



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 12.03.2020

ORDER PRONOUNCED : 06.05.2020

WEB COPY

(The Court was lockdown due to COVID-19 pandemic from 24.03.2020 to 30.04.2020)

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.368 of 2020

Rani

... Petitioner

Vs.

1.The State of Tamilnadu,
represented by Secretary to Government,
Public Welfare Department,
Fort St.George,
Chennai 600 004.

2.The Director,
Tamilnadu State AIDS Control Society,
Egmore,
Chennai 600 004.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Joint Director,
Medical and Rural Health and Family Welfare Department,
Virudhunagar District, Virudhunagar.

5.The Superintendent/Chief Medical Officer,
Government Head Quarters Hospital,
Virudhunagar District,
Virudhunagar.

... 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 respondents to pay a sum of Rs.5,00,000/- as compensation for the medical negligence, within the stipulated period.

For Petitioner : Mr.M.Jothibas



For Respondents : Mr.K.Chellapandian
Additional Advocate General assisted by
Mr.C.M.Marichellaiah Prabhu
Additional Government Pleader

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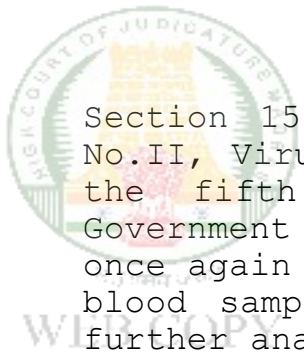
ORDER

This Writ Petition is filed in the nature of mandamus seeking a direction against the respondents to pay a sum of Rs.5,00,000/- as compensation for the medical negligence.

2.The petitioner, Rani, W/o.Rajkumar, 2/50, New Street, Sengundrapuram Village, Virudhunagar Taluk and District, in her affidavit, had stated that on 29.07.2013, she went to the Government Headquarters Hospital, Virudhunagar, for uterus test. She was advised to undergo blood test. Blood samples were taken. The officials attached with the hospital informed the petitioner that blood result indicated that she was HIV positive. Her name was also entered in the HIV patients register. The Doctors advised her to take continuous treatment. She was also advised to bring all her family members for test. It must be pointed out that she is married and has two children. The petitioner did not come back to the hospital thereafter.

3.On the other hand, her sister had taken her for further blood test at Yoga Clinical Lab, Thirunagar, Madurai on 31.07.2013. The blood test result showed that it was HIV non-reactive. She conducted blood test again on 01.08.2013 in Christian Mission Hospital, Madurai. She claims that once again the result was HIV non-reactive. She therefore claimed that the hospital authorities in Government Headquarters Hospital, Virudhunagar, had acted in a negligent manner. She then lodged a complaint to the Superintendent of Police, Virudhunagar District on 04.09.2013, to take action against the persons, who issued such certificate. She sent a representation on 16.09.2013 to the fourth respondent/the Joint Director, Medical and Rural Health and Family Welfare Department, Virudhunagar. She sent another complaint on 17.10.2013 to the Superintendent of Police, Virudhunagar District. She also filed an application under the Right to Information Act, 2005. She lodged a further complaint on 04.12.2013 before the Superintendent of Police, Virudhunagar. She then filed CrI.MP.SR.No.10189/2013 under Section 156 (3) Cr.P.C. before the Judicial Magistrate Court No.II, Virudhunagar. The said petition was returned stating that sanction to prosecute is required.

4.She further submitted representations on 13.01.2014 and 24.02.2014 seeking sanction to prosecute the Government servants. She also filed further representations under the Right to Information Act, 2005. She then again filed a complaint under



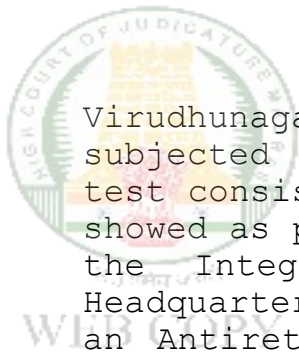
Section 156 (3) of Cr.P.C., before the Judicial Magistrate Court No.II, Virudhunagar. She then received a letter on 08.05.2014 from the fifth respondent/the Superintendent/Chief Medical Officer, Government Headquarters Hospital, Virudhunagar, calling upon her to once again submit herself to blood test and then they would send the blood samples to the State Reference Laboratory, Tirunelveli for further analysis. Her petition filed under Section 156 (3) Cr.P.C., numbered as Crl.M.P.No.2609 of 2014 was dismissed on 26.05.2014. She then filed a petition under Section 482 Cr.P.C., in Crl.O.P.No.23467 of 2014 before this Court, but on 18.09.2018, she withdrew the same with liberty to approach appropriate forum. She sent a further representation under the Right to Information Act, 2005. She received some information regarding the names of the persons, who were working at the time when the blood sample was taken in Government Headquarters Hospital, Virudhunagar. Finally, she had filed the present writ petition seeking compensation of Rs.5,00,000/-.

5.In the counter affidavit filed by the fifth respondent/ the Superintendent/Chief Medical Officer, Government Headquarters Hospital, Virudhunagar, it was stated that the petitioner came for health checkup on 29.07.2013 and her blood samples were taken and it was found that she was HIV re-active. She was asked to come to the hospital on 18.10.2013 by letter in Na.Ka.No.5693/P2/2013 dated 18.10.2013 for further blood test. It was stated that there was a possibility of 2% in getting a false positive result. It was informed to the petitioner that if she gives further blood sample, it would be verified at SRL Medical College Hospital, Tirunelveli.

6.However, she did not come again to the hospital. She had given a representation on 24.02.2014 claiming that she was not subjected to further clinical test. She also gave representations on 20.11.2018 and 31.12.2018. This was replied in Na.Ka.No.8856/2018 dated 05.02.2019 asking upon her to come for further clinical test. It was also stated that the HIV kits are issued by the Tamilnadu AIDS Control Society. There is always a possibility of 2% false positive result. Further, when any person is suffering from various listed diseases, there was always a possibility of false positive result as HIV re-active. It was stated that the petitioner was informed to give further blood sample, so that it could be tested at State Reference Laboratory, Tirunelveli, but that she did not come forward. It was therefore stated that the writ petition should be dismissed.

7.Heard arguments advanced by the learned counsel for the petitioner, Mr.M.Jothibas and the learned Additional Advocate General, Mr.K.Chellapandian, assisted by Mr.CM.Marichellaiah Prabhu, learned Additional Government Pleader for the respondents.

8.The facts in this case are not in dispute. The petitioner had come for health checkup to the Government Headquarters Hospital,



Virudhunagar, on 29.07.2013. Her blood sample was taken. It was subjected to test. It showed that it was re-active to HIV. The test consisted of testing by three kits. All the three test results showed as positive re-active to HIV. Thereafter, a file was open in the Integrated Counselling and Testing Centre in Government Headquarters Hospital, Virudhunagar. She also advised medicines and an Antiretroviral Treatment Record was also opened. The clinical examination results were also noted. Even according to the petitioner, in her affidavit, "the Doctors have advised me to take treatment continuously. Further, I was advised to bring all my family members for the test.". It must be pointed out that she is married and also had two children.

9. She did not go back to the hospital for further testing either alone, or with her family. On the other hand, she took the advice of her sister, who advised the petitioner to take further blood test in Yoga Clinical Lab, Thirunagar, Madurai. The credential of the said laboratory have not been given in the affidavit of the petitioner. The results of the blood sample test have been enclosed in the typed set of the petition. It is stated that on 31.07.2013, she was referred by Dr.P.Jeyasingh, MD., DV., Phd. The only aspect brought out before this Court is as follows:

*"1.SHRUM HIV & 11 : NON-REACTIVE
(TRI DOT METHOD)*

Thank you

*Sd/-
Lab Technician"*

10. The petitioner has not explained what "Tri Dot Method" test means. It is not known whether it is authenticated to test any patient for HIV or not. In this connection, the National AIDS Control Organization, Ministry of Health and Family Welfare, New Delhi, have brought out a Manual for Laboratory Technicians which has been approved by the Tamilnadu State AIDS Control Society, Chennai and State Reference Laboratory, Thoothukudi Medical College, Thoothukudi. It is an comprehensive Laboratory Manual for Technicians working at ICTCs and Blood Banks. It is not known whether Yoga Clinical Lab, Thirunagar, Madurai, are conducting the blood test in conformity with the guidelines issued in this hand book. To the extent that the hand book has been perused by the Court, there is no Tri Dot Method recommended for testing the blood for HIV. In the said manual, it had been given that there are always a possibility of a blood test, returning a false positive and false negative results. The reasons have been given.

"False Positive and Negative Results:-

There are conditions which may give rise to false positive or false negative ELISA results. False positive

<https://hcservices.ecourts.gov.in/hcservices/>



ELISA results have been reported in cases of haematologic malignant disorders, DNA viral infections, autoimmune disorders, multiple myeloma, primary biliary cirrhosis, alcoholic hepatitis, chronic renal failure, positive RPR test and technical error. False negative results have been reported in cases of window period prior to seroconversion, immunosuppressive therapy, malignant disorders, B-cell dysfunction, bone marrow transplantation and technical error."

11.The petitioner should have taken the responsibility of subjecting herself for further blood test which could have been examined in the State Reference Laboratory at Tirunelveli. However, she did not go. Nor did she subject herself for further blood test till this date. After having been tested at Yoga Clinical Lab, Thirunagar, Madurai, the petitioner had then gone to Christian Mission Hospital, Madurai. The results of her blood test of Christian Mission Hospital, Madurai have also been enclosed in the typed set of this petition. It is seen that it was signed by the same Doctor, who had referred her to Yoga Clinical Lab, Thirunagar, Madurai. The results are still more confusing.

12.In the first test, it had been done by Combaids kits which expired on 06.01.2014, it had been shown as HIV 1 and 2 non-reactive. In the second and third tests, both reactive and non-reactive have been scored out. The word non-reactive had been written in ink, but it is not counter signed. The initial of the Doctor alone has been given at the end of the certificate. It had been stated that the signed HIV test report should be sent by the authorised person to the Counsellor in VCTC/PPTCT for handing over to the person test counselling. It is not known whether the Doctor, at Christian Mission Hospital, Madurai, had complied the said stipulations.

13.I hold that the entire issues raised revolve around evidence. The respondents claim that the petitioner was tested with an authorised testing kit at Government Headquarters Hospital, Virudhunagar. The result was HIV positive. Thereafter, she had not subjected herself to any authorised test. She had been advised by her sister to go to Yoga Clinical Lab, Thirunagar, Madurai and to Christian Mission Hospital, Madurai. The results of Christian Mission Hospital, Madurai, show both reactive and non-reactive have been scored out for two kits and in one it had been shown as non-reactive. The interpretation of this has to be given only by the Doctors. The petitioner has to explain why she had not subjected herself to any second authorised test in the Hospital for sending the sample to the State Reference Laboratory, Tirunelveli. The petitioner has a responsibility to go there. She has a responsibility to take her family and go there and test them also. In the counter and in the manual, it had been stated that there can be various conditions when the blood test will show HIV positive.



They have been extracted above and is repeated again:

"False Positive and Negative Results:-

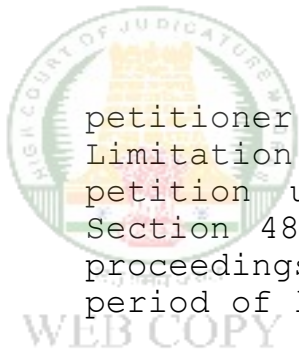
There are conditions which may give rise to false positive or false negative ELISA results. False positive ELISA results have been reported in cases of haematologic malignant disorders, DNA viral infections, autoimmune disorders, multiple myeloma, primary biliary cirrhosis, alcoholic hepatitis, chronic renal failure, positive RPR test and technical error. False negative results have been reported in cases of window period prior to seroconversion, immunosuppressive therapy, malignant disorders, B-cell dysfunction, bone marrow transplantation and technical error."

14.A perusal shows that if the patient has any of the above complications, then the test will show HIV positive. The patient will have to be tested and thereafter, the blood will have to be tested at the State Reference Laboratory. This is the procedure, which has to be followed.

15.On the other hand, the petitioner had given a complaint to the Superintendent of Police, Virudhunagar District, who cannot give any relief to her. She had filed a petition under Section 156 (3) Cr.P.C. for prosecuting the officials. She had not subjected herself for further blood test. A duty is cast on the petitioner even on this date to subject herself to test. She had thereafter filed a petition under Section 482 Cr.P.C., before this Court and withdrew the same with liberty to approach the appropriate forum. Complicated facts and contradictory facts have been presented before this Court by both the petitioner and the respondents. Relying on laboratory results, the writ Court cannot examine these facts to come to any conclusion. Evidence is required.

16.The reports by all the three hospitals are only documents as on date. To be termed as evidence in a Court of law these documents will have to cross, in the first place, the stage of admissibility. They will have to cross the stage of proof in manner known to law. They will have to cross the stage of genuineness. They will also have to cross the stage of relevancy. These can be done only when a deponent of evidence under oath produces these documents and subjects herself to cross examination and the documents themselves are examined and scrutinized in detail and the persons, who actually signed the documents, are also examined in a Court of law and subjected to cross examination. Till then, all these reports remain only pieces of papers.

17.On the basis of these documents, this Court cannot grant any relief to the petitioner. Therefore, the proper forum is not this Court under Article 226 of the Constitution of India. The petitioner will necessarily have to approach the civil Court seeking appropriate relief. The only relief this Court can grant to the



petitioner is to permit her to take advantage of Section 14 of the Limitation Act to the limited period of filing and pendency of the petition under Section 156 (3) of Cr.P.C., the petition under Section 482 of Cr.P.C., and the present writ petition as bonafide proceedings. Such period may be excluded while calculating the period of limitation.

18.The Writ Petition is therefore dismissed with the above observations. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mm

To

- 1.The Secretary to Government,
Public Welfare Department,
Fort St.George,
Chennai 600 004.
- 2.The Director,
Tamilnadu State AIDS Control Society,
Egmore,
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- 3.The District Collector,
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- 5.The Superintendent/Chief Medical Officer,
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MK (15.05.2020) 7P 6C