



WP.No. 7310 of 2020

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Writ Petition No.7310 of 2020

G. Divya

... Petitioner

VS.

1. The Medical Council of India,
Represented by its Member Secretary,
Pocket-14, sector-8, Dwaraka Phase-1,
New Delhi-110077.

2. The Tamil Nadu Medical Council,
Represented by its Registrar,
No 914, Poonamallee High Road,
Arumbakkam, Chennai-600106.

3. Dr. Kavitha Goutham,
M/s. Bloom Healthcare,
No 32, Taramani Link Road,
Velachery, Chennai-600042

4. Dr. Misha Pepsi,
M/s. Bloom Healthcare,
No 32, Taramani Link Road,
Velachery, Chennai-600042

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to



WP.No. 7310 of 2020

pass a Writ of Certiorarified Mandamus, to call for the records relating to the order of the 2nd respondent passed in its proceedings issued by the registrar in TNMC/DC No.61/2017 dated 04.09.2019, in so far as it relates to imposition of meager punishment alone, quash the same and consequently direct the 2nd respondent to impose appropriate and adequate punishment as per the gravity of the delinquencies committed by the respondent 3 and 4 within a specified time.

For petitioner : Mr. P. Ebenezer Paul

For respondents : Mr. P. Anandakumar

Govt Advocate for R2 for R1, R3
and R4- No Appearance

ORDER

Challenging the order dated 04.09.2019 passed by the 2nd respondent, the petitioner has filed the present Writ Petition.

2. It is averred in the writ petition that the petitioner had consultations and medical examination with the 3rd respondent doctor during her maternity period. As guided by the 3rd respondent, petitioner attended ante natal classes for a period of ten sessions. On 26.07.2017 midnight, petitioner experienced labour pain and got admitted in the M/s Blooms Health Care Hospital, where the respondents 3 and 4 are serving as Doctors.



WP.No. 7310 of 2020

WEB COPY

3. It is further averred in the writ petition that on 27.07.2017, at about 6.00 am., petitioner gave birth to a girl baby and the 3rd respondent stated that she conducted water delivery method for child birth. The 4 respondent entered the labour room and put sutures, however, the petitioner found painful and she was bleeding at the time of shifting from water pool suit. Further, the 3rd and 4 respondents gave the discharge summary only after 21 days of the delivery.

4. After delivery and discharge from hospital, the petitioner complained severe pain and discomfort. According to the petitioner, it was only due to negligence on the part of the respondents 3 and 4 and when the petitioner approached one Dr.Ruthra, he found some pieces of cotton in the vagina and the same was removed.

5. Aggrieved by the negligence and the way in which the delivery was conducted, the petitioner's husband preferred a complaint before the 2nd respondent, who in turn disposed of the complaint as follows:-



WP.No. 7310 of 2020

WEB COPY

"17. The Tamil Nadu Medical Council carefully and independently examined the complaint, the written defense statement of Respondent Doctors, the further evidences provided by the Complainant and the recommendations of the Durciplinary Committee. The decision of the Tamil Nadu Medical Council is that, a vaginal pack placed during suturing of Paraurethral tear on the day of delivery was not removed for 3 weeks and that the patient has to suffer pain is not substantiated. There is no negligence on the part of treating Doctors. There was a delay of more than 15 days to hand over the discharge summary to the patient. It was also found out that, Dr.Kavitha Gowtham, was displaying unrecognized degrees. She is not to promote unscientific claims regarding water delivery promising natural delivery. Discharge Summary should be given to patients within 72 Hours.

18. For the above three lapses Dr. Kavitha Gautham is warned to be careful in future and not to repeat such mistakes. She should also avoid promoting water birth as it is unscientific and involves risk. Discharge



WP.No. 7310 of 2020

Summary should be given to Patients within 72 Hours. She is also place in the watch list for 5 years. Case dropped. 19. Complaint stands disposed.'

6. The learned counsel for the petitioner would submit that the action of the respondents 3 and 4 are in clear violation of human rights because it deprived the right to proper medical treatment. He would further submit that for the medical negligence of the respondents 3 and 4, necessary action need to be taken as per Indian Medical Council Professional Conduct Etiquette and Ethics Regulations 2002.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. In the case on hand also, there has been negligence, carelessness and indifference shown by the 3rd and 4th respondent Doctors while treating the petitioner. Only due to their sheer negligence, cotton in vagina was not removed even after the surgery, and therefore it is a clear case of medical negligence as it falls within the tests for medical negligence laid down by



WP.No. 7310 of 2020

the Hon'ble Supreme Court in the decision in Kusum Sharma case [Kusum Sharma v. Batra Hospital and Medical Research Centre, (2010) 3 SCC 480: (2010) 1 SCC (Civ) 747 : (2010) 2 SCC (Cri) 1127], SCC.

9. There is clinching evidence to prove the medical negligence committed by the respondents 3 and 4, wherein after post medical examination of the petitioner by yet another doctor, cotton was found inside the vaginal and was not removed even after the surgery. Therefore, this Court is of the considered view that the suffering undergone by the petitioner is genuine one and it has to be compensated when the charge of negligence arises out of failure of the medical professionals, who unnecessarily harassed and caused complications during child delivery under the promotion of unscientific method of water delivery method for baby delivery. Accordingly, the 3 respondent is directed to pay a compensation of Rs.1,00,000/(Rupees One Lakh only) to the petitioner within a period of one month from the date of receipt of a copy of this order and failing which suitable action will be taken against the third respondent.



WP.No. 7310 of 2020

10. With the above directions, this writ petition stands disposed of. No

costs.

19.06.2023

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

nvsri

To:

1. The Member Secretary,
Medical Council of India,
Pocket-14, sector-8, Dwaraka Phase-1,
New Delhi-110077.

2. The Registrar,
Tamil Nadu Medical Council,
No 914, Poonamallee High Road,
Arumbakkam, Chennai-600106.

J.NISHA BANU,J.

Page No.7/8



WEB COPY



WP.No. 7310 of 2020

nvsri

ORDER MADE IN W.P No. 7310 of 2020

19.06.2023

Page No.8/8