



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Pronounced on : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15398 of 2023

and

WMP(MD)Nos.12994 & 12995 of 2023

Dr.S.Subhaa Shri

... Petitioner

Vs.

1.The Director of Public Health and Preventive
Medicine,
Directorate of Public Health and Preventive
Medicine,
359, Anna Salai, Chennai – 006.

2.The Dean, Tirunelveli Medical College and
Hospital,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent dated 01.06.2023 in Na.Ka.No.5273/Ni.1/2023 and quash the same as illegal and consequently direct the second respondent to appoint a new enquiry committee for conducting re-enquiry based on the representation of the petitioner dated 05.06.2023.



For petitioner : Mr.N.Mohideen Basha
For Respondents : Mr.Suriyanath,
Additional Government Pleader

ORDER

Heard both sides.

2.The petitioner is working as Medical Officer. When she was discharging her duties at Tirunelveli Medical College and Hospital, a remand accused by name Sarath Inigo was brought for medical examination on 26.02.2019 at about 12.00 noon. The petitioner did not find any external injuries. He was referred for being examined by the duty Assistant Surgeon. X-rays were taken. Since admission was not recommended, the remand accused was taken to Palayamkottai Central Prison. The petitioner was subsequently transferred to Government Primary Health Centre, Reddiarpatti in June 2019. According to the petitioner, the Dean, Tirunelveli Medical College and Hospital called upon her vide letter dated 16.06.2022 to issue wound certificate. The petitioner went to Tirunelveli Medical College and Hospital on 22.07.2022 and based on two documents, namely, Accident Register and X-ray report, the petitioner opined that there were no injuries and issued wound certificate to that effect.



3.The petitioner received an enquiry notice on 25.04.2023 calling upon her to appear for enquiry. This was triggered by the complaint dated 26.02.2023 sent by the said Sarath Inigo to the Secretary to Government, Health and Family Welfare Department, Chennai. The Officer on Special Duty in the cadre of Director of Public Health and Preventive Medicine had issued letter dated 28.03.2023 to the Dean, Tirunelveli Medical College and Hospital seeking appropriate action in this regard. The enquiry committee comprised the following persons :

- 1.Dr.Senthil Arumugam, MS.,
- 2.Dr.Arokiya Amalan, Ms.,
- 3.Dr.Ravi, MD.,

The petitioner alleges that when she appeared before the enquiry committee, she was not furnished with the relevant medical records. According to the petitioner, she gave representations dated 04.05.2023 and 30.05.2023 seeking re-enquiry and permission to peruse the treatment particulars. She also wanted to enquire the Medical Records Officer and the duty Assistant Surgeon. But vide order dated 01.06.2023, the petitioner's request was rejected. Questioning this decision, the present writ petition came to be filed.

4.The learned Additional Government Pleader appearing for the respondents pointed out that the petitioner is raising doubts regarding the



impartiality of the enquiry committee as an afterthought. She had endorsed in the minutes that she was satisfied with the enquiry proceedings and she has no other complaint. Since the enquiry committee has given an adverse report, the present writ petition has been filed. The respondents wanted this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The petitioner has not challenged the enquiry report as such. It is well settled that an enquiry report is not the last word. It is for the disciplinary authority to take a final call in the matter. Only while challenging the decision of the disciplinary authority, the enquiry report can also be assailed. But the case of the petitioner is on a different footing altogether. She is only asking for re-enquiry. She does not want Dr.Arokia Amalan and 2 others to be a part of the new committee. The petitioner has stated that there is civil dispute involving her mother and Dr.Arokiya Amalan who was one of the members of the enquiry committee. The Encumbrance Certificate as well as the case status of SA(MD)No.940 of 2011 have been furnished before this Court. It is seen that one M.A.Jegannathan, J.Perumalavan, Surenthiranathan and Sundarrajan, through their power agent, sold a property vide D.No.1921 of 2010 dated 22.03.2010 on the file of the Sub Registrar, Melepalayam. The purchaser is Mrs.Muthamil Selvi who is the mother of the



petitioner herein. Dr.Arokiya Amalan is figuring as the 7th appellant. The petitioner's mother's vendors are figuring as respondents in the Second Appeal. The petitioner's mother will have to implead herself in the said Second Appeal. The petitioner alleges that she was not aware of this and that Dr.Arokiya Amalan had unfairly dealt with her only because of this. The attribution of motive may or may not be true. But the fact remains that Dr.Arokiya Amalan is engaged in a civil dispute and he is one of the appellants in the said Second Appeal. From some of the respondents in the second appeal, the petitioner's mother had purchased a piece of property. So, the petitioner's mother may even be impleaded as respondent. In the event of the appellants succeeding the second appeal, the execution proceedings will have to be conducted against the petitioner's mother also. The petitioner is therefore justified in entertaining a feeling that Dr.Arockiya Amalan is ill-disposed towards her.

6.The test to be applied in such cases is not actual bias but likelihood of bias. An enquiry report is a foundational document. The petitioner has not come to the court immediately. She moved the Dean and only after her request for re-enquiry was rejected, she has come to this Court. From the materials enclosed in the typed set of papers and what has been made available by the learned Additional Government Pleader, it is seen that the



core allegation of Sarath Inigo is that he was not given proper treatment. But when he filed WP(MD)No.19473 of 2019, it was dismissed by a learned Judge of this Court on 09.09.2019 in the following terms :

“2.The learned Government Advocate(Crl.Side) would submit that on the complaint lodged by one Kathiravan and four others a case has been registered against the petitioner in Crime No.105 of 2019 for the offences under Section 294(b), 506(i) of IPC and Section 3(1)(r), 3(1)(a) and 3(2)(va of SC/ST(POA) ACT, 2015. In that case when he was arrested and remanded to judicial custody he did not express anything before the remanding Court and also did not express about the injuries sustained by him before the Investigating Officer. Therefore the present complaint is nothing but only to escape from the complaint registered against him in Crime No. 109 of 2019. Therefore they have further investigated the case and closed as 'Action Dropped' and therefore the prayer sought for in the writ petition cannot be considered.

3.Under such circumstance, this petition is dismissed as devoid of merits. No costs. However the petitioner is at liberty to approach the concerned court for appropriate relief in the manner known to law.”

7.It must also to be noted that in respect of the petitioner's conduct in the discharge of her official duties on 26.02.2019, she has been called upon to offer her explanation in March 2023. Even wound certificate was obtained from her only on 22.07.2022. In these circumstances, the petitioner ought to



be given full opportunity. Even the preliminary enquiry cannot be done in a cursory manner. If one of the members of the enquiry committee is already having a civil dispute which has a bearing on the petitioner's mother, then, the petitioner is justified in feeling that justice is not being done to her. The impugned communication fails to address the concerns of the petitioner. The second respondent has failed to apply the test relating to bias. I make it clear that by sustaining the claim of the petitioner, I am not casting any aspersion on the integrity of Dr.Arokiya Amalan. I only hold that the issue must be viewed through the prism of the petitioner. The impugned communication is set aside. It is for the second respondent to constitute a new committee. The members of the earlier committee shall not be in the new committee.

8.This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

29.09.2023

Index : Yes / No
Internet : Yes/ No
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359, Anna Salai, Chennai – 006.
2. The Dean, Tirunelveli Medical College and Hospital,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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