

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 23.08.2022

ORDER PRONOUNCED ON : 23.09.2022

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No3368 of 2013
MP(MD).No. 1 of 2013**

M.Ramamoorthy

...Petitioner

-Vs-

1.The State of Tamil Nadu
Represented by it's Principal Secretary
Department of Public Health and Family Welfare
Secretariat, St.George Fort,
Chennai

2.The Government Rajaji Hospital
Represented by its Dean
Madurai
Madurai District

3.The District Medical Officer
Medical and Rural Health Service
Madurai
Madurai District

4.Dr.A.Athigaman
Surgeon
The Government Rajaji Hospital
Madurai
Madurai District

5.Dr.Kumar Venkatesan
Pediatric Surgeon
Karthick Hospital

Anna Nagar
Madurai District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent No.1 to pay a total compensation of Rs.25,00,000/- (Twenty five lakhs only) to the petitioner within the time frame fixed by this Court.

For Petitioner : Mr.S.Vasanth
For Mr.T.Lajapathi Roy

For R1 to R3 : Mr.D.Sasikumar
Additional Government Pleader

For R5 : Mr.S.Tamizharasan

For R4 : Mr.V.Santhakumaresan

ORDER

The present writ petition has been filed seeking a writ of mandamus directing the first respondent to pay a compensation of Rs.25/- lakhs to the petitioner on the allegation of medical negligence on the part of the second respondent herein.

2.According to the petitioner, his son was admitted to the second respondent Hospital on 19.08.2008 where he was diagnosed with Hirschsprung disease (hereinafter referred as HD) by the department of paediatric surgery. According to the petitioner, his son underwent Rectal Biopsy and he was under a hope that his son would be operated after the

confirmation of HD disease. But he was discharged on 27.08.2008. Thereafter, the petitioner's son had visited the Hospital on four occasions namely in September, October and November 2008. During the said period, he was just provided with temporary relief and he was treated as an out patient.

3.The petitioner had further contended that his son was admitted for the second time on 11.11.2008 and he was again discharged after providing Barium Enema on 14.11.2008. The petitioner's son was admitted to the second respondent Hospital for the third time on 06.04.2009 and he was discharged on 13.04.2009 without any proper improvement. Since there was no improvement in paediatric ward, the petitioner's son was admitted to the adult ward in the same Hospital on 02.09.2009 and he was discharged on 17.09.2009.

4.The learned counsel for the petitioner had contended that the petitioner's son underwent a surgery on 15.04.2010. The fourth respondent has performed the surgery on the petitioner's son by following Soaves Pull through method and the patient was discharged on 10.05.2010. For the post-operative care, the petitioner's son was again admitted on 14.05.2010 and he was discharged on 17.05.2010. For the second time, for post-operative

care, he was admitted on 15.06.2010 and discharged on 21.06.2010. Then again the petitioner's son got admitted on 18.08.2010 and got discharged on 23.08.2010 .

5.Since the petitioner felt that his son could not improve his health in the second respondent hospital, the petitioner's son was admitted to the fifth respondent hospital on 27.10.2010 and he underwent surgery on 07.01.2011 and he was discharged on 23.01.2011. The petitioner felt that the second respondent Hospital, respondents 4 and 5 have been negligence in performing the operation of the petitioner's son. Hence, he filed Consumer Complaint in C.C.No.117 of 2011 before the District Consumer Forum, Madurai on 09.06.2011 claiming a compensation of Rs.15/- lakhs. While the said complaint was pending, the petitioner's son was again admitted to the second respondent Hospital on 22.11.2011 and he was discharged on 25.11.2011. Thereafter, the petitioner's son who could not recover and had passed away on 17.04.2012.

6.A case was registered in Crime No.25 of 2012 on the file of the Peraiyur Police Station, Ramanathapuram. The postmortem report revealed that the deceased would appear to have died of septic shock due to intestinal obstruction 12-24 hours prior to authority. In view of death of the petitioner's

son, the petitioner has withdrawn the complaint from the District Consumer Forum, Madurai on 18.01.2013 and thereafter, had filed a present writ petitioner seeking compensation on 25.02.2013.

7. According to the learned counsel for the petitioner, though the petitioner's son was taken to the second respondent Hospital on 19.10.2008, surgery was performed nearly 1 ½ years thereafter, namely on 15.04.2010. Had this operation been performed at an earlier point of time, the life of his son could have been saved. Every time when the petitioner's son underwent surgery there were assurance from the respondents 2 and 4 herein that he would get well and he would recover from the disease. However, due to delay as well as negligence in performing the surgery, his son had succumbed to the post operating difficulties and passed away on 17.04.2012.

8. The learned counsel for the petitioner had further contended that the petitioner had relied upon G.O.Ms.No.395, Health and Family Welfare (H1) Department dated 04.09.2018 under which a corpus fund has been created for compensation to be awarded by the Courts in medical mishap cases against the Government Doctors. The learned counsel has also relied upon a judgment of this Court in W.P.No.13326 of 2012 dated 29.06.2021 and contended that the petitioner is entitled to get compensation.

9.Per contra, the learned additional Government Pleader appearing for the second respondent had filed a counter and contended that HD disease is a congenital intestinal nerve disorder for which treatment should have been initiated within few years of birth. However, when the petitioner brought his son to the second respondent hospital, he was already 11 years old and only after informing the petitioner about the possibility of the said surgery, the surgery was performed. The second respondent had further stated that originally the petitioner's son was taking treatment in paediatric ward but suddenly he got admitted to the adult ward for a period of six months. Thereafter, he again returned back to the paediatric ward. Hence, the petitioner was not properly following it up with the paediatric ward after he was diagnosed with HD disease.

10.The second respondent had further contended that after surgery was performed, the petitioner has not brought his son regularly for post operative care to the second respondent hospital. That apart, the petitioner has taken his son to other Hospital also after surgery was performed in the second respondent Hospital. The petitioner's son has again underwent a surgery in the fifth respondent Hospital. Hence, there was no delay on the part of the second respondent Hospital in performing the surgery. There was no

negligence on the part of the Hospital at the time of performing of the surgery. The petitioner has already filed a consumer complaint and thereafter, he has withdrawn the same. Hence, the present writ petition is not maintainable.

11.The fourth respondent has filed a counter and contending that he was arrayed as third party in the consumer complaint and the same was withdrawn without reserving any liberty to file the present writ petition. Hence, the present writ petition is not maintainable. He had further contended that the petitioner's son had left the ward on 22.08.2011 without informing any one. According to the fourth respondent, a proper and appropriate treatment was given to the petitioner's son while he was the head of the department in the second respondent Hospital. According to the fourth respondent, the petitioner's son was discharged on 26.08.2008 and they turned up only after a period of two years ie. 10.05.2010 for post operative care. Hence, the allegation as against the fourth respondent is not maintainable and the writ petition has to be dismissed.

12.The fifth respondent has filed a counter contending that for the second time, a surgery was performed upon the petitioner's son and he had never turned up for any follow up treatment which is very essential. He had

further contended that during the stay in the hospital, the petitioner's son was taking food as against the medical advise and this could have resulted in unwanted consequences. After performance of surgery on 07.01.2011, the patient was discharged from the hospital on 23.01.2011 without any complaint, but he was strictly advised to follow certain procedure and avoid certain kind of food which was not followed by the petitioner's son. This has resulted in the unfortunate event of death of the petitioner's son. Hence, the fifth respondent either in his personal capacity or as a Hospital is not in any way responsible for the death of the writ petitioner's son. Hence, he is not liable to pay any compensation.

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

14.From the medical records produced by the writ petitioner, it could be seen that the petitioner's son was taking treatment in the second respondent Hospital from August 2008 onwards. He had underwent a surgery on 15.04.2010. Thereafter, at least on three occasion, the petitioner's son got admitted in the second respondent Hospital for the post operative care. It could be further seen that before undergoing surgery in the paediatric ward of the second respondent hospital, the petitioner's son has suddenly got himself

admitted in the adult ward of the same hospital and he was taking treatment there from September 2009 and October 2009. Thereafter, after a period of six months, he had again gone back to paediatric ward and got himself admitted and underwent surgery.

15.A perusal of the medical records further indicate that the petitioner's son has got himself admitted in the fifth respondent Hospital on 27.10.2010 and he was discharged on 03.11.2010. Thereafter, again admitted on 07.01.2011 and discharged on 23.01.2011.

16.The documents filed in the typed set of papers indicate that the writ petitioner had filed C.C.No.117 of 2011 before the District Consumer Disputes Redressal Forum, Madurai on 09.06.2011 seeking a compensation of Rs.15/- lakhs alleging medical negligence on the part of the second respondent Hospital and the Doctors namely respondents 4 and 5. A perusal of the complaint indicates that there is no allegation as against the second respondent Hospital for the delay in performing the surgery. It could further be seen that the petitioner's son has got treatment from the fourth respondent doctor in his private clinic also. However, after death of the petitioner's son, the consumer complaint has been withdrawn and the present writ petition has been filed.

17.A perusal of the counter affidavit filed by the Doctors who have given treatment to the writ petitioner's son indicate that it is a congenital intestinal nerve disorder which has affected the petitioner's son right from his birth. The said disease requires an earlier treatment by the medical experts, so that, affected part could discharge stools normally. Any obstruction in passing of the stools would result in damage to other parts of the body. In the present case admittedly, the petitioner's son had visited the second respondent Hospital while he was around 11 years. Hence, according to the respondents 4 and 5 herein, the delay on the part of the petitioner in bringing his son to the Hospital has reduced the chances of success of the surgery. From the medical records and counter affidavit filed in the typed set of papers, it could be seen that no specific allegations have been made relating to the medical negligence either on the part of the fourth respondent or on the part of the fifth respondent. No specific allegations have been made as against the second respondent Hospital also.

18.In such view of the matter, this Court is constrained to arrive at a finding that the second respondent Hospital has not committed any delay in performing the surgery for the petitioner's son and there is no medical negligence on the part of the second respondent Hospital or the respondents 4

and 5. However, the Government G.O.(Ms).No. 395 Health and Family Welfare (H1) Department, dated 04.09.2018 has created a corpus fund for payment of compensation which is awarded by the Courts for medical mishap cases against the Government Doctors. This Court in W.P.(MD).No.2721 of 2017 had arrived at a finding that there is no medical negligence on the part of the Doctors, but fastened the liability on the Government based upon the above said G.O order. In W.P.No.13326 of 2012 also this Court had arrived at a finding that there is no medical negligence on the part of the concerned doctors. Ultimately, found that there was some delay in transporting the patient from Primary Health Centre to the District Head Quarters Hospital and thereafter, proceeded to award a compensation of a sum of Rs.5,00,000/-.

19.In the present case also, the second respondent Hospital, 4th and 5th respondents Doctors cannot be attributed with medical negligence. However, the State Government could be fastened with liability for payment of compensation in view of the fact that the petitioner's son has underwent treatment from August 2008 to April 2012. The petitioner's son was admitted on various occasion to the Government Hospital before the surgery and for post operative care also. Hence, the first respondent is directed to pay a compensation of a sum of Rs.5,00,000/- to the petitioner from the said corpus fund within a period of 12 weeks from the date of receipt of a copy of this

order. Since the respondents 4 and 5 have been exonerated by this Court on the allegation of medical negligence, the same shall not be recovered from the individual Doctors.

20. With the above said observations, this writ petition stands allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2022

Internet : Yes/No
Index : Yes/No
msa

To

1. The Principal Secretary
State of Tamil Nadu
Department of Public Health and Family Welfare
Secretariat, St. George Fort,
Chennai

2. The Government Rajaji Hospital
Represented by its Dean
Madurai
Madurai District

3. The District Medical Officer
Medical and Rural Health Service
Madurai
Madurai District

W.P(MD).No.3368 of 2013

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No3368 of 2013
MP(MD).No. 1 of 2013

23.09.2022