

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.02.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.NO.10345 OF 2011

and

W.P.No.1 of 2011

V.Malar

...Petitioner

.Vs.

1.The State of Tamil Nadu,
rep.by its Secretary,
Health and Social Welfare Department,
Fort St.George,
Chennai.

2.The Director,
Directorate of Medical Services,
D.M.S.Compound,
Thenampet,
Chennai-6

3.The Dean,
Kilpauk Medical College Hospital,
Poonamallee High Road,
Chennai

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to pay sum of Rs.3,00,000/- (Rupees three lakhs only) to petitioner's child as compensation for the denial of treatment, physical, mental and financial injury caused as a result of the denial of medical treatment and ensure immediate and timely medical attention and treatment to the persons living with HIV in serious condition.

For Petitioner : Mr.P.Uma

For Respondents : Mr.J.Ramesh,A.G.for R1 to R3

ORDER

The writ petition has been filed seeking to issue a writ of mandamus directing the respondents to pay a sum of Rs.3 lakhs to the petitioner's child as compensation for the denial of proper treatment.

2. According to the petitioner, her son, at the relevant time, was 13 years old and was diagnosed as PLHIV and had gone to the 3rd respondent hospital for taking treatment. On 18.02.2011 when the petitioner's son had gone to the 3rd respondent hospital along with the petitioner, he was not treated properly by the Doctors therein, although on that day, he was suffering from intolerable pain and high fever. In the hospital, proper care was not given to the petitioner's son and the Doctors had also not attended the patient promptly by giving due care.

3. In the above said circumstances, the petitioner was forced to take treatment to her son in a private hospital. Since there was lack of professional service rendered by the hospital authorities, the present writ petition has been filed, seeking the aforementioned compensation.

4. Except stating that no proper treatment had been given to the petitioner's son and making some vague references about the lack of proper treatment by the 3rd respondent hospital authorities, nothing had been stated in the affidavit filed in support of the writ petition about any specific negligence or lack of care on the part of any Doctor concerned. According to the learned counsel for the petitioner, in view of the indifferent attitude shown by the Doctors of the 3rd respondent hospital, the right of the petitioner's son guaranteed under Article 21 of the Constitution has been violated.

5. This Court is unable to appreciate such argument for the simple reason that on the basis of some vague averments contained in the affidavit, this Court cannot come to any conclusion against the hospital authorities for not giving proper treatment to the petitioner's son on that particular date. In any event, it appears from the averments that nothing has been pointed out in clear terms as to how the treatment which was expected to be given to the petitioner's son was denied to him by any staff or the Doctors of the 3rd respondent hospital. The said allegation has to be established only by way of letting in evidence, to fix the responsibility on any particular person, who is expected to discharge his professional duty and only in case of failure to discharge such

professional duty, the responsibility could be fixed on such person. In the absence of such details, this Court cannot come to any conclusion particularly in favour of the petitioner on the basis of certain general allegations.

For the above said reasons, this Court finds no substance in the writ petition and accordingly, the writ petition stands dismissed. No costs. Connected miscellaneous petition is dismissed.

msk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Health and Social Welfare Department,
Fort St.George,
Chennai.
2. The Director,
Directorate of Medical Services,
D.M.S.Compound,
Thenampet,
Chennai-6
3. The Dean,
Kilpauk Medical College Hospital,
Poonamallee High Road,
Chennai

+1cc to The Govt.Pleader, Advocate, Vide SR.NO.18908

W.P.No.10345 of 2011

BR(CO)
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