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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.3309 of 2022

&

W.M.P. No.3445 of 2022

A. Dharmaraj ... Petitioner
..Vs..

1. The Secretary to Government,
Health and Family Welfare (R1) Department,
St. George Fort, Chennai
2. The Director,
Family and Welfare Department,
Chennai.
3. The District Collector,
Nagapattinam District,
Nagapattinam.
4. The Deputy Director,
Medicine, Rural and Family Welfare,
District Family Welfare Department,
Neela South Street, Nagapattinam.
5. The Dean,
Government Medical Hospital,
Nagapattinam District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus or any other appropriate, writ, order or direction in the nature of writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the 4th respondent in Na.Ka. No.117/A1/2020 dated 29.04.2021 and quash the same and consequently direct the respondents No.1 to 4 to disburse the compensation amount to the petitioner for the cause of death of his wife during the wrongful sterilization operation done by the 5th respondent hospital based on the petitioner's representation dated 19.11.2019 within the time stipulated by this Hon'ble Court.



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For Petitioner : Mr. M. Dinesh
For Respondents : Mr. B. Vijay
Additional Government Pleader.

ORDER

This Writ Petition has been filed challenging the impugned order under which the petitioner's claim seeking compensation for the alleged medical negligence on the part of the respondents has been rejected. The petitioner's wife died after she underwent sterilization operation. She died on 18.03.2016. She underwent sterilization operation on 07.03.2016. The petitioner preferred a claim seeking compensation as per the Government Scheme, on 25.09.2019. The claim for compensation has been rejected under the impugned order on the ground that the said claim has been made belatedly beyond the period of 90 days. Aggrieved by the same, this Writ Petition has been filed.

2. Heard Mr. M. Dinesh, learned counsel for the petitioner and Mr. B. Vijay, learned Additional Government pleader for the respondents.

3. The petitioner has raised several grounds in this Writ Petition for challenging the impugned communication of the 4th respondent under which the petitioner's claim for compensation has been rejected. The grounds raised by the petitioner are as follows:

- a) The 4th respondent sent a communication to the petitioner on 28.09.2020. In that communication, the 4th respondent admitted the cause of the death of his wife. The petitioner's application has been approved and when the compensation amount was about to be disbursed after a lapse of one year, the 4th respondent has issued the impugned order.
- b) The 4th respondent has not followed G.O. Ms. No.119 dated 30.05.2013 Health and Family Welfare Department, which, according to the petitioner, squarely reveals that the Director of Family Welfare is permitted to make payments from the Tamilnadu Miscellaneous purpose fund maintained in the office of the Director of Family Welfare, Chennai 600 006.
- c) The 4th respondent has not considered the fact that the petitioner is having two minor sons and is facing financial distress.
- d) The G.O. M.S. No.119 permits the Director of Family Welfare



to settle the benefits for death/failure/complications arising out of sterilization. The 4th respondent has not followed the guidelines issued by the Health and Family Welfare Department, Chennai.

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4. Even though several grounds have been raised in this Writ Petition, the only ground for rejection of the petitioner's application seeking for compensation is that the claim was submitted beyond the period of 90 days.

5. The learned counsel for the petitioner submits that the petitioner's wife having died due to medical negligence on the part of the doctors, who conducted the sterilization operation on her, the 4th respondent on sympathetic grounds ought not to have rejected the petitioner's claim seeking compensation only on the ground that the said claim is filed beyond the period of 90 days. Being a benevolent G.O., according to the learned counsel for the petitioner, the respondents ought not to have rejected the petitioner's application seeking compensation only on the ground that the said claim has been filed beyond the stipulated period under the Government Scheme.

6. After giving due consideration to the contentions raised by the petitioner in this writ petition, which were not considered in the impugned order, this Court is of the considered view that the impugned order is a non speaking order with regard to the contentions of the petitioner. Since the petitioner's wife has died, the 4th respondent ought to have shown some amount of benevolence on the petitioner's application and ought to have given some more opportunity to substantiate his case for compensation. But instead, under the impugned order, without giving sufficient opportunity of hearing and by a non speaking order to the contentions raised by the petitioner in this Writ Petition, the 4th respondent has rejected the petitioner's application seeking for compensation only on the ground that the claim has been filed beyond the period of 90 days. Being a non speaking order and an order passed by violating the principles of natural justice, the impugned order has to be necessarily quashed and the matter remanded back to the 4th respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting him the right of personal hearing and permitting the petitioner to produce the necessary documents to substantiate his case.

7. For the foregoing reasons, the impugned order dated 29.04.2021, passed by the 4th respondent is hereby quashed and the matter is remanded back to the 4th respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting



him the right of personal hearing and also permitting him to file documentary evidence in support of his case and the 4th respondent shall pass final orders within a period of 12 weeks from the date of receipt of a copy of this order.

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8. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Health and Family Welfare (R1) Department,
St. George Fort, Chennai
2. The Director,
Family and Welfare Department,
Chennai.
3. The District Collector,
Nagapattinam District,
Nagapattinam.
4. The Deputy Director,
Medicine, Rural and Family Welfare,
District Family Welfare Department,
Neela South Street, Nagapattinam.
5. The Dean,
Government Medical Hospital,
Nagapattinam District.

+1cc to Mr.A.P.Dhas, Advocate, S.R.No.36664

+1cc to the Government Pleader, S.R.No.35343

W.P.No.3309 of 2022
& W.M.P. No.3445 of 2022

GJ(CO)
UMA(24/06/2022)