



WP(MD)No.21111 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.21111 of 2021
and W.M.P.(MD) Nos.17702 & 17703 of 2021

Suresh

...Petitioner

/Vs./

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
St. George Tower,
Chennai – 600 009.
2. The Special Secretary to Government,
Public (HR) Department,
Secretariat,
St.George Tower,
Chennai 600 009.
3. The Director of Public Health
and Preventive Medicine,
No.358 DMS Building,
Anna Salai, Teynampet,
Chennai – 600 018.
4. The Deputy Director of Health Service,
No.16, Old Police Hospital Road,
Samathanapuram, Palayamkottai,
Tirunelveli District – 627 002.
5. The District Collector,
District Collector Office,
Tirunelveli District – 627 002.
6. Dr. Kalaiarasi



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7. Dr. Jenifer

8. S.Udhayasoorian

9. Bindhu Metilda

10. K.Subbulakshmi

...Respondents

PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents No.1 to 5 to pay a just and reasonable compensation a sum of Rs.50,00,000/- (Fifty Lakhs Rupees) for the negligent act of the Respondents No.6 to 10 for the death of petitioner's deceased wife namely Akila with death of the petitioners still born baby within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.R.Senthilkumar

For R1 to R5 : Mr.D.Saravanan
Additional Government Pleader

For R6 : Mr.Mohammed Athiff
for Mr.S.Micheal Heldon Kumar

For R7 : Mr.D.Vijayakumar

For R8 : Mr.V.Angusamy

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the respondents No.1 to 5 to pay compensation for the demise of the petitioner's wife due to the alleged negligence on the part of the respondents No.6 to 10.



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2. When the matter came up for hearing on 26.11.2021, this Court passed the following order:

Mr.D.Ghandiraj, learned Special Government Pleader takes notice on behalf of the respondents 1 to 5.

2.The learned counsel for the petitioner may file a further affidavit explaining how the writ petition is maintainable, particularly, because the matter has been taken suo-motu by the State Human Rights Commission and orders have also been passed, including payment of compensation to the petitioner herein.

3.If the petitioner is aggrieved by those orders then the petitioner should take further steps in the manner know to law.

4.At the present, I am not issuing notice to respondents 6 to 10.

5. Call the matter once again on 10.12.2021, for filing additional affidavit and also for counter affidavit on behalf of respondents 1 to 5.

3. When the matter was once again posted for hearing on 10.12.2021, this Court passed the following order:

Mr.Ghandiraj, learned Special Government Pleader forwarded a copy of the proceedings of the Director of Public Health and Preventive Medicine, Chennai, in proceedings No.49513/MCH 2/1/2019, dated 18.11.2021, with respect to the claim of the petitioner. It had been stated that a sum of Rs.5,00,000/- had been sanctioned in accordance with G.O (2D) No.136 of Health and Family Welfare (B1) Department, dated 26.10.2021.

2.It is stated that accordingly, a sum of Rs.5,00,000/- would be forwarded



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to the petitioner herein through bank transfer. This is the amount which has also been sanctioned and recommended by the Sare Human Rights Commission, to be paid to the petitioner.

3. The petitioner seeks a direction in the present Writ Petition pay a sum of Rs.50,00,000/-.

4.It is not known how he had valued such amount of Rs. 50 ,00,000/-. At any rate, medical negligence will have to be established in manner known to law, in a Court of law through evidence.

5.Call on 07.01.2022.

4. When the matter was once again posted for hearing on 20.11.2023, this Court passed the following order:

The petitioner has sought for payment of compensation for the alleged negligent act on the part of the respondents 6 to 10, which resulted in the death of the petitioner's wife and child.

2.This Court carefully went through the pleadings and also heard the learned Counsels appearing on either side. It is seen from the records that the State Human Rights Commission took *suo motu* cognizance regarding the incident, that was published in the newspaper and conducted an enquiry in S.H.R.C.No.2976 of 2019 and a direction was issued to the Government to pay compensation of a sum of Rs.5,00,000/- and take disciplinary action against the concerned Doctors for their negligence.

3.The petitioner has once again approached this Court by filing this Writ Petition under Article 226 of Constitution of India and also once again sought for compensation. The main issue, that arises for consideration, is that the State Human Rights Commission has already taken cognizance



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regarding the incident and has granted payment of compensation, which is stated to have been paid to the petitioner. After this Public Law Remedy is initiated, the question is to whether the petitioner can once again knock the doors of this Court and file a Writ Petition under Article 226 of Constitution of India and seek for compensation. Only upon answering this question, the other issues, that have been raised in this Writ Petition, can be gone into.

4.The learned Counsel for the petitioner sought for some time to respond to this query posed by this Court.

5.Post this case under the caption “part heard case” on **27.11.2023**.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 6, the learned counsel appearing for the 6th respondent, the learned counsel appearing for the 7th respondent and the learned counsel appearing for the 8th respondent.

6. In the considered view of this Court, the petitioner has already been paid compensation of Rs.5 lakhs pursuant to a public law remedy that was granted by the Human Rights Commission. Hence, this Court will not once again exercise its jurisdiction under Article 226 of Constitution of India, which is also in the nature of public law remedy.



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7. In view of the above, if the petitioner is not satisfied with the compensation, liberty is granted to the petitioner to work out his remedy before the competent civil court seeking for enhanced compensation by establishing the negligence on the part of the Doctor and Staff belonging to the Public Health Centre.

8. It is also contended before this Court that the Human Rights Commission had directed disciplinary action to be initiated against the concerned Doctors and that no such action has been taken till date.

9. Pursuant to the order passed by the Human Rights Commission, disciplinary action has been initiated and the counter affidavit of the 4th respondent states that action will be taken against the erring Medical Officers and suitable orders will be passed.

10. In view of the same, there shall be a direction to the 4th respondent to follow up with the directions issued by the Human Rights Commission and complete the disciplinary proceedings within a period of 3 months from the date of receipt of a copy of this order.



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11. It is also left open to the petitioner to work out his remedy before the competent civil court if the petitioner wants to claim for a higher compensation amount for the alleged negligence on the part of the Doctors and Staff belonging to the Public Health Centre.

12. With the above terms, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions closed.

27.11.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
CM



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To,

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N.ANAND VENKATESH, J.

CM

Order made in
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and W.M.P.(MD) Nos.17702 & 17703 of 2021

Dated:
27.11.2023