

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WP.No.28321/2016

P.M.Raja

... Petitioner

Vs

- 1.The Chairman
Tamil Nadu Medical Council
Chennai - 10.
- 2.The Director
Medical and Rural Health Services
DMS Complex, Chennai 600 006.
- 3.The Joint Director
Medical and Rural Health Services
East Garden Road, Fairlands
Salem-16.
- 4.Dr.S.Senthilkumar, D.A
Chief Civil Medical Officer
Government Hospital,
Sankari, Salem District.
- 5.Dr.A.Malarkodi, D.G.O
M.V.S.Hospital, Attur Town and Taluk
Salem District.

... Respondents

Prayer: Writ Petition filed Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order of the 3rd respondent dated 06.01.2016 made in Na.Ka.No.467/K3/15 with enquiry report and to quash the same, consequently direct the 2nd respondent to conduct a medical examination of petitioner's daughter R.Miruthika @ Abinaya by a medical committee and to submit a report to the competent authority for taking necessary action.

For Petitioner : Mr.C.Prabakaran
For RR 1 to 3 : Mrs.V.Yamuna Devi
Special Govt. Pleader
R4 : No appearance
For R5 : Mr.M.Arun Kumar
for M/s.Sampath Kumar

ORDER

- (1) The petitioner challenges the rejection of her application for action against the doctor complaining that the wrong treatment or wrong procedure adopted by the doctor at the time of delivery of his child resulted in the child suffering a permanent mental illness.
- (2) Upon receipt of the complaint, the 4th respondent, namely, the Chief Civil Medical Officer of the Government Hospital at Sankari, one Dr.S.Senthilkumar, was directed to conduct an enquiry. The said Medical Officer, after exhaustive examination of the documents placed before him, concluded that a definite conclusion to the effect that it was the mistake of the doctor that had resulted in the illness of the child, could not be reached by him. This conclusion has been arrived at after examining various medical reports issued by various Medical Organizations including the Christian Medical College at Vellore.
- (3) Mr.C.Prabakaran, learned counsel for the petitioner would submit that since the petitioner is not satisfied with the Report which in fact acquits the doctor of any complacency, a larger Committee should be constituted to go into the issue. I do not think such prayer can be granted in exercise of the powers to issue a writ of mandamus under Article 226 of the Constitution of India.
- (4) The petitioner had made a complaint and the complaint has been enquired into under the relevant Rules and a responsible officer, namely, the Chief Civil Medical Officer of a hospital has conducted an enquiry and after examination of various records, he has come to a conclusion. It is still open to the petitioner to launch appropriate proceedings either before a competent Civil Court or the Consumer Forum under the Consumer Protection Act, examine competent Medical Personnel and prove the alleged complacency of the doctor who had delivered the child.

- (5) The learned counsel for the petitioner would also concede that a complaint is pending before the District Consumer Forum at Salem.
- (6) It is for the petitioner to prove the negligence of the doctor in the said proceedings. The petitioner cannot use Article 226 of the Constitution of India to fish for evidence to support his case before the Consumer Forum.
- (7) Hence, the writ petition is dismissed. It is made clear that of the observations made herein would not have any effect on the proceedings before the District Consumer Forum at Salem and the Consumer Forum shall not be swayed by any of the observations made in this order. It shall decide the dispute independent of the above observations based on the evidence that is placed before it. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

AP

To

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5.Dr.A.Malarkodi, D.G.O
M.V.S.Hospital, Attur Town and Taluk
Salem District.

+1cc to Mr.C.Prabakaran, Advocate SR.No.42104
+2cc to M/s.Sampath Kumar & Associates, Advocate SR.No.42218
+1cc to the Government Pleader, SR.No.42932

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PL(CO)
CB(28/07/2022)