



WP.No.28992/2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WP.No.28992/2015

Mr.S.Karthikeyan

.. Petitioner

Vs.

1.The President

Tamil Nadu Medical Council
No.914, Poonamallee High Road
Arumbakkam, Chennai.

2.Dr.Vijayasaradhi

3.Dr.Sarojini

4.Dr.Rajeshwari

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to consider petitioner complaint dated 21.04.2015 and to take appropriate action against the respondents 2 to 4 within the time stipulated by this Court.

For Petitioner	:	Ms.G.Umamaheswari
For RR1, 3&4	:	No appearance
For R2	:	Ms.V.Kaaviya for M/s.A.R.Suresh



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ORDER

- (1) This writ petition is filed for issuance of a writ of mandamus to direct the 1st respondent to consider the petitioner's complaint dated 21.04.2015 and to take appropriate action against respondents 2 to 4 within the time to be stipulated by this Court.
- (2) The petitioner's case is that he admitted his wife in the hospital in which respondents 2 to 4 are working as doctors. It is the petitioner's further case that his wife died on 09.03.2015 due to improper treatment of his wife by the hospital doctors, particularly the 3rd respondent. Finding that the hospital had given to the petitioner, a Discharge Summary quite contrary to the reasons for the cause of death of petitioner's wife, the petitioner appears to have given a complaint to the 1st respondent bringing to the notice of the 1st respondent the negligence and the manner in which the doctors of the hospital had conducted themselves while treating the petitioner's wife. In response to the complaint given by the petitioner, the 1st respondent has responded by a communication dated 15.05.2015 to the effect that the petitioner's complaint is



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acknowledged and action will be taken in that regard.

(3) The learned counsel for the 2nd respondent submitted that the petitioner has filed a Claim Petition before the Tamil Nadu State Consumer Disputes Redressal Forum in CC.No.205/2015 and the same was dismissed for non prosecution for non filing of the proof affidavit by order dated 08.04.2022. Referring to the order passed by the Tamil Nadu State Consumer Disputes Redressal Forum, the learned counsel for the 2nd respondent submitted that the petitioner cannot maintain a parallel remedy and the writ petition for issuing a direction to the 1st respondent to take action against the doctors is not maintainable.

(4) However, the learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in WA.No.2363/2013 dated 21.08.2014 in the case of ***the Tamil Nadu Medical Council Vs. Dr.Easwaran, DNB, FRCS and another***, wherein the Division Bench, in similar situation, has held as follows:-

11.....The Hon'ble Supreme Court in the decision



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reported in AIR 1989 SC 2039 (P.T.Parmanand Katara vs. Union of India), emphasized the duty of the Doctors to treat patients with utmost care and respect. In paragraph No.8, it is held thus:-

"8.....Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way....".

Considering the above said legal principle emphasized by the Hon'ble Supreme Court, the appellant is not justified in not looking into the complaint given by the 1st respondent against the Doctors.

.....

14. Nowadays we come across that in some cases timely treatment is not extended to patients, who require immediate medical attention and treatment,



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due to want of Doctors; want of beds in the hospital; want of operation tables; for not depositing advance amount even for admission for getting instantaneous treatment in private hospitals. It is a well known fact that for certain serious diseases, immediate treatment alone will save the patients, and if there is time gap, which is called "Precious time/Golden Hours", the patient may not be in a position to survive or restore to normalcy, even after extending treatment belatedly. Similarly, it is also brought to our notice that in several hospitals, in ICU/Critical Care Units, no experts are available and only unqualified/qualified nurses are put incharge to take care of the critically ill patients. The said conduct of both private and government hospitals as well as the persons, who are in the administration of the hospitals, are bound to be enquired into by the Apex body of the State viz., The Tamil Nadu Medical Council. The Tamil Nadu Medical Council is not expected to shirk its responsibility by stating that the patient or his/her relatives, have already approached the Consumer Forum for payment of compensation. The payment of compensation is one aspect and the action to be initiated against the Registered Medical Practitioner



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for violation of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, including temporary/permanent debarment of Doctors from practising medicine is another aspect, for which the Tamil Nadu Medical Council and the Medical Council of India alone are competent."

- (5) In view of the judgment of the Division Bench of this Court as extracted above, this Court is of the view that the writ petition cannot be dismissed merely because the petitioner has approached the Consumer Redressal earlier. Since the nature of complaint against the particular doctors for their professional misconduct or negligence is different from the relief the petitioner can seek before the Consumer Disputes Redressal Forum, this Court has no hesitation in allowing this writ petition.
- (6) Accordingly, this writ petition is **allowed** and the 1st respondent is directed to consider the petitioner's complaint dated 21.04.2015 in accordance with law and take appropriate action against respondents 2 to 4 if necessary after holding proper enquiry and giving adequate opportunity to the petitioner as well as to respondents 2 to 4 within a period of twelve weeks from the date



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WEB COPY of receipt of a copy of this order. No costs.

27.10.2022

AP

Internet : Yes

To

The President
Tamil Nadu Medical Council
No.914, Poonamallee High Road
Arumbakkam, Chennai.



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S.S.SUNDAR, J.,

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