BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2868 of 2016
and
M.P.(MD)No.2533 of 2016

P.Niroshan ... Petitioner

Vs.

1.The Secretary to the Government,
Health and Family Welfare Department,
St.George Fort,
Chennai.

2.The District Collector,
Karur District,
Karur.

3.The Assistant Director,
Primary Health Department,
District Collectorate,
Thanthonimalai,
Karur-7.

4.The Joint Director,
Government Head Quarters Hospital,
Karur-1.

5.Rani

6.Kavitha

7.M.Malini
(R7 is suo motu impleaded vide order
dated 08.06.2023)

8.S.Kanagambujam
(This Court vide order dated 26.09.2023
impleaded 8th respondent
in W.M.P.(MD)No.5172 of 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.15,00,000/- as compensation to the petitioner and minor childrens for the death of his wife namely Priya, within a reasonable interest from the date of death or any reasonable compensation to the petitioner.

For Petitioner : Shri.Gokulraj

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.D.Gandhiraj
Special Government Pleader for R1 to R4

: Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran for R6 , R7 & R8

ORDER

The learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the official respondents and the learned senior counsel appearing for the private respondents.

2. The writ petitioner is a Srilankan refugee. He married one Priya and was blessed a female child by name Nibisha. Priya became pregnant and she was regularly going to the Primary Health Centre, Kodangipatti for her monthly checkup. She was admitted on 17.11.2009 at 1.20 p.m as she developed labour pain at around 11.30 a.m. She delivered a child through normal mode at around 6.35 pm. Thereafter, complications developed. She was rushed to the Government Headquarters Hospital, Karur. She was admitted at around 7.35 pm. Inspite of the treatment given by the doctors, Priya passed away at around 8.20 pm. Crime No.1094 of 2009 was registered on the file of the Inspector of Police, Pasupathipalayam. The petitioner alleged that his wife's death was due to medical negligence. Peace Committee Meeting was conducted. Since no compensation was paid, 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 and called upon this Court to grant relief as prayed for.

4.The official respondents as well as the private respondents filed counter affidavit. The learned Additional Advocate General as well as the learned

Senior Counsel appearing for the private respondents took me through their contents. They strongly denied the allegation that there was medical negligence. According to the respondents, complication was due to the phenomenon called "uterus inversion" and that neither nursing staff nor doctors can be blamed therefor. They pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The first allegation made by the petitioner is that occurrence would not have taken place if the duty doctor was available. It is not in dispute that the 7th respondent was not available in the Primary Health Centre premises, Kodangipatti, when the delivery took place. The question that calls for consideration is whether on this ground, the respondents can be faulted.

6. My attention is drawn to the guidelines issued by the Ministry of Health and Family Welfare. It is seen therefrom that one of the duties of the staff nurse related to the Maternal and Child Health Care is to conduct normal delivery and provide care to the new born. My attention is also drawn to G.O. (Ms.)No.339, Health and Family Welfare(L-2) Department, dated 14.10.2009 from which it is seen that a medical officer will have to be on duty in the Primary Health Centre from 09.00 a.m to 04.00 p.m. During the relevant time,

Dr.M.Malini who was one of the duty doctors allotted to the Primary Health Centre, Kodangipatti, admitted the petitioner's wife. Though she left Kodangipatti to attend the Block Health Review Meeting, the specific stand of the 7th respondent is that at 04.00 pm., the condition of the patient was not such as to require her continued presence at Primary Health Centre, Kodangipatti. It is seen from the postmortem certificate that the uterus of the deceased was partly inverted.

7. The learned Additional Advocate General as well as the learned Senior Counsel draw my attention to Dr.Dutta's Textbook of Obstetrics (9th edition). It says that inversion of uterus either partially or completely can be a life-threatening complication and that this incidence is about 1 in 20,000 deliveries. According to the respondents, on account of unexpected uterus inversion, death had taken place. Kodangipatti is located at a distance of 4 ½ kilometers from Karur. The respondents stated that the moment staff nurse noticed that the patient was suffering from complication, the 7th respondent was telephonically contacted who in turn alerted the doctors at Government Headquarters Hospital, Karur. It is not the case of the petitioner that the patient was not properly received or treated at the Government Headquarters Hospital, Karur. I need to make two remarks. It is in the ambulance arranged by the

petitioner, the patient was transported from Primary Health Centre, Kodangipatti to Karur. 108 ambulance did not arrive in time. The Hon'ble Apex Court in the decision reported in ***AIR 1996 SC 2426 (Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal)*** held as follows:-

> "5. There is not much dispute on facts. In the affidavit of Ms. Lina Chakraborti, filed on behalf of the State of West Bengal, respondent No. 1, it is stated that the rural areas of the State are served by the Block Health Centres and by the Subsidiary Health Centres since redesignated as "Primary Health Centres" where primary and general treatment is provided but no specialist treatment is available. Hakim Seikh was examined by the medical officer at the Block Health Centre at Mathurapur and after giving him first-aid the Medical Officer referred him to the Diamond Harbour Sub- Divisional Hospital or any State hospital for better treatment. It is also admitted that Hakim Seikh was brought to Neel Ratan Sircar Medical College Hospital at 11.45 P.M. on July 8, 1992 and there he was examined and two skull X- rays were also taken. The medical officer who attended him at that hospital recommended immediate admission for further treatment but he could not be admitted in the particular Department, i.e., Surgery Department having neurosurgery facilities as at the material point of time there was no vacant bed in the Surgical Emergency Ward and the regular surgery ward was also full. It is also admitted that Hakim Seikh was thereafter taken to the Calcutta Medical College Hospital, Calcutta National Medical College Hospital and Bangur Institute of Neurology in the early morning of July 9, 1992 but he could not be admitted in any of these hospitals because of non-availability of bed. It was stated that Hakim Seikh could Not be admitted in all the hospitals having facility of neuro surgery as all such beds were fully occupied on the date/dates and that such a patient cannot be given proper treatment if he is kept on the floor of a hospital or a trolley because such arrangement of treatment is fraught with grave risks of cross infection and lack of facility of

proper post-operative care. In the said affidavit it is also stated that total number of beds maintained by the State Government all over the State is 57,875, out of which 90% are free beds for treatment of poor and indigent patients and all the beds in the concerned wings in the Government hospitals in Calcutta where Hakim Seikh reported for treatment were occupied on the relevant date/dates.

6. During the pendency of this writ petition in this Court the State Government decided to make a complete and thorough investigation of the incident and take suitable departmental action against the persons responsible for the same and to take suitable remedial measures in order to prevent recurrence of similar incidents. The State Government appointed an Enquiry Committee headed by Shri Justice Lilamoy Ghose, a retired Judge of the Calcutta High Court. The terms and reference of the said Committee were :

"A. Enquiry into the circumstances under which the said Shri Hakim Seikh was denied admission to the State Government hospitals.

B. Fixing responsibilities for dereliction of duties if any, on the part of any Government official in this respect.

C. Recommendations on actions against the Government officials who have found wanting in the discharge of their official duties in this respect.

D. Recommendations on actions that should be taken by the State Government to rule out the recurrence of such incident in future and to ensure immediate medical attention and treatment to patients in real need."

8. In ***Thangapandi Vs. the Director of Primary Health Services, Chennai***, it was held that the primary health centre are expected to posses an ambulance to meet any emergency. These decisions were followed by a learned Judge of this Court vide order dated 29.06.2021 in ***W.P.(MD)No.13326 of 2012***

(T.Rajagopal Vs. State of Tamil Nadu rep. by its Principal Secretary). Therefore, non-availability of an ambulance on call is to be noted. Whenever an occurrence of this nature takes place, enquiry must be conducted.

9. Where there has been a death of a patient admitted in the Government hospital and an allegation of medical negligence has been made, enquiry must be promptly conducted by an expert team. In this case, no enquiry whatsoever was conducted. This is a serious lapse on the part of the administration. Even though I have made these two remarks, from a reading of the entire materials on record, I am satisfied that a case of medical negligence has not at all been made out. I would not fault the 7th respondent. As regards the para medical staff are concerned, I am not in a position to say one way or other. Only an enquiry at the appropriate time would have revealed the truth. Since such an enquiry was not conducted, I am not in a position to conclude either way. Be that as it may, in the case of patients admitted for delivery, the Government should assume what is known as 'no fault liability'. TANGEDCO has issued proceedings providing for compensation of a sum of Rs.5,00,000/- as compensation in fatal cases even if there is no negligence on their part. Vide order dated 01.02.2021 in W.P.(MD)No.2721 of 2017, I had held as follows:-

"8.Even though I may reject the allegation of the petitioner as regards medical negligence, still, there is no answer to the question regarding compensation. The petitioner belongs to Hindu Pallar community. It is a notified scheduled caste community. Her child was admitted in a Government Hospital for tonsil surgery. The learned counsel for the respondents would state that such surgeries are regularly performed in Government Hospital, Aruppukottai. The petitioner's child should have been discharged after successfully conducting surgery. But what the petitioner got was only the dead body of her child. Neither the petitioner nor her child was at fault. When a patient is admitted in a government hospital for treatment and he/she suffers any injury or death which is not anticipated to occur in the normal course of events, even in the absence of medical negligence, the government is obliged to disburse exgratia to the affected party. In the case on hand, liability has to be fastened on the government. Since the institution happens to be the Government institution, the Government of Tamil Nadu will have to necessarily take consequence. My attention is drawn to G.O(Ms)No.395 dated 04.09.2018 whereby a corpus fund has been created by the Tamil Nadu Government. It appears that every Government doctor contributes certain sum of money towards this corpus fund and whenever compensation is directed to be paid by the courts, amount will be drawn from this fund and paid. Considering the overall circumstances, I am of the view that the petitioner deserves to be paid a sum of Rs.5.00 lakhs as compensation. The said amount shall be paid by the department/Government from the said fund. Such payment will be made to the petitioner within a period

of eight weeks from the date of receipt of copy of this order. Since the enquiry conducted by the department itself had exonerated the private respondents from any charge of negligence, the question of recovering the said amount from their salary will not arise. ”

Para No.17 of the order dated 29.06.2021 made in W.P.(MD)No.13326 of 2012(T.Rajagopal Vs. State of Tamil Nadu) is as follows:-

“17.It is for this purpose, G.O.Ms.No.395, dated 04.09.2018, was brought into force by the Government by creating a Corpus fund. The Government Doctors contribute a certain amount towards this Corpus Fund and whenever a case arises for payment of compensation, the amount can be paid from this Corpus fund without unnecessarily burdening any Doctor or Government Institution. Considering the entire facts and circumstances of the case, this Court is of the considered view that the case of the petitioner will fall within the requirements of Sub Clause II of Clause 4(G). Hence, the petitioner is entitled to be paid compensation under this Government Order the tune of Rs.5,00,000/- (Rupees Five Lakhs Only). ”

11. In view of the above, the respondents 1 & 2 are directed to pay a sum of Rs.5,00,000/- as compensation for the death of the petitioner's wife. The petitioner will be given a sum of Rs.1,00,000/- directly. The petitioner is having two children. A sum of Rs.2,00,000/- will be deposited in the name of the elder child in a fixed deposit in a nationalized bank. A sum of Rs.2,00,000/- will be deposited in the name of the younger child in a fixed deposit in a nationalized bank. The elder child can withdraw the deposit amount after a

lapse of three years and the younger child can withdraw the deposit amount after a lapse of seven years.

12. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2023

Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.

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