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W.P.Nos.23610 & 23611 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

W.P.Nos.23610 and 23611 of 2009

Dr.S.Paramasivam .. Petitioner in both the writ petitions

v.

1. State Human Rights Commissioner

Tamil Nadu

Greenways Road, Chennai

2. Chitra Parthiban

W/o Parthiban

3. Dr.S.Parthasarathy

Civil Surgeon

Government Headquarters Hospital

Kumbakonam

4. Tmt.M.Kalaiselvi, Staff Nurse

Government Headquarters Hospital

Kumbakonam



W.P.Nos.23610 & 23611 of 2009

WEB COPY

5. Tmt.S.Ponmozhi, Staff Nurse
Government Headquarters Hospital
Kumbakonam

6. Mr.Aruldoss, Sub-Jailor
Borstel School
Pudukkottai

7. Mr.Umamaheswaran
Grade II Police Constable
Sub-Jail, Kumbakonam

8. Mr.Sivanandham
Grade II Police Constable
Sub-Jail, Kumbakonam

9. Mr.Balasubramanian, D.S.P.
C.B.C.I.D., Thanjavur .. Respondents in WP 23610/2009

1. State Human Rights Commissioner
Tamil Nadu
Greenways Road, Chennai

2. Loganathan

3. Dhanalakshmi
W/o Loganathan

4. Dr.S.Parthasarathy, Civil Surgeon
Government Headquarters Hospital
Kumbakonam

5. Tmt.M.Kalaiselvi, Staff Nurse
Government Headquarters Hospital
Kumbakonam



W.P.Nos.23610 & 23611 of 2009

6. Tmt.S.Ponmozhi, Staff Nurse
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8. Mr.Umamaheswaran
Grade II Police Constable
Sub-Jail, Kumbakonam

9. Mr.Sivanandham
Grade II Police Constable
Sub-Jail, Kumbakonam

10.Mr.Balasubramanian, D.S.P.
C.B.C.I.D., Thanjavur .. Respondents in WP 23611/2009

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in connection with SHRC Nos.88 of 2005 & 5652 of 2007 respectively, dated 01.07.2009 and to quash the same in so far as petitioner is concerned.

For Petitioner :: Mr.K.S.Vaithianathan
for M/s K.Chandrasekaran
in both the petitions

For Respondents :: M/s G.Anbumani for R1
in both the petitions
No appearance for R2 to R8 in
WP 23610/2009 and for R2 to R9
in WP 23611/2009
Not ready in notice for R9 in
WP 23610/2009 & for R10 in
WP 23611/2009



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W.P.Nos.23610 & 23611 of 2009

COMMON ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

These two writ petitions are filed as against the common order passed by the State Human Rights Commission on 01.07.2009 in S.H.R.C.Nos.88 of 2005 and 5652 of 2007.

2. The first respondent in both the writ petitions is the State Human Rights Commission. The second respondent in W.P.No.23610 of 2009 is the wife of Thiru.Parthiban and the second and third respondents in W.P.No.23611 of 2009 are the parents of Thiru.Parthiban. The wife of Thiru Parthiban is the complainant in S.H.R.C.No.88 of 2005 and the parents of Thiru.Parthiban are the complainants in S.H.R.C.No.5652 of 2007, before the first respondent.

3. The husband of the complainant in S.H.R.C.No.88 of 2005 was working as Surveyor in Papanasam Taluk and he was arrested in connection with a vigilance case. The complainant's husband was remanded to judicial



W.P.Nos.23610 & 23611 of 2009

custody and he was confined in Sub-Jail, Kumbakonam. It is the case of complainant that in the night of 31.08.2004, her husband suffered heart attack and he was taken to Government Hospital at Kumbakonam at 8.30 p.m. and later he was taken back to Sub-Jail at 9.00 p.m. without proper treatment. It is the specific case of complainant that her husband had chest pain again on the same day at 10.40 p.m. and he was taken to Government Hospital. Even after he was brought to the hospital for the second time, he was not given proper treatment. After a short time complainant's husband was taken back to Sub-Jail. On the next day early morning, it is stated that the complainant's husband suffered once again heart attack and died within a few hours after he was taken to hospital. It is the case of complainant that Thiru.Parthiban was allowed to die without proper treatment by not admitting him as in-patient in the hospital. It is stated by the victim's wife that though Thiru.Parthiban suffered a severe heart attack, the Deputy Superintendent of Police, Vigilance Department, Thanjavur was threatening the Sub-Jail Superintendent and the doctor not to admit Thiru.Parthiban as in-patient in the hospital and that this is how they murdered her husband. A specific allegation has also been made against the writ petitioner that he



W.P.Nos.23610 & 23611 of 2009

failed to admit Thiru.Parthiban as in-patient in the hospital for further examination and treatment at the instigation of the Deputy Superintendent of Police.

4. A detailed counter affidavit was filed by the writ petitioner before the first respondent Commission, wherein the writ petitioner admitted that Thiru.Parthiban was brought on 31.08.2004 at 8.30 p.m. However, it is contended by the writ petitioner that he examined him and came to the conclusion that the pain in the upper portion of the abdomen of Thiru.Parthiban might be due to ulcer or related to his heart. Though the writ petitioner stated that he advised Mr.Parthiban to get himself admitted in the hospital as in-patient for further examination and medical treatment, Mr.Parthiban refused to accept his advice and declined the same. It is the version of the writ petitioner that the deceased told him that it was usual for him to get such pain and that on taking one antacid tablet, his pain would disappear. The version of the writ petitioner is that despite his persuasion, the deceased did not co-operate and therefore he was helpless. The writ petitioner again admitted that on 31.08.2004, Thiru.Parthiban was again



W.P.Nos.23610 & 23611 of 2009

brought to the hospital, because he complained of chest pain and that despite the advise of the doctor to get himself admitted as in-patient for further examination and treatment, the deceased declined as before. Therefore, the explanation offered by the writ petitioner is that he persuaded the deceased to get himself admitted, but he was not given admission, because the patient refused to hear his advise and opted to go to prison. It is further admitted that on the early morning of next day i.e., 01.09.2004, Sub-Jail authorities brought Parthiban to hospital and the patient died as a result of heart attack.

5. This Court heard the submissions of the learned counsel appearing for the petitioner and the first respondent.

6. This Court finds that the Commission had examined the whole case and recorded specific reasons why the explanation given by the doctor has not been accepted. During the course of hearing, it was admitted that the doctor did not make any endorsement/noting in the register maintained by the jail authorities which was produced before the doctor by the escort



W.P.Nos.23610 & 23611 of 2009

party. Admittedly, the patient complained of severe pain in the abdomen and it was at his instance, the Sub-Jail authorities brought him to the hospital on three occasions. When the deceased complained of severe pain and the doctor suspected that it may be due to heart problem, it is expected from the doctor to advise the jail authorities to admit the patient for treatment. It is nobody's case that the deceased reported no pain or comfortable after he was brought to the hospital on the first occasion or on the second occasion. When the doctor suspected that his pain may be due to heart problem, absolutely there is no explanation from the petitioner as to why he did not recommend examination of victim by a Cardiologist. It is admitted that no ECG was taken. At least anticoagulant drug (like heparin) could have been given to Mr.Parthiban when the doctor suspected that his pain may be due to heart problem. The only explanation is that the patient was not admitted because of his own decision, is not acceptable or probable, as the patient had been brought to hospital due to severe pain suffered by him while he was in the prison at his request. When the patient was brought to the hospital for the second time, he would never say no for himself being admitted as in-patient for taking treatment in the hospital. This Court finds



W.P.Nos.23610 & 23611 of 2009

that the Commission has considered every possibility and arrived at the conclusion that the doctor was negligent in not admitting the deceased when he was brought to the hospital successively on two occasions on 31.08.2004. This Court is of the view that proper examination and medical treatment would have saved the life of Parthiban and the complainants had suffered a great loss on account of the negligence of the doctor.

7. Taking into account of such negligence, the Commission has directed the State to make a payment of rupees one lakh to the wife of the deceased. The Commission has also directed to recover a sum of Rs.25,000/- from the salary of the petitioner, who is a Senior Assistant Surgeon in Government Headquarters Hospital, Kumbakonam. The learned counsel appearing for the petitioner submitted that the Commission has no power to direct recovery of a sum of Rs.25,000/- from the salary of the writ petitioner.

8. In this context, the specific issues referred to the Hon'ble Full Bench of this Court have been answered in the judgment in *Abdul Sathar v.*



W.P.Nos.23610 & 23611 of 2009

Principal Secretary to Government, Home Department and others,

reported in **2021 (2) CWC 1**, and while answering issue no.(iii), namely, whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) & (iii) of Clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the Compensation amount directed to be paid by the State to the victims of violation of Human Rights under sub-clause (i) of Clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation, the Hon'ble Full Bench, in paragraph-490 at page 253, has succinctly held as follows:-

“Ans: Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the Compensation from the State and payable to the victims of the violation of Human Rights under sub-clause (a)(i) of Section 18 of the Act and the State in turn could recover the Compensation paid, from the Officers of the State, who have been found to be responsible for causing Human Rights



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W.P.Nos.23610 & 23611 of 2009

violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a Show Cause Notice seeking his explanation only on the aspect of quantum of Compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.”

9. In view of the judgment of the Hon'ble Full Bench, this Court is unable to consider the argument of the learned counsel appearing for the petitioner. Accordingly, finding no merits whatsoever, both the writ petitions are dismissed. Consequently, interim order stands vacated and the M.P.Nos.1 and 2 of 2009 are also dismissed. No order as to costs.

(S.S.S.R.,J.) (C.K.,J.)

15.06.2023

Index : yes/no

Neutral citation : yes/no

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To

1. The Members

State Human Rights Commission

P.S.Kumarasamy Raja Salai

R.A.Puram, Chennai 600 028



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W.P.Nos.23610 & 23611 of 2009

S.S.SUNDAR,J.

AND

C.KUMARAPPAN,J.

SS

W.P.Nos.23610 & 23611 of 2009

15.06.2023