



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.10652 of 2020

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Nehru

... Petitioner

Vs.

- 1.State represented by
The Principal Secretary,
Tamilnadu Public Health Department,
Secretariat Office, St.George Fort, Chennai- 600 009.
- 2.The Director,
The Tamilnadu Public Health Department,
Chennai - 600 006.
- 3.The District Collector,
Madurai District, Madurai.
- 4.The Assistant Director,
The Tamilnadu Public Health Department,
Corporation Office, Madurai.
- 5.K.Rajkumar, NTC Hospitals,
No.187, Thathaneri main road,
Vaithiyanathapuram, Madurai.
- 6.The Tamilnadu, Medical Council,
Represented by its Registrar,
Arumbakkam, Chennai.

(suo motu impleaded as the

6th respondent vide order dated 23.09.2020)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 4 to take necessary action against the fifth respondent hospital based on the petitioner's representation dated 05.08.2020.

For Petitioner: Mr.A.Banumathy

For R1 to R4 : Mr.Sricharan Rangarajan,
Additional Advocate General
Assisted by Mr.P.Mahendran,
Additional Government Pleader

<https://hcservices.courts.gov.in/hcservices/> For R5 : Mr.A.K.Baskarapandiyan



ORDER

This writ petition has been filed by one Nehru of Sonaiyar Colony, Raja Mill Road, Madurai. He was afflicted with severe fever and head ache on 07.07.2020. His wife Vasuki also suffered the very same affliction. The couple went to NTC hospital run by Dr.K.Rajkumar on the same day. The case of the petitioner is that the medical officer of the said hospital told them that they are probably suffering from COVID-19 infection and that unless they made a payment of Rs.8 Lakhs, they will not be admitted. The petitioner states that on account of the panic caused by the pandemic, he coughed up the amount of Rs.8 Lakhs.

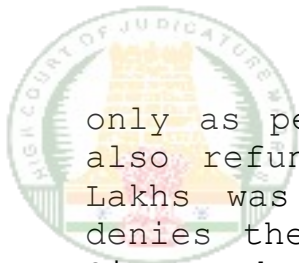
2.The learned counsel for the petitioner would state that the petitioner paid a sum of Rs.5 Lakhs in cash and the balance amount was paid through his son-in-law's credit card. The payment was said to have been made to one Joseph, the cashier of the hospital. The petitioners were admitted in the hospital and on 08.07.2020, that is the next day, a swab test was conducted on him and his wife. The results were negative and on 10.07.2020, the petitioner and his wife were discharged from the hospital. The petitioner states that they were given bills only for a sum of Rs.65,840/- each. The petitioner was refunded only a sum of Rs.1,05,000/-. When the petitioner asked for payment of the balance amount, the hospital management took the stand that there will not be any further refund.

3.The petitioner thereupon sent a legal notice dated 05.08.2020. The petitioner also sent representation dated 05.08.2020 to various authorities. Since the efforts taken by the petitioner to obtain refund did not bear fruit, the petitioner filed this writ petition for directing the authorities to take action against the fifth respondent hospital.

4.I ordered notice to the respondents. Since the case concerns professional conduct, I *suo motu* impleaded the Tamilnadu Medical Council as one of the respondents.

5.The contesting respondent/the fifth respondent filed a detailed counter affidavit. The fifth respondent claims that their's is a 100 bedded multi speciality hospital and that they are providing state of the art services and facilities. Their specific stand is that the petitioner and his wife approached them on 07.07.2020 and they complained of symptoms which indicated that they may be suffering from COVID-19. The petitioner and his wife were subjected to several tests. They were admitted in the ICU of the fifth respondent hospital. Since the results did not indicate any COVID-19 infection, they were discharged from the hospital on 10.07.2020.

6.The firm assertion of the hospital is that they had charged



only as per the scheduled rates and that the balance amount was also refunded to them. They maintain that only a sum of Rs.3 Lakhs was received from the petitioner. The hospital stoutly denies the claim that they had collected a sum of Rs.8 Lakhs. Since the hospital had collected Rs.3 Lakhs from the writ petitioner, after deducting the charges payable by the petitioner, a sum of Rs.1,05,000/- was also refunded to the petitioner on 10.07.2020. According to the fifth respondent, the petitioner is falsely claiming that he paid a sum of Rs.5 Lakhs in cash. The question of making further refund does not arise. The fifth respondent called for dismissal of this writ petition.

7.The learned counsel for the petitioner and the learned counsel for the fifth respondent reiterated the contentions set out in their respective pleadings. In the normal course of events, I should have dismissed the writ petition on the ground that the matter involves an investigation into a factual dispute. There is nothing on record to indicate that the petitioner had paid a sum of Rs.5 Lakhs in cash. But what impels me to delve a little deeper is the filing of another writ petition by one P.Nagendran. The said Nagendran had also approached the very same hospital on 06.07.2020. The hospital had collected a sum of Rs.5,90,000/- from him. The said Nagendran tested positive and was in hospital for a full week. He was discharged on 13.07.2020. He was given an bill only for a sum of Rs.40,000/-. He should have been refunded the balance amount of Rs.5,50,000/-. The management had refused to make the refund. Therefore, Nagendran filed police complaint. He also gave representation to various authorities. Thereafter, he filed W.P.(MD)No.12171 of 2020 before this Court on 15.09.2020.

8.The case came up for admission before me on 21.09.2020. The learned Counsel appearing for Nagendran made a mention at 10.30 in the morning to withdraw the writ petition. Since it rang a bell somewhere in my head, I did not permit the withdrawal of the writ petition. It is, of course, open to any litigant to abandon the cause. That right can never be denied. But the question of permitting someone to withdraw the writ petition is entirely in the hands of the Court concerned, more so, when the public interest element is also present.

9.When the matter was subsequently taken up, I asked the learned counsel for petitioner as to why he wanted to withdraw the writ petition. He informed the Court that the petitioner has been refunded the entire balance amount of Rs.5,50,000/- I further asked him as to when the amount was paid. He frankly told the Court that the refund was made on 20.09.2020. In other words, the NTC hospital which was obliged to refund Rs.5,50,000/- on 13.07.2020, waited almost till the writ petition was listed before



this Court. From 13.07.2020 till 20.09.2020, Nagendran had been moving heaven and earth. He lodged complaint before the Sellur Police Station in CSR No.520 of 2020. Therefore, I have to appreciate the defence taken in Nehru's case in the light of what had transpired in Nagendran's case.

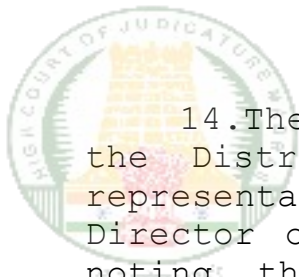
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10. Nehru did not come as a lone patient to NTC hospital. He was accompanied by his wife Vasuki. Both were having apparent symptoms of COVID-19. It is admitted by the hospital management that both Nehru as well as his wife were admitted on 07.07.2020 in the ICU. Thus, W.P.(MD) No. 10652 of 2020 involves two patients. When from a single patient Nagendran, the hospital management had collected a sum of Rs.5,90,000/- though the entire billing was only for Rs.40,000/-, I find it difficult to believe that they collected only a sum of Rs.3,00,000/- for both Nehru as well as his wife Vasuki.

11. I am narrating all these facts only to show that the learned counsel for the petitioner herein had made out a prima facie case for conducting an enquiry into the allegations made by Nehru. Now the question arises whether the authorities will be competent to go into the issue.

12. Mr. Sricharan Rangarajan, learned Additional Advocate General appearing for the Government submitted that there is a scope for initiating action in a case of this nature under the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997. Admittedly, the NTC hospital is a clinical establishment falling within the said Act. Section 2(a) defines who is a competent authority. Section 6 of the said Act states that "*The Competent authority shall have the right to cause an inspection of, or inquiry in respect of any private clinical establishment, its buildings, laboratories and equipment and also of the work conducted or done by the private clinical establishment, to be made by such person or persons as it may direct and to cause an inquiry to be made in respect of any other matter connected with the private clinical establishment and that establishment shall be entitled to be represented there at.*"

13. According to the learned Additional Advocate General, the expression '*work conducted or done*' would definitely include within its scope, any kind of irregularity or malpractice committed by the clinical establishment. The Government of Tamil Nadu had issued G.O.(Ms) No. 240, Health and Family Welfare (EAPI-1) Department dated 05.06.2020, in which the cost for treatment that can be collected by the clinical establishment had also been laid down. The direct allegation is that NTC Hospital had committed violation of the Government Order.



14. The learned Additional Advocate General also submitted that the District Collector, Madurai had taken cognizance of the representation made by the petitioner and directed the Joint Director of Medical Services to enquire into the matter. While noting the action taken by the District Collector, Madurai District, I direct the Director of Medical and Rural Health Services, Chennai to enquire into the complaint made by the petitioner herein. If the competent authority sustains the petitioner's allegations, consequences must follow and there shall be prosecution as per the 1997 Act.

15. That may not be the end of the issue. The Medical Council of India had issued notification dated 11.03.2002 setting out its Code of Medical Ethics. It sets out the duties and responsibilities of a physician in general. The physician shall uphold the dignity and honor of his profession. It further states that the physician shall conduct himself with propriety in his profession.

16. Now the allegation is that the fifth respondent had collected amounts in excess of the ceiling fixed by the Government. It is further alleged that receipts were not issued. More than anything else, it is also alleged that full refund was not made. These allegations if true, in my view would attract the Code of Medical Ethics. Therefore, I permit the petitioner Nehru to submit a malpractice complaint to the Tamilnadu Medical Council and I direct the Tamilnadu Medical Council, Arumbakkam, Chennai, to enquire into the same and take appropriate action.

17. I make it clear that the observations so far made are only prima facie observations and they would not foreclose the defence of the fifth respondent. In the enquiry that is to be made by the competent authority under the Tamilnadu Clinical Establishments (Regulation) Act as well as the Medical Council of India, all the defences of the fifth respondent are left open. The entire exercise by both the authorities should be completed on merits and in accordance with law within a period of 16 weeks from the date of receipt of a copy of this order.

18. Accordingly, this writ petition is disposed of on these terms. No costs.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar (CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Secretary,
Tamilnadu Public Health Department,
Secretariat Office, St. George Fort,
Chennai- 600 009.
2. The Director, The Tamilnadu Public Health Department,
Chennai - 600 006.
3. The District Collector, Madurai District, Madurai.
4. The Assistant Director, The Tamilnadu Public Health Department,
Corporation Office, Madurai.
5. The Registrar,
Tamil Nadu Medical Council,
Arumbakkam, Chennai.

+1 CC to SGP (SR-17976, 18073[F] dated 24/09/2020)

+1 CC to Mr. A.K. BASKARA PANDIYAN, Advocate (SR-18050[F] dated 25/09/2020)

W.P. (MD) No. 10652 of 2020
23.09.2020

SH(CO)
KM (13.10.2020) 6P 8C