



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2021

Coram

THE HONOURABLE MR.JUSTICE R. MAHADEVAN

WP No. 34372 of 2015

Sathiyabama

..Petitioner

Versus

1. The State of Tamil Nadu
Rep. by its Secretary,
Medicine and Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.
2. The Director,
Office of Medicine and Rural Services,
Chennai - 600 006.
3. The District Collector,
Office of the District Collector of Perambalur,
Perambalur,
Perambalur District.
4. The Joint Director,
Department of Health and Medicine,
Perambalur,
Perambalur District.
5. The Superintendent of Police,
Perambalur,
Perambalur District.
6. The Chief Medical Officer,
Government General Hospital,
Perambalur,
Perambalur District.
7. The Chief Medical Officer,
Government Hospital,
Krishnapuram,
Perambalur District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing



the respondents to pay compensation a sum of Rs.10 Lakhs for death of the petitioner's child due to negligence on part of the 7th respondent's staff.

For Petitioner : Mr.B.Sathiyaraj

For Respondents : Mr. Stalin Abimanyu
Government Advocate

ORDER

The present writ petition has been filed by the petitioner seeking a Mandamus directing the respondents to pay a sum of Rs.10 Lakhs as compensation for the death of her male baby, who allegedly died due to the negligence of the seventh respondent Hospital's staffs.

2. According to the petitioner, on 02.11.2014, she was admitted in the seventh respondent Hospital for child birth, wherein, she was treated by a Doctor named Booshna and assured her that there is a chance for normal delivery on the same night, however, nothing happened so. Thereafter, on 03.11.2014, a staff nurse attached with the seventh respondent Hospital had taken a scan to the petitioner at 10.00 a.m and said that the baby in her womb is in good condition and the delivery would happen at any time. But the petitioner had no labor pain and so the two staff nurses attached with the seventh respondent Hospital viz., Ponmani and Chitra had injected her some medicine for labor pain. While so, unexpectedly, the aforesaid nurses informed the petitioner's husband that since there is no sufficient medical facilities in the Hospital, the delivery could not be done there. Further, they forced the petitioner to leave the Hospital with her husband and therefore, left with no other option, on the very same day, the petitioner's husband admitted his wife/petitioner in the sixth respondent Government Hospital at 11.55 p.m, where, the Doctors diagnosed that her baby died in the womb itself and the same could not come out of her womb. They also informed the petitioner that her baby died only due to the improper and wrong treatment given by the staff of the seventh respondent Hospital. Finally, the Doctors of the sixth respondent Hospital had performed a cesarean and the dead child in the womb was taken out.

3. In this context, on 06.11.2014, the petitioner's father-in-law had made a complaint to the respondents 3 & 5 as well as the Special Cell of the Hon'ble Chief Minister, stating that the baby of his daughter-in-law (petitioner) died in the womb, due to the negligence of the aforesaid Doctor Booshna and the nurses working in the seventh respondent Hospital. Pursuant to the said complaint, the second respondent vide Letter in



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Na.Ka.No. 73443/ AKU2/ 2/ 2014 dated 15.12.2014 directed the fourth respondent to conduct an enquiry with regard to the representation dated 06.11.2014, given by the petitioner's father-in-law and to submit a report within a period of 15 days from the receipt of the said Letter. However, neither an enquiry was conducted nor a report submitted, as directed by the second respondent. Therefore, the petitioner had made a representation dated 02.01.2015 to the respondent 1 to 5, requesting to take action against the aforesaid staffs of the seventh respondent Hospital for the improper treatment given by her inter alia claiming compensation for the death of her baby. Thereafter, the fourth respondent vide Letter in Na.Ka.No.93/Nil/2014 dated 06.01.2015 directed the petitioner to participate in the enquiry which was scheduled to be held on 13.01.2015, however, the fourth respondent did not conduct any enquiry on that date. Hence, left with no other option, the petitioner had filed a writ petition in W.P.No.4352 of 2015 before this Court, seeking a Mandamus directing the fourth respondent to conduct an enquiry as per the Letter in Na.Ka.No.93/Nil/2014, dated 06.01.2015 and the said Writ Petition was disposed of by this Court vide order dated 20.02.2015. The operative portion of the said order reads as follows:

"2. In the light of the above facts, without going into the merits of the allegations made by the petitioner, the fourth respondent is directed to issue a fresh notice to the petitioner and conduct enquiry on the date fixed based on the documents produced by the petitioner and submit a report to the second respondent for appropriate action. The enquiry shall be conducted by the fourth respondent within a period of three weeks from the date of receipt of a copy of this order.

3. With the above direction, this writ petition is disposed of. No costs."

4. Subsequent to the aforesaid order of this Court, the second respondent vide Letter in Na.Ka.No.000859/aaku2/2/2015 dated 17.02.2015 directed the fourth respondent to conduct an enquiry and submit a report within 15 days, as per which, the fourth respondent had also conducted the enquiry but not filed the report before the second respondent. Since the fourth respondent failed to comply with the aforesaid order of this Court, the petitioner had filed a Contempt Petition in Cont.P.No.1291 of 2015 and the same was disposed of by this Court vide order dated 03.07.2015, directing the fourth respondent to forward a report to the second respondent, within a period of two weeks from the date of receipt of a copy of that order. Despite the aforesaid orders of this Court, the respondents have not yet taken any action against the above mentioned staff working in the seventh respondent Hospital.



Hence, the petitioner has filed the present writ petition before this Court.

5. Heard the learned counsel on both sides and perused the materials placed before this Court. The petitioner seeks to issue a Mandamus directing the respondents to pay compensation of Rs.10 lakhs to her for the alleged negligent in discharge of duty by the staff attached to the seventh respondent hospital, which resulted in the death of her child in the womb. In case of this nature, it would be appropriate to examine as to whether the allegations levelled by the petitioner as against the staff of the seventh respondent hospital are true or not. For this purpose, enquiry has to be conducted and it has to be medically examined as to the cause of the death of the child in the womb. While so, the relief sought for by the petitioner cannot be granted by this Court. However, this Court hereby directs the respondents 1 to 5 to consider the petitioner's representation dated 02.01.2015, if not considered earlier, conduct an enquiry, afford an opportunity of personal hearing to the petitioner and thereafter pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

mrr/rsh

To

1. The Secretary,
Medicine and Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.
2. The Director,
Office of Medicine and Rural Services,
Chennai - 600 006.
3. The District Collector,
Office of the District Collector of Perambalur,
Perambalur,
Perambalur District.



4. The Joint Director,
Department of Health and Medicine,
Perambalur,
Perambalur District.

5. The Superintendent of Police,
Perambalur,
Perambalur District.

6. The Chief Medical Officer,
Government General Hospital,
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7. The Chief Medical Officer,
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Perambalur District.

+1cc to Mr.B.Sathiyaraj, Advocate, S.R.No.36005
+1cc to the Government Pleader, S.R.No.35973

WP No. 34372 of 2015

SSD(CO)
CT(02/09/2021)