BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5815 of 2014

P.Poongodi ... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Department of Public Health & Family Welfare,
Secretariat,
Chennai.

2.The Director,
Public Health & Preventive Medicine,
Office of D.M.S.,
Tenampet,
Chennai-6.

3.The Assistant Director of Public Health,
Public Health Service,
Visvanathapuram,
Madurai-620 014.

4.The Principal,
Government Rajaji Hospital,
Madurai.

5.The Block Medical Officer,
Primary Health Centre,
Sathya Moorthi Nagar,
Samayanallur Post,
Madurai District.

6.Palaniswamy
The Then Deputy Director of Health Services,
Now, the Principal
Health and Family Welfare Training Centre,
Vishwanathapuram,
Madurai-625 014.
(R6 is suo motu impleaded vide order
dated 28.06.2023) ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to pay a sum of Rs.25 lakh as compensate for the death of the petitioners daughter due to the negligence of the Doctors of Primary Health Centre, Samayanallur.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.S.RA.Ramachandran
Additional Government Pleader for R1 to R5

: Mr.R.Anandraj for R6

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the official respondents and the learned counsel for the sixth respondent.

2. The petitioner had conceived when she was aged around 32 years. She was a resident of Samayanallur. She was taking treatment in the Primary Health Centre at Sathyamoorthi Nagar, Samayanallur. She was admitted on 20.03.2010. She was an inpatient in the Primary Health Centre till 27.03.2010. She was shifted to the Government Rajaji Hospital, Madurai on 27.03.2010 at around 6.30 am. She delivered a child on the next day at 1.40 p.m. The child however died on 29.03.2010. The petitioner's specific allegation is that the child died entirely due to negligence of the doctors working at the Primary Health Centre, Samayanallur. Demanding compensation, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He laid particular stress on the enquiry report submitted by the sixth respondent. The learned counsel took me through its contents and pointed out that the said report severely indicts the doctors working in the Primary Health Centre, Samayanallur. He also would point out that Crime No.484 of 2011 registered on the file of the Samayanallur Police Station was charge sheeted and the case is presently pending trial in S.C.No.179 of 2016 on the file of the Mahila Court, Madurai. The counsel's contention is that when the jurisdictional police have

filed final report holding that the doctors concerned were negligent and the same was also taken on file by the competent criminal court, it prima facie indicates that the petitioner has made out a case for payment of compensation. He called upon this Court to grant relief as prayed for.

4. The official respondents have filed counter affidavit and also additional counter affidavit. The learned Additional Advocate General took me through its contents. He points out that Dr.Palanisamy who gave an enquiry report upholding the allegations of the petitioner was not a gynecologist and that therefore, an expert committee was appointed. The expert committee went into the issue and submitted report dated 30.11.2011 and it exonerates the doctors working at Primary Health Centre, Samayanallur. His further contention is that the petitioner was a high risk patient and that when she was admitted in the Primary Health Centre, Samayanallur on 20.03.2010, she was advised to move to the Government Rajaji Hospital, Madurai. The tragic event could have been avoided if the petitioner and her husband had cooperated in the first instance. It was because of their stand that she would not move to Government Rajaji Hospital, Madurai, the event took an unfortunate turn. He submitted that there is absolutely no negligence on the part of the authorities and hence, the writ petition deserves dismissal.

5. Dr.Palanisamy was impleaded as the party respondent on 28.06.2023. The learned counsel for the 6th respondent submitted that the 6th respondent was then Deputy Director of Primary Health Centre, Madurai and he had given a report based on the materials then available. He would also add that since no specific relief has been sought for against the 6th respondent, the writ petition may be dismissed as far as he is concerned. The sixth respondent has no comment to offer on the subsequent report dated 30.11.2011 submitted by the expert committee.

6. I carefully considered the rival contentions and went through the materials on record.

7. Having dealt with quite a few cases alleging medical negligence, I take judicial notice of the fact whenever a pregnant woman is admitted in a Primary Health Centre in Tamil Nadu, the doctors usually take a call as to whether it would be safe to have the delivery in the Primary Health Centre or whether she must be referred to the Government hospital or if need be to the Government Medical College Hospital. This initial assessment is invariably made. The petitioner was to deliver her first child at the age of 32 years. She was obviously a high risk category patient. The stand of the official respondents is

that the petitioner was advised to get herself admitted in the Government Rajaji Hospital Madurai on 20.03.2010 itself. The petitioner's counsel alleges that the report of Dr.Palanisamy would indicate that there was some antedating.

8. The first question that calls for consideration is whether she was advised to get admitted in the Government Rajaji Hospital at the earliest. The petitioner has filed the present writ petition for compensation. She had also set the criminal law in motion against the doctors and staff who were working in the Primary Health Centre, Samayanallur. The petitioner's complaint was registered as Crime No.484 of 2011 and taken on file and final report was also filed. A reading of the same would indicate that the doctors had specifically told the petitioner even on 20.03.2010 itself that she should not get admitted in Primary Health Centre, Samayanallur. The petitioner's allegation in the criminal case probabilises and substantiates the stand now taken by the official respondents before this Court. The primary health centre in the very nature of things will not have all the facilities and infrastructure that are available in the District Government Hospital or in the Medical College Hospital. The doctors and staff working the Primary Health Centre can only perform and discharge their obligations based on the facilities available. A doctor working in the primary health centre cannot be expected to give the level of treatment which

the patient can get in the medical college hospital. The petitioner for reasons that are not quite clear refused to get admitted in the Government Rajaji Hospital, Madurai. She insisted that she will stay only at the Primary Health Centre, Samayanallur and deliver a child there. The doctors could not have forcibly evicted the petitioner. However, when the situation turned difficult on 27.03.2010, the petitioner was shifted in an ambulance to Government Rajaji Hospital, Madurai. Inspite of best treatment given by the doctors at Government Rajaji Hospital, Madurai, the child could not be saved. The petitioner gave birth to the child only at the Government Rajaji Hospital, Madurai and the child died later there.

9. I fail to understand as to how the doctors working at Samayanallur can be fastened with any blame or liability. Of-course, the enquiry report gave by the sixth respondent sustains the allegation made by the petitioner herein. The next question that calls for consideration is whether on the strength of the report given by the sixth respondent, the writ petition can be allowed. The answer has to be necessarily in the negative. As already noted, the sixth respondent is not a gynecologist. An expert committee was subsequently constituted and the expert committee in its report dated 30.11.2011 completely exonerates the primary health centre doctors. The report of the expert

committee is as follows:-

Expert Committee,
Govt. Rajaji Hospital,
Madurai-20.

To
The Dean,
Govt. Rajaji Hospital,
Madurai-20.

Respected Sir,

Ref: 1) 20789/G6/2011, dated. 22.11.2011.
2) 744/G6/2010, dated 03.12.2010.

* * *

On Perusal of the case sheet given to us, we the expert committee constituted by the Dean, Govt. Rajaji Hospital, Madurai-20, takes into consideration the following points.

1. The patient named Poongodi, 32yrs. elderly Primigravida, became pregnant after 5yrs of married life, had regular Antenatal check up at Samayanallur PHC.
2. On 23.03.2010 she had decreased urine out and elevated BP. As she was an elderly Primigravida, she was referred to a tertiary care hospital (GRH) but as per the case-sheet, the said patient was not willing.
3. Subsequently on 24.03.2010 still, she had elevated pressure, facial puffiness, Abdominal wall odema, Pedal oedema and Albumin was getting excreted in the urine.
4. From the case sheet, it is found that appropriate antihypertensive drug was given. The patient was asked to go the nearby Tertiary care hospital (GRH) and it was noted that the husband was not willing.
5. On 25.03.2010, the patient has responded to the treatment and BP was normal, But the facial puffiness and abdominal wall oedema persisted.
6. On 26.03.2010 the condition of the patient remained the same.
7. On 27.03.2010 around 9.30a.m. the Membranes ruptured and the process of delivering the baby was accelerated as usual using syntocinon drip.
8. In view of the elderly primigravida, pregnancy induced hypertension with premature rupture of membranes, the patient was asked to go to GRH.
9. The same condition prevailed and some how the patient was referred out to GRH from Samayanallur PHC around 5.50p.m. on 27.03.2010.
10. The patient was received in the OG casuality of GRH on 27.03.2010 at 7.15p.m. As she was in active labour, the process of delivery was speeded up with syntocinon drip. An asphyxiated alive female baby weighing 2.4kg was delivered by outlet forceps on 28.03.2010 at 12.20a.m.

Paediatrician resuscitated the baby and immediately shifted to the special care baby unit (NICU) for necessary action. It was given to revive the Hypoxia of the baby. On 28.03.2010 at 10.00a.m. baby developed convulsions thrice (10.00a.m, 11.00a.m., 3.00p.m.) and treated with appropriate anticonvulsants. The baby was kept under Radiant warmer, Oxygen through oxygen hood was delivered and herewith I.V. fluids and antibiotics. In spite of our energetic treatment, heart rate and Rexpiratory rate shallowed and finally the baby expired on 29.03.2010 at 10.00a.m.

Points for Determination:

1. 32yrs old mother, who has conceived 5 years after marriage, is a high risk mother, whole antenatal check up and delivery has to be conducted in a Tertiary care hospital, which is more advisable because of anticipated complications.
2. Hypertension during pregnancy can cause death inside the uterus, during delivery and after delivery. Decreased Oxygen supply to the ~~foetus~~ in utero due to the diseased placenta (utero placental insufficiency) is the major cause of foetal death, meconium aspiration syndrome and birth asphyxia.

   So in such cases, apart from obstetrician, services of the Paediatrician and Neonatal intensive care set up becomes absolutely necessary.
3. Perinatal mortality rate in pregnancy induced hypertension mother, even in a tertiary care hospital like Govt. Rajaji Hospital is around 30%.

Taking the above points into consideration, we are all in the unanimous opinion that the facilities available in the primary health centre, co-operation of the patients etc, we don't find any area of negligence on the part of treating medical staff.

P Arunachalam Rajeswari 30.11.2011
Director of ICH & RC
Govt. Rajaji Hospital,
Madurai.

Professor of Paediatrics
Institute of Child Health &
Research Centre,
Govt. Rajaji Hospital, Madurai-20

30.11.11
Prof. of Obs. & Gyn.
Govt. Rajaji Hospital,
Madurai.

30/11/11
PROF. OF OBG
GRH, Madurai.

30/11/11
Prof. of Anaesthesia
Govt. Rajaji Hospital,
Madurai.

30/11
Prof of Anaesth

10. One of the accused filed Crl.O.P.(MD)No.10061 of 2016 for quashing the proceedings. The quash petition was allowed by me on 06.02.2020 in the following terms:-

> "8. Charges have been framed against all the accused under Sections 313, 314, 315, 506(i), 120(B) and 167 of I.P.C. In this case, it is admitted that the defacto complainant delivered a child on 28.03.2010 at 12.20 a.m. It was kept in ICU and it died there two days later. When the child was born alive and it died only two days later, the question of miscarriage does not arise at all. Therefore, the offences set out in Sections 313 and 314 of I.P.C. are not attracted. The elementary ingredients of these offences are wholly absent. Section 315 of I.P.C. penalises any act done with intent to prevent the child being born alive or to cause it to die after birth. The birth of the girl child is not disputed. The petitioner herein was not associated with the delivery of the child at all. In fact she was on leave during the relevant time. Therefore, by no stretch of imagination Section 315 of I.P.C. can be invoked against the petitioner herein. The offence under Section 167 of I.P.C. can be attracted only if it is shown that the public servant has framed an incorrect document with intent to cause injury. In this case it is beyond dispute that the petitioner herein was on leave on 26.03.2010 to 28.03.2010. In fact she had given a leave application as early as on 22.03.2010 and the same was also duly sanctioned. If the petitioner had an intention to cause injury to the defacto complainant, she would not have applied for leave. Likewise I find the allegations of criminal intimidation to be rather farfetched. If the doctor had an intention to cause injury to the defacto complainant, they would not be asking her to get discharged and get admitted in Madurai Government Rajaji Hospital. Even according to the defacto complainant, from the early days of her pregnancy the medical professional attached to the said Primary Health Centre were taking proper care of her. That is why the defacto complainant got herself admitted in the Primary Health

Centre on 21.03.2010. Considering her medical condition, in all good faith the staff had advised her to get admitted in Madurai Government Rajaji Hospital. The allegations regarding criminal intimidation as well as conspiracy are inherently improbable and absurd.

9. It is true that the enquiry report of Dr.A.Palanisamy found the allegations of the defacto complainant as proved. I carefully went through the entire report. The learned counsel appearing for the petitioner would state that the medical professionals of Samayanallur Primary Health Centre had been requesting Dr.A.Palanisamy who was the then Deputy Director of Health Services, Madurai, to issue instruction for transferring the defacto complainant to Madurai Government Rajaji Hospital. He had remained totally indifferent to their request. After the issue took a serious turn, he conveniently shifted the entire blame on the medical personnel of Samayanallur Primary Health Centre.

10. If the report of Dr.A.Palanisamy is compared with the subsequent report dated 30.11.2011, one can notice that while the report of Dr.A.Palanisamy does not refer to the medical aspects at all, the report dated 30.11.2011 approaches the issue from a technical perspective. I do not want to make any further comment on the report of Dr.A.Palanisamy. I am satisfied that the continuance of the impugned prosecution against the petitioner herein can only be termed as an abuse of legal process. Therefore, the impugned prosecution stands quashed as far as the petitioner is concerned. This criminal original petition stands allowed."

11. The question of government paying compensation would arise only if medical negligence is established. The materials on record are utterly insufficient to come to any such conclusion. However, taking note of the overall facts and circumstances, I direct the first respondent to pay a sum of Rs.50,000/- as ex-gratia to the petitioner. This amount shall be paid within a

period of ten weeks from the date of receipt of a copy of this order. The case on hand is rather unfortunate. Even when a natural calamity strikes, the Government invariably announces ex-gratia payment. It does not mean that there was some fault or negligence on the part of the government. It is rather an acknowledgment of the government's solicitousness towards the victim.

12. The Writ Petition is disposed of accordingly. No costs.

20.09.2023

Index : Yes / No
Internet : Yes/ No
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To

1.The Secretary to Government of Tamil Nadu,
Department of Public Health & Family Welfare,
Secretariat,
Chennai.

2.The Director,
Public Health & Preventive Medicine,
Office of D.M.S.,
Tenampet,
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G.R.SWAMINATHAN, J.

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