



Neutral Citation Number: 2023:DHC:5419-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 24.07.2023

% **Judgment delivered on: 02.08.2023**

+ **W.P.(C) 5155/2021**

HARPATI AND ORS.

..... Petitioner

Through: Mr. Anuj Chauhan, Advocate.

versus

STATE OF NCT OF DELHI AND ORS.

..... Respondent

Through: Ms. Mehek Nakra, ASC (Civil),
GNCTD with Mr. Abhishek Khari,
Advocate for R-1, 2, 3. Mr. Anurag
Ahluwalia, CGSC for R4/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioners before this Court have preferred the instant writ petition claiming compensation from the Respondents due to alleged mismanagement and criminal negligence on their part due to which the son of Petitioner No. 1 has unfortunately expired.



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2. The facts as stated in the writ petition are, that on the night of 26.04.2021 around 8:30 PM, Naveen, the son of Petitioner No. 1 started facing severe shortness of breath. The Petitioner No. 1 called Petitioner No. 2, a friend of Naveen, who took him to Rao Tula Ram Memorial Hospital, Jaffarpur Kalan, New Delhi. It is stated that *vide* OPD Registration No. 7929, the son of Petitioner No. 1 was examined by one Dr. Sheetal at the Hospital. The examining doctor recorded an SPO2 level of 60 percent and a pulse rate of 112 beats per minute of the son of Petitioner No. 1. It is stated that the examining doctor recorded that Naveen was conscious and oriented at the time of the examination and referred him to a Higher Center.

3. It is stated that Petitioner No. 2, made multiple requests with the Hospital to make arrangements for an ambulance to transfer Naveen to another Hospital, however the hospital staff did not provide any assistance. The Petitioner No. 2, thereafter took him to a Bus Stand at Ujwa Village which is stated to be 5 to 10 minutes away from the hospital and they started looking for some conveyance to reach another hospital.

4. The Petitioners state that at about 11:39 PM, Petitioner No. 2 dialled 100, the police emergency helpline number, complaining that the Hospital has refused to admit his friend and requested for an ambulance. The Petitioner No. 2 followed upon on his request by dialling 100 again at 11:40 PM, 11:46 PM, 11:47 PM on 26.04.2021 and at 12:03 AM and 12:05 AM on 27.04.2021. It is further stated that Petitioner No. 2 called the Delhi Government Cab Ambulance Service as well, requesting for ambulance service, however, no ambulance reached the patient. It is stated that shortly



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after, the son of Petitioner No. 1 expired due to shortage of oxygen, which was a result of the mismanagement of state agencies.

5. Mr. Anuj Chauhan, Learned Counsel for the Petitioner has submitted before this Court that a writ petition is maintainable to claim compensation from the Respondents as it involves an infraction of the fundamental rights of the Petitioners. He submits that the Hon'ble Supreme Court, through several judgments has recognized the right to health and access to healthcare as essential facets of the right to life guaranteed under Article 21 of the Constitution of India. He therefore has made a prayer for issuance of direction to the Respondents to pay appropriate compensation to the petitioners for the loss of life of the deceased, Naveen, which has occurred due to mismanagement and criminal negligence by the Respondents.

6. *Per Contra*, Ms. Mehak Nakra, Learned ASC, appearing on behalf of Respondent No. 3/Rao Tula Ram Memorial Hospital, has disputed the facts as stated by the Petitioner. She submits that as per the record maintained by the Respondent Hospital, Naveen was brought to the Hospital on the night of 25.04.2021 and not on 26.04.2021. She further submits that upon arrival, the deceased was examined by Dr. Sheetal, Junior Resident *vide* OPD Slip No. 7929 and was brought to the Flu Corner of the Respondent Hospital with the complaint of shortness of breath for one day, dry cough for the past three days and fever for the last four days.

7. Ms. Nakra further submits that on first examination, the deceased was found to be conscious and oriented and the SPO2 levels were measured at 23 percent, and therefore the patient was immediately put on oxygen and given



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nebulisation with Budecort and Ipravent, as well as Effcorlin injection. Upon administration of the aforesaid treatment, the oxygen level of Naveen increased to 60% but did not improve beyond 60% even on full oxygen flow. She submits that due to lack of a Rapid Antigen Test, Naveen was diagnosed as a case of suspected COVID-19 with underlying lung damage and inability to maintain oxygen saturation level.

8. It is submitted by Ms. Nakra, that subsequent to this diagnosis, Naveen was examined by one Dr. Hari Singh, Senior Resident (Medicine) at the Respondent hospital who was satisfied with the line of treatment given by Dr. Sheetal, however, as the condition of Naveen was still serious, he had to be moved to an ICU at a COVID-19 Hospital. She submits that the Respondent Hospital does not have an ICU and is not a COVID-19 Hospital. She states that this situation was explained to the Petitioners and dedicated efforts were made by the Respondent hospital to find an ICU bed at COVID-19 Hospitals, however no bed was found available.

9. It is further submitted by Ms. Nakra that subsequent to this, the Petitioners approached Dr. Monika, the CMO on duty and made a request for taking Naveen to another Hospital, which was accepted as his condition was relatively stable and his Oxygen levels had increased to 60%. It is also submitted that the Respondent Hospital does not have its own ambulance and ambulance service at the Hospital is provided by Centralized Ambulance Trauma Services (CATS), which was unavailable at that time.

10. Ms. Nakra also submits that sincere efforts were made by its officials, which were in the best interest of the patient. She submits that the



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Petitioners had revisited the Respondent Hospital in the early hours of 26.04.2021 and requested for an oxygen regulator which was provided on the assurance that the same will be returned. She submits that despite best efforts of the health professionals at the Respondent Hospital, the deceased died eventually owing to the severity of his illness during the peak of the COVID-19 Pandemic.

11. Ms. Nakra, who also appears on behalf of Respondent No. 1/Government of NCT of Delhi (GNCTD), submits that this Court *vide* an order dated 27.04.2021 in W.P. (C) 3031/2020 titled ***Rakesh Malhotra v. GNCTD***, had directed GNCTD to submit a report regarding deaths which have occurred on account of shortage of oxygen in Hospitals and Nursing Homes in Delhi. In compliance with the same, GNCTD received information from 6 Hospitals and *vide* order no. F.23/Misc./Covid-19/DGHS/NHC/2020/Pt XV-B/242-249 dated 28.08.2021, constituted a committee comprising of four senior doctors to examine the case sheets of all patients and to determine whether the cause of death was shortage of oxygen. It is submitted that after proper scrutiny of patient case records as submitted by the Hospitals, it was found that only one Hospital reported 21 deaths due to shortage of oxygen.

12. Ms. Nakra further submits that *vide* an order dated 30.05.2021 in Suo Motu Writ Petition (Civil) No. 3/2021 titled In Re: Distribution of Essential Supplies and Services during Pandemic, the Apex Court suggested to the Central Government that the National Disaster Management Authority may consider laying down minimum standards of relief for providing ex gratia



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assistance on account of loss of life and restoration of means of livelihood in terms of 12(iii) of Disaster Management Act, 2005.

13. It is submitted by Ms. Nakra that previously, two similar writ petitions being W.P.(C) No. 5220/2021 and W.P(C) 5295/2021 were filed wherein the petitioners sought compensation to the next of kin of patients where the patient's death was alleged to have occurred due to lack of oxygen. The two writ petitions were disposed of by this Court *vide* orders dated 07.05.2021 and 17.05.2021 respectively, by directing that the writ petitions be treated as representation by the Respondent Authorities-therein.

14. Mr. Anurag Ahluwalia, learned CGSC appearing on behalf of Respondent No. 4/National Disaster Management Authority (NDMA) submits that the NDMA has published Guidelines No. 16/11/2021-RR dated 11.09.2021 for Ex-Gratia Assistance to next of kin of those who have lost their lives due to COVID-19 in compliance with the Hon'ble Supreme Court's order dated 30.06.2021 in W.P.(C) No. 554/2021 titled ***Reepak Kansal v. Union of India*** and W.P.(C) No. 539/2021 titled ***Gaurav Kumar Bansal v. Union of India***. Thereafter the Hon'ble Supreme Court passed an order dated 24.03.2022 in I.A. No. 40111/2022 in M.A. No. 1805/2021 in W.P.(C) No. 539/2021 issuing further guidelines regarding payment of ex-gratia compensation to next of kin of those who lost their lives due to COVID-19. In pursuance of the Apex Court's order dated 24.03.2021, NDMA issued a Public Notice for information, compliance and necessary action of all concerned. It is submitted that the NDMA Guidelines dated 11.09.2021 have been made in pursuance of Section 12(iii) of the Disaster



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Management Act, 2005 and the directions of the Apex Court and these guidelines are not related with providing compensation on account of criminal negligence and mismanagement allegedly done by Doctors and Hospitals, as is being alleged in the present petition.

15. Heard learned counsels appearing on behalf of all the parties and perused the record.

16. In the present case, the Petitioners have sought compensation from the Respondents for causing the death of Naveen due to their mismanagement and criminal negligence, which has resulted in a violation of their fundamental rights. The Respondent Hospital however has disputed the facts stated by the Petitioners in the present writ petition, including material details such as the date and time on which the patient was brought to the Respondent Hospital by the Petitioners, the treatment given by the doctors and the conduct of the staff and officials of Respondent No. 3. It is in dispute whether there has been any misconduct or criminal negligence on the part of the doctors while treating the patient which led to the death of the patient, or if the death has occurred despite best efforts made by the doctors. It is also not clear whether the death of the Petitioner has occurred due to a shortage of oxygen in Delhi during the peak of the COVID-19 Pandemic. GNCTD and NDMA have also stated that they have come out with policies and guidelines for the grant of compensation to the next of kin of those who have died due to the COVID-19 virus, however it is not clear from the facts whether the Petitioner would be entitled to compensation under these policies. These are all important questions of fact which are in dispute and



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need to be answered to decide the question of whether the Petitioners are entitled to any compensation.

17. It is settled law that a High Court should not exercise its jurisdiction under Article 226 of the Constitution of India when it raises disputed question of facts. The Hon'ble Supreme Court in the case of ***Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das***, (1999) 7 SCC 298 was dealing with the question of whether the High Court had made an error in entertaining a writ petition filed seeking compensation for the death of a person due to electrocution, which had allegedly been caused due to the negligence of the authorities. The Apex Court in the said case observed as under:

“6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that “admittedly/prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases



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*they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. **These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy.** The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995.”*

(emphasis supplied)

18. The aforesaid judgment has been relied/ reiterated by the Apex Court in *S.P.S. Rathore v. State of Haryana*, (2005) 10 SCC 1 wherein it observed as follows:

*“16. In *Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das* [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. **The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In *T.N.****



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Electricity Board v. Sumathi [(2000) 4 SCC 543] it was held that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.” (emphasis supplied)

19. Similarly, the Hon’ble Supreme Court in **Shubhas Jain v. Rajeshwari Shivam, 2021 SCC OnLine SC 562** has held as under:

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

20. Subsequently, in **Union of India Vs. Puna Hinda, (2021) 10 SCC 690**, the Hon’ble Supreme Court has observed:

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be



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undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads.”

21. Recently, the Hon’ble Supreme Court in the case of ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.***, (2023) 2 SCC 703, while dealing with the issue of exercise of writ jurisdiction by a Court in matters arising out of a contract, has stated:

*“82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, **the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought.** Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.”* (emphasis supplied)

22. A reading of the aforesaid judgments makes it clear, that it is well settled proposition of law that when there are disputed question of facts involved in a case, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India. Particularly in cases where tortious liability and negligence is involved, it has been held that the remedy under



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Article 226 may not be proper. In the instant case, the relief of compensation sought by the petitioners is contingent upon the resolution of the disputed question of facts raised, and these questions cannot be adjudicated only on the basis of affidavits. In view of the aforesaid, it would not be appropriate for this Court to entertain the instant writ petition as there are disputed questions of fact involved, the resolution of which is necessary, as an indispensable prelude to the grant of the relief sought.

23. The Petitioners are at liberty to take recourse to other alternate remedies available to them under the law.

24. With these observations, the writ petition is dismissed with the aforesaid liberty, along with pending application(s), if any.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SAURABH BANERJEE)
JUDGE

AUGUST 02, 2023