saraswathi leaving the forceps in her abdomen. There are no relevant documents available on

record. No reliable document has been produced by the respondents. It is the case of the respondents that the case sheet and other relevant documents are missing, for which, action has already been initiated. The petitioner-Doctor has produced evidence to show that she was on leave between 02.06.1986 and 13.06.1986 and produced the communication to that effect before this Court. In the impugned order, in one of the paragraphs, the second respondent has stated that the records are missing and in another paragraph, the second respondent has stated that on a perusal of the available records of the institution, the staff nurse and medical record officer are identified as persons responsible in the above case. Though this Court is of the view that serious deficiency in service has been committed by the hospital staff, more particularly, the Doctor who has performed the surgery, it is very difficult to confirm that the petitioner-Dr.Prema Rajagopalan alone has performed the surgery in the hospital, as in the affidavit of the writ petitioner, she has stated that one Dr.Janaki has performed the surgery. Though it has been stated that the said Dr.Janaki was there in the hospital at that time, there is no iota of evidence to show as to whether any explanation has been called for from the said Dr.Janaki.

8. It is not the case of the respondents that the petitioner-Doctor, who was attending on the said patient, was called to perform the surgery at the instance of the patient on that particular day. In the absence of such a pleading, and more particularly, in the absence of any records and that as the petitioner has produced leave letter copy showing the leave that has been granted to the petitioner between 02.06.1986 and 13.06.1986, this Court has no other option except to interfere with the impugned order of recovery passed against the petitioner.

9. Accordingly, the impugned order is set aside insofar as the petitioner alone is concerned. It is made clear that this Court has not expressed any opinion with regard to the recovery made on the other persons mentioned in the impugned order in the annexure therein. The Writ Petition is allowed. No costs. W.P.M.P. is closed.

10. Before parting with the case, it has to be observed that the hospitals like the second respondent's hospital, namely Government Kasturba Gandhi Hospital for Women and Children (famously known as Gosha Hospital) and the other Government Hospitals, as also the other private hospitals, must ensure that the medical documents of the Hospitals are kept in safe custody and the case sheet, discharge summary, list of Doctors who attended on the patient's surgery, treatment details given, more particularly, the discharge summary should also contain the name of the Doctor/Surgeon who has performed the surgery and who are all assisted the Doctor, namely the staff nurse who attended on the patient during surgery, so that the persons like the victim-patients who approach the Court, can correctly identify the

person, i.e. the Doctor, staff nurse and other staff who attended on the patient during surgery.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cs

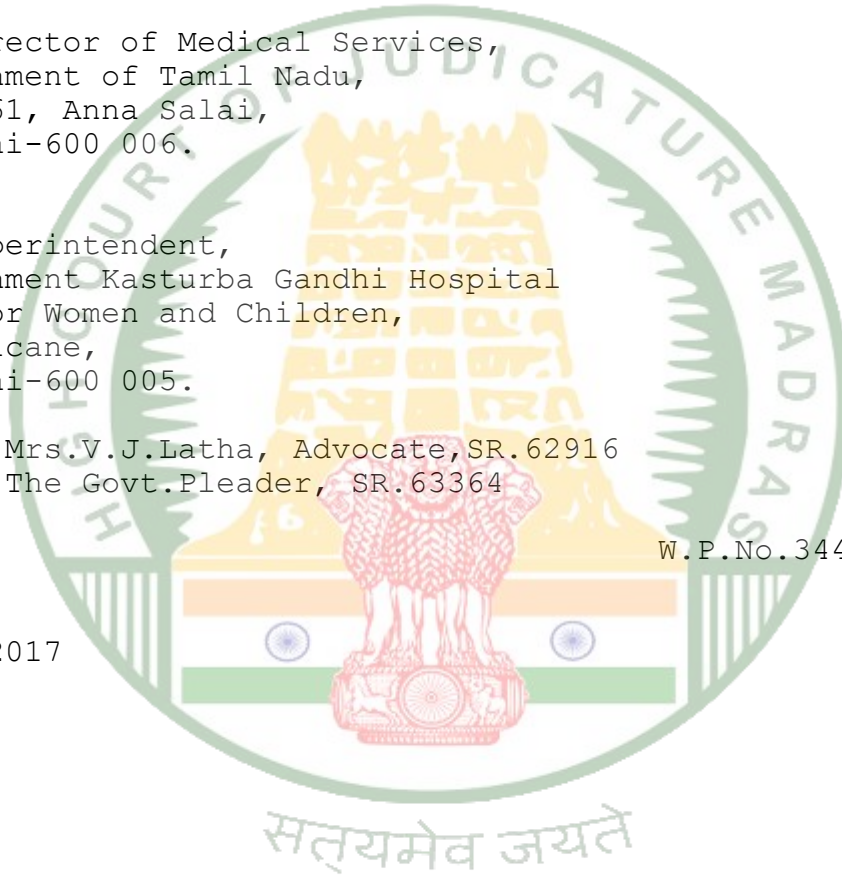
To

1. The Director of Medical Services,
Government of Tamil Nadu,
258-261, Anna Salai,
Chennai-600 006.
2. The Superintendent,
Government Kasturba Gandhi Hospital
for Women and Children,
Triplicane,
Chennai-600 005.

+ 1 cc to Mrs.V.J.Latha, Advocate,SR.62916
+ 1 cc to The Govt.Pleader, SR.63364

W.P.No.34402 of 2003

SAI (CO)
NR 27/09/2017



WEB COPY