

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.16028 of 2017

and

W.M.P.Nos.17317 and 17318 of 2017

R.Muruganantham

... Petitioner

Vs.

- 1.The Chairperson,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi - 110023.
- 2.The Secretary to Government,
Department of Health and Family Welfare Services,
Government of Puducherry,
Puducherry-605001.
- 3.The Director,
Department of Health and Family Welfare Services,
Main Block of the Old Maternity Hospital Complex,
Victor Simonel Street,
Puducherry - 605001.
- 4.The Dean,
Indira Gandhi Medical College and Research Institute,
Vazhudavur Road, Kathirkamam,
Puducherry-605009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 2nd to 4th respondents, (i) To provide Dialysis treatment in three shifts for 24 hours in 4th respondent hospital; (ii) To provide Dialysis treatment under the supervision of Nephrologists; (iii) To depute a Nephrologists and three dialysis technicians to attend the patients in every shift; (iv) To provide dialysis treatment to twenty patients per day; (v) To follow rules and regulation of

Medical Council of India; (vi) To depute adequate number of staff and nurses in Nephrology Department; (vii) To improve the facilities and infrastructures in Nephrology Department; (viii) To maintain the electricity power without shut down problem in all departments of the 4th respondent Hospital.

For petitioner : Mr.Raghumankhan
for Mr.S.Mohamed Ansar

For Respondents: No Appearance

ORDER

(Order of the Court was made by S.MANIKUMAR,J)

Petitioner has sought for a Writ of Mandamus, directing the respondents 2 to 4, (i) To provide Dialysis treatment in three shifts for 24 hours in 4th respondent hospital; (ii) To provide Dialysis treatment under the supervision of Nephrologists; (iii) To depute a Nephrologists and three dialysis technicians to attend the patients in every shift; (iv) To provide dialysis treatment to twenty patients per day; (v) To follow rules and regulation of Medical Council of India; (vi) To depute adequate number of staff and nurses in Nephrology Department; (vii) To improve the facilities and infrastructures in Nephrology Department; (viii) To maintain the electricity power without shut down problem in all departments of the 4th respondent Hospital.

2. Supporting the prayer sought for petitioner has contended that three patients while taking dialysis treatment, died due to medical negligence in the 4th respondent Hospital, for the reason that there was no nephrologist, and the technician did not attend the patients, when power shut down. In this regard, petitioner has sent a representation dated 28.03.2017, to the respondents. Since, there was no response, the petitioner has filed the instant writ petition, for the prayer, as stated supra.

3. Dean, Indira Gandhi Medical College and Research Institution, Puducherry/the 4th respondent herein, has filed the counter affidavit, wherein he has stated that remedial measures have been taken by the government, to solve the problem expressed by the petitioner. For brevity, counter affidavit dated 10.07.2017, is extracted hereunder:-

(i) Respondent No.4 has submitted that, Perunthalaivar Kamaraj Medical College Society (PKMCS), a duly registered society under the Societies Registration Act, was floated by the Government of Puducherry in the year 2005, to impart free medical education in the Union Territory of Puducherry. The Memorandum of Association (MOA) and Rules and

Regulations of the Medical College Society were framed by the Government, vide G.O.Ms.No.30, dated 31.05.2005 of Health Secretariat, Puducherry and published in the part of the Extraordinary State Gazette No.41, dated 06.06.2005. The Society is a separate entity whose powers are vested with the General Body and Governing Body of the Society. The Governing Body is empowered to take decisions according to the requirements of the Society and Institutions. The powers and functions of the Board (Governing Body) have been clearly spelt out in rule 12 of Rule and Regulations of Pondicherry Medical College Society (now PKMCS).

(ii) Respondent No.4 has further submitted that, the PKMCS has started a Medical College known as "Indira Gandhi Medical College and Research Institute (IGMC&RI) in the year 2010 with an intake of 150 students per annum. The Hospital attached to the College is presently having bed strength of 750. The College and Hospital was constructed at a cost of Rs.277 crore including land cost.

(iii) Respondent No.4 has further submitted that, the Dialysis Unit in IGMC&RI was started in the year 2015 with the direct supervision and guidance of Dr.K.Kumar, Nephrologist of Government General Hospital, Puducherry (IGGGH&PGI). There are total number of 7 dialysis machines in this Institute. Dialysis was conducted daily and at least 5 patients were availing of the services during these days. So far, more than 1600 dialysis have been done. The public, especially the patients who have taken treatment were quite satisfied on the performance of the services rendered in the Dialysis Unit. Apart from utilizing the services of Nephrologist and Dialysis Technician of Government General Hospital, Puducherry, trained nursing sisters and 4 qualified Dialysis Technicians (as interns) and one Assistant Professor Medicine trained in Nephrology Department of IGGGH&PGI, Puducherry were posted in the Unit.

(iv) Respondent No.4 has further submitted that, on 09.03.2017, when 3 patients were undergoing hemodialysis, there was a power outage at 11.00 a.m. After 15 minutes, the power was restored. For reasons yet to be identified, the patients who were undergoing dialysis developed complications soon after the power supply was restored. The patients started vomiting, immediately the doctors and staff nurses who were on duty at the time rushed to aid and they could not

revive the patients. It is not correct to state that inexperienced medical students had given dialysis treatment to the patients on 09.03.2017. It is also not correct to state that the staff who were posted were not trained and do not know to operate the dialysis machine. On the other hand, they are well trained and possess technical educational qualification required for dialysis. The technicians have successfully completed their diploma in dialysis technician in Jawaharlal Institute of Post Graduate Medical Education & Research (JIPMER) and Mother Theresa Post Graduate & Research Institute of Health Sciences, (MTPG&RIHS), a Government owned Institute. Similarly, the nursing sisters who were posted in dialysis unit have rich experience in this field. The death caused was accidental due to the power outage and this is in no way connected with the carelessness of the staff. Soon after the occurrence of this unfortunate incident, Hon'ble Minister for Health rushed to the spot and consoled the relatives of the deceased and announced the compensation of Rs.5.00 lakhs each to the next kin of the deceased on humanitarian basis and the same has been disbursed. As per his order, officials who were on duty at the time, were placed under suspension, pending enquiry.

(v) Respondent No.4 has further submitted that, the dialysis unit set up in Indira Gandhi Medical College & Research Institute as per Medical Council of India (MCI) norms was functioning under Dr.K.Kumar, Nephrologist who is working in Indira Gandhi Government General Hospital & Post Graduate Institute (IGGGH&PGI). He used to come daily and inspect the arrangements and oversee the functioning the dialysis unit. It is, therefore, not correct to state that inexperienced medical personnel and nurses have given treatment to the patients. It is true that after the incident, the functioning of dialysis unit has been stopped temporarily.

(vi) Respondent No.4 has further submitted that, there are 7 dialysis machines in IGMC & RI and there is only one shift which was functioning from 8.30 a.m to 2.00 p.m. In order to function the dialysis unit in three shifts, more man power is required. With the available qualified technicians, hitherto it was possible to run only one shift. A nephrologist exclusively for this Institute has since been selected along with dialysis technicians to expand the Department of Nephrology so that second and third shifts could function in the near future.

(vii) Respondent No.4 has further submitted that, in Puducherry, apart from this Hospital, adequate dialysis machines are available in JIPMER and in Government run Hospital namely IGGGH & PGI and the poor patients are availing the facilities there.

(viii) Respondent No.4 has further submitted that, soon after the occurrence of the incident, the Government has constituted an Inquiry Committee consisting of the Nephrologists of IGGGH&PGI and JIPMER, Puducherry, officials of Electricity Department, Puducherry to find out the cause of the death of the patients. The full report of the Inquiry Committee is still awaited. However, in the interim report, the Committee suggested long-term and definitive measures to ensure that such events are not repeated in future.

(ix) Respondent No.4 has further submitted that, the following corrective measures as pointed out by the Inquiry Committee have already been complied with by this Institute.

1. The water treatment plant and distribution system has been redesigned.

2. An Industrial, inverter type UPS of 2.00 KVA capacity has been installed exclusively for the running of pressure pump provided at the delivery point of RO treated water tank. This ensures cent percent that there is no back flow or negative pressure in the pipe line system.

3. Individual 3.00 KVA capacity, single phase Numeric UPS with one hour back up batteries 42 AH of maintenance free (SMF) type have been provided for all the 7 nos. of Dialysis machines. The machines will run uninterruptedly even during power outage and cover the gap of the moment till the automatic generator starts.

4. The power line has been rectified by providing a raising main and the same was inspected by the Executive Engineer, Electricity Department, Puducherry for its fitness. It is ensured that there will not be any tripping of power in future.

5. Providing direct telephone line work has been completed.

6. Maintenance of water treatment plant has been arranged."

4. In view of the explanation given in the counter affidavit, there is no need to delve further into the matter and hence, writ petition is disposed of. No Costs. Consequently, the connected writ miscellaneous petitions, are closed.

dm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairperson,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi - 110023.
- 2.The Secretary to Government,
Department of Health and Family Welfare Services,
Government of Puducherry,
Puducherry-605001.
- 3.The Director,
Department of Health and Family Welfare Services,
Main Block of the Old Maternity Hospital Complex,
Victor Simonel Street,
Puducherry - 605001.

+1cc to Mr.S.Mohamed Ansar, Advocate, SR.No.66392
+1cc to the Govt.Pleader, Vide Sr.No.66275

सत्यमेव जयते

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Kak(16/09/2019)

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