



W.P.No.4738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

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K.Sakunthala

... Petitioner

Versus

1. The Principal Secretary,
Ministry of Health and Family Welfare
Department, Secretariat, Fort St. George,
Chennai.
2. The District Collector,
District Collector's Office,
Salem.
3. The Tamilnadu Medical Council,
Rep. by its Secretary,
No.914, Poonamallee High Road,
Arumbakkam, Chennai 600 020.
4. The Director,
Department of Medical and Rural
Health Services, No.359, Anna Salai,
Teynampet, Chennai 600 006.
5. The Joint Director,
Department of Medical and Rural Health
Services, No.406, 4th Floor,
Collectorate Office, Salem - 1.

6. Dr.Madhumathi

7. Malathi (Nurse)

<https://www.mhc.tn.gov.in/judis>



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8. The Director,
Department of Public Health and
Preventive Medicine, Chennai.

9. The Deputy Director,
Department of Public Health,
Salem.
(R8, R9 suo motu impleaded vide
order dt.03.03.2022 made in
WP.4738/2022 by ASMJ)

..... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the 1st respondent to pay a sum of Rs.50,00,000/- as compensation to the petitioner and direct the 2nd to 4th respondents to recover the same from the 6th and 7th respondents for the medical negligence caused by the respondents.

For Petitioner : Mr.K.Tholkappian
For Respondents : Mr.B.Vijay
AGP for RR 1, 2, 4, 5 and 8
: Mr.Sankaran for R3
: Mr.Anand David
for M/s.AAV Partners
for R6 and R7

ORDER

The writ petition has been filed for a Mandamus seeking for a direction to the first respondent to pay compensation of Rs.50,00,000/-(Rupees



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fifty lakhs only) to the petitioner on account of the alleged medical negligence committed by the respondents 6 and 7 who are working in the Government Primary Health Centre at Rangampalayam, Salem District.

2. According to the petitioner, she was admitted in the Government Primary Health Centre at Rangampalayam, Salem District on account of labour pain and for delivery of her child. According to the petitioner, due to medical negligence committed by the respondents 6 and 7, the petitioner has suffered severe blood loss and she was pushed till the brim of death. The petitioner claims that it was a full term normal vaginal delivery and the 7th respondent, without any experience and with the advice of the 6th respondent over phone, by herself cut the vagina thereby causing severe Fourth Grade Perineal tear and damaged the Anal Sphincter Tone and Rectum causing severe blood loss. In such circumstances, the petitioner has sought for compensation from the respondents amounting to Rs.50,00,000/-.

3. The sixth respondent has filed counter, denying her medical negligence and the same is recorded. Whether the sixth respondent is guilty of medical negligence or not it is for the third respondent to consider the same on merits and in accordance with law.



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4. It is now brought to the notice of this Court that subsequent to the complaint lodged by the petitioner with regard to the medical negligence on the part of the respondents 6 and 7, the third respondent has already commenced conducting enquiry with regard to the petitioner's complaint. It is also brought to the notice of this Court by the learned Standing Counsel appearing for the third respondent that an explanation has been called for from the sixth respondent and a Report was also received which was found to be unsatisfactory. He further submits that since the explanation submitted by the sixth respondent was found to be unsatisfactory, the third respondent has sought for an Expert Opinion and the same is awaited. He further submits that if sufficient time is granted to the third respondent, enquiry proceedings will be completed and a Report shall be filed.

5. Unless and until it is proved by the petitioner that only due to the medical negligence of the respondents 6 and 7, the petitioner has suffered loss of health, as stated supra, she cannot seek compensation. Since the writ petition has been filed prematurely even without waiting for the outcome of the enquiry report to be submitted by the third respondent, the relief sought for by the petitioner cannot be granted at this stage, though the petitioner's case may be a



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deserving one. But whether the petitioner is entitled for compensation or not can be decided only when the enquiry report to be submitted by the third respondent confirms that the respondents 6 and 7 are found guilty of medical negligence.

6. The third respondent who is conducting enquiry only against the sixth respondent/doctor, will have to enquire the seventh respondent also, as according to the petitioner, both of them are responsible for the medical negligence.

7. No prejudice would be caused if the seventh respondent is also enquired though she may be a nurse. Unless and until a full fledged enquiry is conducted, the truth will not be established.

8. For the foregoing reasons, this Court directs the third respondent to conduct enquiry with regard to the complaint given by the petitioner against the respondents 6 and 7 and submit a report within a period of twelve weeks from the date of receipt of a copy of this order after affording a fair hearing to the petitioner as well as the respondents 6 and 7, including granting them the right of personal hearing.



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9. The petitioner as well as the respondents 6 and 7 are permitted to produce the documents/evidence before the third respondent to substantiate their respective contentions. If an adverse report is passed against the respondents 6 and 7, liberty is granted to the petitioner to approach this Court once again, seeking for compensation.

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sr

Index: Yes/No

Speaking Order/Non-Speaking Order

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ABDUL QUDDHOSE, J

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