



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.19742 of 2018

K.Prema

.. Petitioner

Vs

1.The Director,
Family Planning and Public Welfare Department,
No.359, DMS. Building,
Anna Salai, Teynampet,
Chennai -18.

2.The District Collector,
Theni District, Theni.

3.The Chief Medical Officer,
District Head Quarters Government Hospital,
Periyakulam,
Theni District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pay a sum of Rs.10 lakhs as compensation due to the medical negligence committed by the Medical Officer of the 3rd respondent Hospital in the petitioner's sterilization (Family Planning) operation, on considering the representation dated 07.12.2017.

For Petitioner : Mr.R.Shankar Ganesh

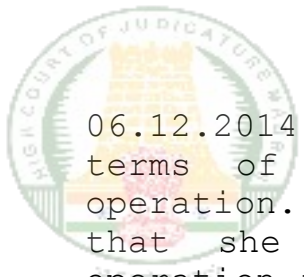
For Respondents : Mr.M.Jeyakumar

Additional Government Pleader

ORDER

The case of the petitioner is that after giving birth to two children, in 2014, she decided to undergo sterilization operation (Tubectomy) with the consent of her husband to prevent any future pregnancy, since her husband is a coolie and the family without sufficient means of income is not in a position to support any other new member in the family.

2.According to the petitioner, she underwent sterilization operation in 2014 and discharged from the Government Hospital on



06.12.2014. She was also paid Rs.700/- as monetary benefit in terms of the policy of the Government for family planning operation. To the petitioner's shock, in 2017, she came to know that she had conceived again, despite her family planning operation was done in 2014 and therefore, she was admitted in the Government Medical College Hospital, Kanavilakku, Theni District on 23.02.2017 and the pregnancy was aborted.

3.The petitioner thereafter came to know that she could claim compensation, if the family planning operation has resulted any complication or failure and after taking advise from the well-wishers, she submitted a representation, dated 07.12.2017 to the respondents asking suitable compensation. However, there was no response and therefore, the petitioner is before this Court.

4.Notice was ordered by this Court on 12.09.2018 and in response to the same, Mr.M.Jeyakumar, learned Additional Government Pleader has entered appearance on behalf of the respondents and also a counter affidavit has been filed on behalf of the 3rd respondent.

5.In the counter affidavit, in paragraph No.3, it has been clearly stated that a person, who is aggrieved by the failure of sterilization operation, is entitled to get a sum of Rs.30,000/- as compensation and such claim is to be made within a period of 90 days from the date of occurrence of failure of sterilization operation.

6.The learned Additional Government Pleader referred to a Government Order in G.O.(Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013, which provides the period of limitation for claiming compensation. He would therefore submit that the claim of compensation of Rs.10 lakhs by the petitioner is unsupported by any material and the same is extremely inflated which cannot be entertained by this Court.

7.When this Court asked the learned counsel for the petitioner as to how the petitioner is entitled to claim compensation of Rs.10 lakhs, he is unable to give any specific answer. At this, the learned counsel for the petitioner would submit that at least Rs.30,000/- as contemplated in the Family Planning Indemnity Scheme, could be granted to the petitioner.

8.When the matter is taken up for hearing today, the learned Additional Government Pleader for the respondents has produced a manual of Standards and Quality Assurance in Sterilization Services. In the said manual, in paragraph No.8.6 under the steps of the claim process, it is mentioned as under:-



"Steps of the Claim Process

Beneficiary to file the claims document (within 90 days from the occurrence of event of Complications / Failures / Deaths)."

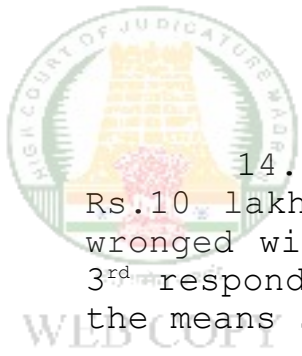
9. Since this claim was made in the year 2017, much after the operation, which was conducted in 2014, the petitioner is not entitled to avail the benefit of the scheme.

10. This Court considered the submissions of the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents.

11. As regards the claim for Rs.10 lakhs as compensation, this Court finds that the same is untenable, as the claim was not supported by any material or any averments. In the absence of any material, the claim cannot be considered by this Court by exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

12. As regards the availing of the benefit of the scheme and also with reference to the Government Order in G.O.(Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013, the only objection is that the claim was not made within a period of 90 days. But, what is to be seen in this case is that, the failure of the family planning operation became known to the petitioner only when she became pregnant in 2017 and therefore, 90 days period must be counted from the date on which the pregnancy was recorded. Therefore, the 90 days period cannot be said to commence from the date of the operation conducted in 2014. Moreover, in a beneficial scheme, like the present one, there will always be a reasonable delay in claiming compensation. Further, the claimants in such situation by and large hail from rural areas, may not be aware of the limitation provided in the scheme and more so the policies of the Government in order to make a prompt claim. That does not mean that their claim is to be summarily rejected by invoking the limitation, as provided in the G.O.(Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013 or in the manual as extracted supra. The compensation of this nature is very meagre and such lesser amount, contemplated in the policy, cannot be denied to the petitioner, if the averments of the petitioner are found to be true and supportive.

13. This Court is of the considered view that the compensation provided under the scheme read with G.O.(Ms).No.119, Health and Family Welfare (R1) Department, dated 30.05.2013, ought to be construed liberally to ensure that the benefits contemplated reach the maximum beneficiaries, rather than being perfunctory in service to the rigours of the period of limitation.



14. In the above circumstances, the claim of compensation of Rs.10 lakhs is rejected outright. However, the petitioner being wronged with faulty family planning operation at the hands of the 3rd respondent cannot be left without being compensated even with the means solatium of Rs.30,000/-.

15. Therefore, this Writ Petition is allowed to the extent that the respondents are directed to grant payment of Rs.30,000/- as compensation to the petitioner, if the petitioner's claim is otherwise in order. Such amount shall be paid to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

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2. The District Collector,
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+1 CC to M/s.GP (SR-3293[F] dated 04/02/2021)

W.P. (MD) No.19742 of 2018

03.02.2021

MJ(CO)

TR(25.02.2021) 4P 5C