



W.P.(MD)No.15337 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.15337 of 2020

R.Jancy Mary

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By the Principal Secretary,
Secretariat, St.George Fort,
Chennai.

2.The Director,
Directorate of Public Health and Preventive Medicine,
No.359 Annasalai, Tenampettai, Chennai-600 006

3.The District Collector,
Tenkasi District.

4.The Joint Director of Health Services,
Tenkasi District,
Tenkasi.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to take necessary appropriate and suitable action as against the erring doctors attached with Government Hospital Tenkasi, Tenkasi District who have wrongly diagnosed and treated and become responsible for the death of the petitioner's husband (K.Raja Subramanian, aged 49 years) as Covid-19 patient and further



W.P.(MD)No.15337 of 2020

direct the 1st respondent to pay a suitable compensation in this regard on the strength of the representation e-mailed in this connection on 12.9.2020.

For Petitioner : Mr.R.Anand
For Respondent : Mr.R.Ragavendran
Government Advocate

ORDER

This writ petition has been filed for the issue of writ of mandamus directing the respondents to take action against the erring Doctors attached to the Government Hospital, Tenkasi, who according to the petitioner have wrongly diagnosed and treated the husband of the petitioner and as a result, he died on 10.09.2020.

2.The case of the petitioner is that on 03.09.2020, the petitioner's husband was running temperature and hence, he was taken to the Tenkasi Government Hospital and he was admitted as an inpatient. There it was informed that the petitioner's husband tested positive for Covid-19 virus. The petitioner informed the Doctors that her husband is suffering from Diabetes and therefore, she requested to give proper treatment to her husband.

3.The further case of the petitioner is that on 06.09.2020, her husband was discharged from the Tenkasi Government Hospital and he was advised to



W.P.(MD)No.15337 of 2020

remain in home quarantine for a period of 14 days. The petitioner was under the impression that her husband was infected with Covid-19 virus and therefore, she complied with the directions given by the Doctors at Tenkasi Hospital. All of a sudden, on 08.09.2023, the health condition of the petitioner's husband started deteriorating and he was rushed to the Tenkasi Government Hospital through ambulance. He was shifted to Tirunelveli Government Medical College Hospital at about 11.30 p.m., on the same day.

4.At that point of time, it came to light that the husband of the petitioner was not infected with Covid-19 virus, whereas the treatment was given to him by administering the medicines for Covid-19. Due to this wrong diagnosis, the situation worsened and unfortunately, the petitioner's husband died on 10.09.2020 at about 06.00 a.m.. In view of the above, the petitioner made a representation to the respondents to take action against the erring Doctors, who according to the petitioner were negligent in treating the petitioner's husband and as a result, he died leaving the petitioner and her two children in lurch.

5.The fourth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:



WEB COPY

“7.It is respectfully submitted that admittedly husband of writ petitioner namely Raja Subramanian was treated as outpatient at kadayam Primary health Centre for cough and fatigued and he was advised to come on next day taking blood test. On next day blood test and swap test was taken to him and in the said test low platelets (82000) and therefore he was immediately referred to Tenkasi Government Hospital and on 03.09.2020 around 3.30 P.M. he was admitted at SARI Ward with fever and Fatigued and further during admission it was diagnosed that he was already infected with diabetes and Blood Pressure and for which he is taking treatment and Swap Test taken at Kadayam Primary Health Centre was negative and thereafter she was given necessary Medical Treatment and after recovery he was discharged from Tenkasi Government Hospital on 06.09.2020. Later he was once again admitted at Government Hospital Tenaksi on 08.09.2020 at 3.25 A.M. with Dizziness and with fatigued, during admission the husband of writ petitioner was found with high blood sugar and salt content.

8. It is respectfully submitted that due high infection level Doctors have referred to Government Medical College hospital, Tirunelveli for further treatment. Accordingly husband of writ petitioner was immediately shifted from Tenkasi Government Hospital to Government Medical College hospital, Tirunelveli on the same day and after medical treatment husband writ petitioner died. It is respectfully submitted that on the same day death summary was issued to the writ petitioner in which we have clearly stated that Raja Subramanian aged about 47 years, known diabetic admitted with complaints of fever for 4 days followed by altered sensorium, which means "The totality of those parts of the brain that receive, process and interpret sensory stimuli. The sensorium is the supposed seat of sensation, the place to which



W.P.(MD)No.15337 of 2020

WEB COPY

impressions from the external world are conveyed and perceived. The sensorium also refers to the entire sensory apparatus of the body". Basic investigations it was diagnosed as Sepsis with MODs/acute on CKD. He was treated with higher antibiotics anti hyperglycemias, IV Fluids and Supplemental O₂. Despite above treatment condition of patient deteriorated and due to sudden cardiopulmonary arrest on 10.09.2020 at 5.35 AM CPR started, Inj., Adrenaline give according to protocol. Despite above resuscitative measures, patient could not be revived declared death on 10.09.2020 at 6.05 A.M. Therefore there is no fault on the part of Doctors and the diagnosis and treatment given by them are proper."

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

7. The main issue raised by the learned counsel for the petitioner is that there was wrong diagnosis on the part of the Doctors at Tenkasi Government Hospital to the effect that the petitioner's husband was infected with Covid-19 virus and they have also administered medicines for the same and later, it came to light that the petitioner's husband was not infected with Covid-19 virus. This according to the petitioner, became apparent after receiving the information under the Right to Information Act to the effect that he tested negative in the Covid-19 test. Therefore, according to the petitioner the wrong treatment that was given to the petitioner's husband resulted in his demise.



W.P.(MD)No.15337 of 2020

8.Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the blood test and swab test were taken and it was found that there was low platelet count, which was an indication that a person is infected with Covid-19 virus and therefore, he was referred to Tenkasi Government Hospital on 03.09.2020 and admitted. That apart, he was also running temperature and it was also informed to the Doctors that he has diabetes and blood pressure. The medical treatment was given and after recovery, the petitioner's husband was discharged from Tenkasi Hospital on 06.09.2020. Once again, the husband of the petitioner was admitted at Government Hospital, Tenkasi on 08.09.2023 on the ground that his health condition deteriorated and he was found to be suffering with dizziness and fatigue.

9.The learned counsel submitted that after the re-admission, the investigation of the petitioner's husband revealed that he was suffering from Sepsis with MODs/acute on CKD. In view of the same, he was treated with antibiotics and anti hyperglycemias, IV fluids and Supplemental O2. Despite the same, the petitioner's husband died due to sudden Cardiac Arrest on 10.09.2020. In view of the same, the learned Government Advocate submitted that there was absolutely no negligence on the part of the Doctors and all attempts were made to save the life of the petitioner's husband and



W.P.(MD)No.15337 of 2020

unfortunately he died on 10.09.2020. The death summary was also issued stating the reasons for the death.

10.In the considered view of this Court, while exercising writ jurisdiction, in a case where the compensation is claimed and action is sought to be taken against the Doctors for their negligence, this Court must see whether there are serious disputed questions of fact. If there are disputed questions of fact, this Court should not exercise its writ jurisdiction and the parties must be left to agitate the dispute before the competent civil Court by adducing necessary evidence. This Court will exercise its writ jurisdiction only in a case, where there is an apparent negligence, which will not require any appreciation of evidence to act upon the same. This is more so in cases involving Doctor's negligence, since it is a specialized area.

11.The real dispute in this case is as to whether the petitioner's husband tested positive for Covid-19 virus and was administered proper medicines or there was negligence on the part of the Doctors in treating the petitioner's husband with wrong diagnosis. It must be borne in mind that Covid-19 pandemic had set in during the last week of March, 2020. The entire

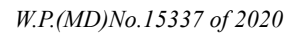


W.P.(MD)No.15337 of 2020

world was grappling to understand the nature of virus that was virtually killing people in large numbers across the world. Unfortunately, there was no medicine to treat the persons infected with Covid-19 virus.

12.The Doctors themselves were not very sure in giving treatment to the persons affected with Covid-19 virus. There were also instances, where the presence of Covid-19 virus was not very apparent and inspite of the same, the platelet count started falling down and oxygen levels started getting down for some of the patients. That apart, all the hospitals were virtually filled up with patients suffering from infection. The Doctors during the relevant point of time were placed in such an extreme situation and unfortunately, there were even some Doctors, who died due to the infection while treating the patients.

13.In the instant case, the petitioner's husband, who was taken to the hospital on 03.09.2020 was diagnosed having low platelet count, which at that point of time, was understood to be one of the indications for the person infected with Covid-19 virus. Therefore, the treatment was immediately started. That apart, the petitioner's husband was also running temperature, which was yet another indication for the persons infected with covid-19 virus. Later on the swab test that was taken at Kadayam



14. The number of deaths that took place during the period between was enormous and the medical community was literally baffled with the impact of the Covid-19 virus on the human race. Therefore, by considering the situation that was prevailing at the relevant point of time, it is difficult for this Court to come to the conclusion that there was any wrong in this case. As stated supra, the medical community itself was not aware about the effect and impact of Covid-19 virus and every other ailment was viewed only from the angle of Covid-19 virus. Therefore, the benefit of doubt is to be necessarily given to the Doctors, who were virtually toiling at the relevant point of time in treating huge number of patients, who were filling the hospitals with infection.

<https://www.mhc.tn.gov.in/judis>
9/11



W.P.(MD)No.15337 of 2020

undermining the loss of the husband suffered by the petitioner as a result of which, the petitioner and her children were left in lurch. The only issue is whether he died due to the negligence on the part of the Doctors and this Court holds that there is no apparent negligence found from the materials placed before this Court. Therefore, this Court is not able to grant the relief as sought for by petitioner in this writ petition. Accordingly, this writ petition is dismissed. No costs.

10.11.2023

NCC : Yes / No
Index : Yes/No
Internet : Yes/No
ta

To

- 1.The Principal Secretary,
Secretariat, St.George Fort,
Chennai.
- 2.The Director,
Directorate of Public Health and Preventive Medicine,
No.359 Annasalai, Tenampettai, Chennai-600 006
- 3.The District Collector,
Tenkasi District.
- 4.The Joint Director of Health Services,
Tenkasi District,
Tenkasi.



WEB COPY



W.P.(MD)No.15337 of 2020

N.ANAND VENKATESH, J.

ta

W.P.(MD)No.15337 of 2020

10.11.2023