



W.P.(MD)No.19190 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.19190 of 2020

M.Albert,

... Petitioner

Vs

1. State of Tamil Nadu, Rep By,
The Secretary To, Government,
Department of Health and Family
Welfare, Fort St.George, Chennai 600009.

2. The Director of Medical And,
Rural Health Services, 359, Anna Salai
Chokkalingam Nagar,
Teynampet,
Chennai Tamilnadu 600006.

3. The District Collector,
Sivagangai.

4. Thiru Anandhaaraj,
Medical Officer,
Panangudi Primary
Health Centre, Kallal Block, Karaikudi
Taluk, Sivagangai.



W.P.(MD)No.19190 of 2020

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5. The Inspector of Police

Kallal Police Station,

Sivagangai District.

... Respondents

(R5 has been suo motu impleaded

vide order W.P.No.19190/2020 dated 09.10.2023)

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to initiate departmental and Criminal action as against the 4th respondent who due to his medical negligence has caused death to the petitioners sister Belsia Rani and further directed to pay compensation of 25,00,000 to the petitioner for the loss of his sister and the mental agony he along with the family members suffering based on the representation of the petitioner dated 19.06.2020 within the specific time frame as fixed by this Honble Court

For Petitioner :Ms.W.Pamelin,

For Respondents :Mrs.D.Farjana Ghousia for R1 to R3
Special Government Pleader
Mr.Shaji Chellan for R4
Mr.R.Sivakumar for R5
Government Advocate (Crl.side)

ORDER

This writ petition has been filed for the issue of a writ of mandamus to direct the respondents to initiate departmental/criminal proceedings against the 4th respondent on account of the demise of the sister



W.P.(MD)No.19190 of 2020

WEB COPY

of the petitioner due to the medical negligence and for a further direction to the respondents to pay compensation for the loss of his sister by considering the representation made by the petitioner on 19.06.2020.

2. The case of the petitioner is that his sister conceived during the year 2019 and she was undergoing treatment in Panangudi Primary health centre under the guidance of the 4th respondent. On 27.05.2020, the sister of the petitioner developed pain and she was rushed to the primary health centre. At that point of time, no doctors were available and the delivery was done by the nurses belonging to the primary health centre. The sister of the petitioner developed complications and there was no doctor to handle the same. Ultimately, she was rushed in an ambulance to the Government hospital, Sivaganga. The sister of the petitioner ultimately died due to complications on 28.05.2020.

3. According to the petitioner, it is the negligence on the part of the fourth respondent, which had resulted in the demise of his sister, since the fourth respondent was aware about the complication suffered by his



W.P.(MD)No.19190 of 2020

sister and he was duty bound to remain in the hospital for conducting delivery, whereas, he left it in the hands of the nurses, who were not able to handle the situation. The petitioner had given complaint against the 4th respondent and the grievance of the petitioner is that till date, no departmental/criminal action has been initiated against the 4th respondent. Hence, the petitioner filed the present writ petition seeking for appropriate relief.

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

“5. I submit that on 27-05-2020 my duty time was between 9.00 a.m. to 4.00 p.m. But I stayed in the Primary Health Center till 6.00 p.m. and thereafter I left for Madurai and I was on Call Duty. The Belsia Rani was admitted in the hospital by 10.00 p.m. in Panangudi Primary Health Center. When I received a call from Hospital Staff Nurse around 10.10 p.m., I clarified the condition of the patient and instructed them accordingly and I started to Panangudi Primary Health Center. On my way to Primary Health Center, I was continuously following the condition of the patient (Ante-Natal Mother)



WEB COPY



W.P.(MD)No.19190 of 2020

regarding cervical dilatation, vital stability and progression of labour etc. The patient delivered an alive female baby by 12.40 a.m. I reached the Primary Health Center at 12.50 a.m. and properly attended the child and mother with routine treatment protocol of fluid resuscitation. Since the post-natal mother had complication of Retained Placenta (incomplete placental delivery), we shifted her to Sivagangai Medical College Hospital without any delay for expert management. Two staff nurses from our Panangudi Primary Health Center accompanied the patient in the ambulance and I also went along with the ambulance in my car. I painfully state that all the efforts taken by me and other staff to save the life of the mother went in vain and the patient died.

6. I submit that the averment made by the writ petitioner with regard to pushing up his sister Belsia Rani's stomach during delivery is absolutely false and baseless. Now a days Fundal Pressure is not given in Normal Vaginal Delivery and the same was also duly followed in this case. There is no negligence of any means on my part or on the part of the staff nurses. The staff nurses are also well experienced and normally there are minimum 3 deliveries take place every month in our Primary Health Centre.



WEB COPY



W.P.(MD)No.19190 of 2020

7. I submit that throughout my service, there is no bad remarks against me and I possess an unblemished record of service. The writ petition is filed by the brother of the deceased with ulterior bad intentions. All the averments made by the writ petitioner are imaginary, concocted and without any iota of truth. The post-mortem report also falsifies the allegations of the writ petitioner. The postmortem report also makes it clear that the uterus of the patient did not come out but "only a portion of intact placenta with clamped umbilical cord found expelled through the vaginal orifice".

5. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 to 3 and the learned counsel for the 4th respondent.

6. The fourth respondent has taken a very specific stand that the husband of the deceased was aware about the complications faced by the deceased and in fact, the petitioner's sister was undergoing treatment in the year 2019 itself and looking at the medical records, the preferred delivery mode was through elective caesarean section. However, the previous



W.P.(MD)No.19190 of 2020

records were not properly shown and hence, the 4th respondent was not made aware of the previous medical history of the deceased. The 4th respondent in the counter affidavit had given his justification as to how he had not committed any negligence in this case.

7. The learned Special Government Pleader, on instructions, submitted that the disciplinary proceedings were initiated against the 4th respondent under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and an enquiry officer was appointed and the enquiry officer has also submitted his report. The learned counsel submitted that the disciplinary authority in this case is the Deputy Director of Health and Service, Sivagangai and based on the enquiry report and the materials available on record, Deputy Director of Health and Service, Sivagangai will take further action against the 4th respondent.

8. In view of the above, the disciplinary action as sought for by the petitioner has already been initiated and it is now pending for passing final orders by the Deputy Director of Health and Service, Sivagangai, who



W.P.(MD)No.19190 of 2020

is the disciplinary authority of the 4th respondent.

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9. Insofar as the criminal case is concerned, an FIR has already been registered by the Kallal Police Station in Crime No.272/2020 under Section 174 Cr.P.C. The Inspector of Police, Kallal Police Station, Sivagangai District is suo motu added as respondent No.5 in this writ petition. The learned Government Advocate (Crl. Side) takes notice for the 5th respondent.

10. If the 5th respondent has not filed final report in this case, the 5th respondent shall proceed further to file a final report or the closure report, as the case may be, before the concerned jurisdictional Court as expeditiously as possible.

11. Insofar as the claim for compensation is concerned, the brother of the deceased has approached this Court. That apart, the case involves medical negligence and there are disputed questions of fact, which cannot be decided in this writ petition. Therefore, if at all any compensation



W.P.(MD)No.19190 of 2020

is claimed, it cannot be dealt with by this Court and it has to be agitated only before the competent civil Court, which will have the advantage of going through the evidence and appreciation of evidence to arrive at a final conclusion as to whether there was any negligence on the part of the 4th respondent, which warrants payment of compensation.

12. In the light of the above discussion, the disciplinary proceedings shall be completed and final determination shall be made within a period of eight weeks from the date of receipt of a copy of this order. Similarly, the 5th respondent is directed to file a final report or the closure report before the jurisdictional Court within a period of three months from the date of receipt of a copy of this order, if it has not already been filed. Insofar as the compensation is concerned, it is left open to the petitioner to agitate his rights before the competent civil court.

13. The writ petition is disposed of with the above terms.

09.10.2023

NCC :Yes/No
Index :Yes/No
RR



W.P.(MD)No.19190 of 2020

To

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Rural Health Services, 359, Anna Salai
Chokkalingam Nagar, Teynampet,
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W.P.(MD)No.19190 of 2020

N.ANAND VENKATESH, J.

RR

W.P.(MD)No.19190 of 2020

09.10.2023