



WP(MD)No.12311 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.10.2023**

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.12311 of 2021

J.Ebanesar

...Petitioner

/Vs./

1.The Principal Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai – 600 009

2.The Director,
Directorate of Medical and Rural Health Services,
Nagercoil,
Kanyakumari District.

3.The Joint Director,
Medical and Rural Health Services,
Nagercoil, Kanyakumari District.

4.The District Collector,
Kanyakumari District,
at Nagercoil

5.The Managing Director,
Rathna Memorial Hospital (P) Ltd.,
11/208, Main Road,
Swamiyar Madam, Kattathurai Post,
Kanyakumari District.

...Respondents



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PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 4 to consider the petitioner's representation dated 12.04.2021 and to direct the respondents 1 to 4 to take appropriate action as against the 5th respondent hospital and to direct the 5th respondent to provide compensation of Rs.50,00,000/- on the death of the petitioner's wife name Sheeba and the Children in the womb died due to medical negligence on the part of the 5th respondent within the time stipulated by this Court.

For Petitioner	: Mr.M.R.Sreenivasan
For R1 to R4	: Ms.D.Farjana Ghoushia Special Government Pleader
For R5	: Mr.A.Hajamohideen

ORDER

This writ petition has been filed for issuance of writ of mandamus directing the respondents 1 to 4 to consider the representation made by the petitioner, wherein the petitioner is seeking for taking action against the 5th respondent hospital and for payment of compensation for the death of his wife and the child in womb due to medical negligence on the part of the 5th respondent hospital.

2. Heard Mr.M.R.Sreenivasan, learned counsel for the petitioner, Ms.D.Farjana Ghoushia, learned Special Government Pleader for the official respondents and Mr.A.Hajamohideen, learned counsel for the fifth respondent.



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3. The grievance of the petitioner is that he had admitted his wife in the 5th respondent hospital for delivery and due to the negligence on the part of the 5th respondent, the petitioner lost his wife and the child in the womb. The petitioner therefore made a representation before the respondents 1 to 4 to take action against the 5th respondent and the petitioner is also seeking for compensation.

4. The 5th respondent has filed a detailed counter affidavit before this Court denying the allegations made by the petitioner and taking a stand that there was no medical negligence on the part of the 5th respondent.

5. In the considered view of this Court, the dispute is between the petitioner and the 5th respondent and this issue cannot be gone into in a writ petition. If according to the petitioner, there was deficiency in service, the petitioner has to agitate the dispute before the concerned consumer forum. If the petitioner is seeking for payment of compensation against the 5th respondent, the petitioner has to file a suit before the concerned civil Court and seek for appropriate remedy. This issue cannot be gone into in a writ petition, more particularly, where there are disputed questions of fact. Hence, liberty is



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granted to the petitioner to workout his remedy before the concerned forum in accordance with law.

6. This writ petition is disposed of in the above terms. No costs.

19.10.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To,

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N.ANAND VENKATESH, J.

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Order made in
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19.10.2023