



W.P.(MD).No.4827 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 05.07.2022

ORDER PRONOUNCED ON : 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.4827 of 2012
and MP(MD).Nos.1 and 2 of 2012**

M.Chellakannu

....Petitioner

Vs

1.The District Collector
Office of District Collector
Madurai

2.The Dean
Government Rajaji Hospital
Madurai

3.The Principal
Madurai Medical College
Madurai

4.Dr.Kannappan
Om Shakthi Clinic
187/2, Alagarkoil Main Road
K.Pudur
Madurai -7

5.Vignesh Blook Bank
101/1, Sivagangai Road
Madurai

....Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records pertaining to the proceedings passed by the third respondent in ந.க.எண்.12223/ந1/4/2011 dated 22.12.2011 and quash the same as illegal and consequently direct the 4th respondent to pay adequate compensation to the petitioner's daughter's HIV positive due to the negligence on his part of the 4th respondent and consequently directing the respondents to give treatment to the petitioner's daughter's HIV positive.

For Petitioner	: Mr.R.Senthil Kumar
For R1 to R3	: Mr.D.Sasikumar Additional Government Pleader
For R4	: Mr.K.Mahendran For Mr.A.Karthick
For R5	: Mr.R.Murali

ORDER

The present writ petition has been filed challenging an enquiry report under which the respondents 4 and 5 were exonerated in a medical negligence case and consequently, direct the respondents to pay adequate compensation and to give proper treatment to his daughter.

2.According to the petitioner, his younger daughter minor Kowsalya while studying 9th standard at Government Higher Secondary School, Manamadurai was suffering from nasal bleeding. Hence, she was first treated



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at Jayapal Nursing Home and Jegan Critical Care Centre at Manamadurai.

Even after taking treatment, the doctor could not arrest the nasal bleeding and hence, he approached the fourth respondent hospital and underwent various tests. After analysing the test report, the fourth respondent doctor has informed the petitioner that his daughter is suffering from low haemoglobin and low platelet count. Based upon the said report, he was instructed to admit his daughter as an inpatient for further evaluation. The petitioner had admitted his daughter on 24.09.2009 and the doctor had advised to transfuse two pint of blood to his daughter.

3.The fourth respondent doctor without following the procedure for transfusing the blood, has obtained the blood from the fifth respondent and it was transfused to his daughter on 25.09.2009 and 26.09.2009. The petitioner's daughter was discharged from the fourth respondent hospital on 30.09.2009. Even thereafter, the nasal bleeding had not stopped and hence, he again approached the fourth respondent on 07.09.2010. After examination, the fourth respondent doctor had advised the petitioner to admit his daughter in Meenakshi Mission Hospital, Madurai for further opinion and medical intervention. As per the said advise, the petitioner's daughter was admitted to Meenakshi Mission Hospital, Madurai on 08.09.2010. The said hospital authorities, after examination, found that his daughter is suffering from HIV



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positive. They were shocked to hear the said news. The petitioner thereafter had approached the fourth respondent and persuaded him to take necessary steps to find out from where HIV had spread to his daughter. The fourth respondent did not offer a proper explanation and hence, he made a representation to the first respondent on 05.09.2011 to take action against the fourth respondent. The said representation was forwarded to the second respondent herein for taking necessary action against the fourth respondent. The second respondent vide his proceedings dated 18.10.2011 had appointed the third respondent as an Enquiry Officer. The said third respondent without properly appreciating the material evidence and without properly conducting an enquiry had passed a non-speaking order on 22.12.2011 and exonerated the fourth respondent doctor and fifth respondent blood bank. The said enquiry report is under challenge in the present writ petition.

4. According to the writ petitioner, the petitioner's daughter was minor and she had not even attained puberty when she was taken to the fourth respondent hospital on the complaint of nasal bleeding. Hence, the petitioner's daughter would never be subjected to any allegation of any immoral activities and there is no chance to get infected with HIV virus.



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5.The learned counsel for the petitioner had contended that the third respondent had not properly appreciated the contention of the writ petitioner and has arrived at an erroneous finding and exonerated the respondents 4 and 5 herein. The learned counsel had further contended that the fifth respondent blood bank was chosen by the fourth respondent doctor and hence, he should be held responsible for any infection through the said blood transfusion. Based upon the said contention, the learned counsel for the petitioner had prayed for initiating action as against the respondents 4 and 5 for payment of compensation. In the alternative, the petitioner has also prayed for a direction to the respondents to give proper treatment to the petitioner's daughter who is suffering from HIV virus. Hence, he prayed for allowing the writ petition.

6.The respondents 2 and 3 have filed a counter contending that they have conducted a detailed enquiry on 16.12.2011 at Government Rajaji Hospital. Furthermore, the Dean of Madurai Medical College, Madurai namely Dr.A.Edwin Joe perused the documents submitted by the fourth respondent containing the treatment details as well as the certificate issued by the fifth respondent. As per enquiry, only after conducting proper screening and clarification, the blood was sent by the fifth respondent blood bank to the fourth respondent hospital. The fourth respondent had also produced a letter given by the Senior Drug Inspector Madurai in which it is stated that the



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blood units, each one unit on 25.09.2009 and 26.09.2009, supplied by the fifth respondent blood bank are free from HIV. The respondents 2 and 3 had further contended that the treatment given by the fourth respondent in the private clinic is not related to the Government Rajaji Hospital and hence, the Government is not liable to pay any compensation.

7.The fifth respondent blood bank has filed a counter and contending that the fourth respondent had made a request for 'B+' type blood on 26.09.2009 and in response to the said request, after proper cross matching and testing, two units of blood were supplied to the fourth respondent hospital. Admittedly, the blood stored by the bank is not having any HIV virus. According to the fifth respondent, all the donors name with full address were taken while the blood was donated. The blood is stored and put into use only after proper check up. The learned counsel for the fifth respondent had further contended that based upon the complaint lodged by the writ petitioner, the Drug Inspector, Madurai had inspected the blood bank on 03.08.2011 and he has conducted an elaborate enquiry. During the said inspection, the Donor Register and other relevant documents were scrutinized and the particular donors of the blood units which were given to the petitioner's daughter were also identified by the Drug Inspector. Once again the blood samples were taken from the two donors and they were tested by the Drug Inspector. In the



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said test, it was found that the two donors are negative to HIV. He had further contended that in view of the above said facts, it is evident that there is no error on the part of the blood bank and they totally not aware of the health condition of the petitioner's daughter. There is no allegation as against the fifth respondent blood bank in the writ petition and hence, the writ petition may be dismissed as against the fifth respondent.

8.The fourth respondent has filed a counter contending that only after proper screening, cross matching and compatible test, the blood received from the blood bank was transfused to the patient on 25.09.2009. Another one unit of blood was transfused to the petitioner's daughter on 26.09.2009. Both the transfusion have taken place with necessary antibiotics, low dose steroids and other supportive treatment. He had further contended that during the period of stay in the hospital, she was found comfortable and she was discharged from the hospital on 30.09.2009 with proper medical advise and she was advised to come for review after 10 days. He had further contended that a detail discharge summary and the reports were also furnished to the writ petitioner's wife. On 08.10.2009, the patient visited the hospital as an out patient. On examination, it was found that the general condition of the patient was good and further medicines were prescribed for another one week and advised to come for review after one week. The petitioner's daughter was



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again examined on 12.09.2009 on which day she was found to be in a good condition.

9.The learned counsel for the fourth respondent had further contended that the petitioner's daughter got blood transfusion on 25.09.2009 and on 26.09.2009, but the petitioner's daughter was admitted to Meenakshi Mission Hospital, Madurai on 08.09.2010 where she was found to be suffering from HIV. Hence, there is no medical negligence on the part of the fourth respondent doctor or hospital. Hence, he prayed for dismissal of the writ petition as against the fourth respondent herein.

10.I have considered the submissions made on either side and perused the materials available on record.

11.The petitioner's daughter had accessed medical treatment at Manamadurai for nasal bleeding. Thereafter, she had visited the fourth respondent hospital on 15.09.2009. Since the petitioner's daughter was found to be anaemic, blood transfusion was given to her on 25.09.2009 and on 26.09.2009 from the blood bank of the fifth respondent. Thereafter, the petitioner's daughter was discharged on 30.09.2009 from the fourth respondent hospital. After discharging from the fourth respondent hospital,



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the petitioner's daughter was taken to the same hospital on several occasions for review. Since the petitioner felt that the disease had not cured, she was taken to Meenakshi Mission Hospital, Madurai on 08.09.2010. From the test conducted by the said hospital, it was revealed that the patient was suffering from HIV positive. According to the petitioner, respondents 4 and 5 have not properly afforded any explanation for this serious and unfortunate incident of infection of HIV virus in their hospital.

12. Based upon the complaint lodged by the writ petitioner, the first respondent had directed the second respondent to conduct an enquiry and enquiry was conducted by the third respondent herein. During the enquiry, the fourth respondent doctor had appeared before the enquiry officer along with all medical records. On perusal of the medical records, the third respondent has arrived at a finding that only after verifying that the blood supplied by the fifth respondent blood bank is free from any disease, the fourth respondent hospital has used it for transfusing blood to the writ petitioner's daughter.

13. The complaint given by the writ petitioner to the first respondent on 05.09.2011 indicates that all the allegations are made as against the fourth respondent doctor alone and there is no allegation as against the fifth respondent blood bank. The third respondent at the time of conducting an



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enquiry, has gone through the medical records submitted by the fourth respondent doctor and has arrived at a finding that only after proper screening, the blood from the fifth respondent bank has been utilised. The only allegation that has been made as against the fourth respondent doctor is that he is responsible for spreading the infection of HIV virus to his daughter by transfusion of blood. There is no allegation as against the blood bank for supply of any infected blood. The fifth respondent in his counter has also pointed out that an enquiry was conducted by the Drug Inspector and the blood samples were taken from the donors of the said blood which was transfused to the writ petitioner's daughter. The Drug Inspector has closed the investigation on the ground that the original donors have tested negative for HIV.

14. In view of the above said facts, it is clear that the blood bank has taken all precautions and they have supplied infection free blood to the fourth respondent hospital. The fourth respondent doctor/hospital is not alleged to have cause spreading of HIV through any other means other than the blood transfusion. When the blood supplied by the fifth respondent bank is free from any infection, the allegations as against the fourth respondent doctor/hospital have no legal basis to stand.



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15.The third respondent had conducted an enquiry and arrived at a finding that there is no medical negligence on the part of the fourth respondent. No ground has been raised challenging the said finding or by production of any documents which are contra to the said findings. Hence, there is no illegality or infirmity in the impugned enquiry report submitted by the third respondent herein. I do not find any ground to interfere with the said enquiry report and arrive at a different finding. When the fourth respondent as well as the fifth respondent have found to be not guilty of any medical negligence, the question of directing them to pay compensation does not arise.

16.The petitioner has further prayed for a direction to the respondents to give proper treatment to the writ petitioner's daughter. It is an unfortunate case where a young girl has got infected to HIV virus without any fault on her part.

17.In view of the above said facts, the second respondent is hereby directed to continue to offer proper medical treatment to the writ petitioner's daughter.



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18. With the above said observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes/No

Index : Yes/No

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To

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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