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W.P.Nos.22657 & 21757 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.Nos.22657 & 21757 of 2023

and

W.M.P.Nos.22110, 22111 & 21104 of 2023

Dr.R.Muthukumaran

... Petitioner
in W.P.No.22657 of 2023

Dr.C.Kumaran

... Petitioner
in W.P.No.21757 of 2023

Vs.

1.M.Abraham

2.Tamil Nadu State Human Rights Commission,
Represented by its Secretary/Registrar,
Greenways Road,
Chennai – 600 028.

... Respondents
in both writ petitions

Common Prayer : Writ Petitions filed under Article 226 of the Constitution
of India for issuance of a Writ of Certiorari to call for the records pertaining



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to the order dated 01.03.2022 passed by the 2nd respondent in S.H.R.C. Case

No.4482 of 2009 and quash the same.

For Petitioners	:	Mr.Vijayakumar Senior Counsel for Dr.B.Cheran in both writ petitions
For R1	:	Mr.R.Chandrasekaran in both writ petitions
For R2	:	Mr.C.Jayaprakash Standing Counsel in both writ petitions

COMMON ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

These writ petitions are filed for issuance of Writ of Certiorari to quash the order dated 01.03.2022, passed by the 2nd respondent, in SHRC Case No.4482 of 2009.

2.Brief facts that are necessary for the disposal of these writ petitions are as follows :



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WEB COPY The 2nd respondent Commission received a complaint from the 1st respondent on 26.05.2009 stating that his daughter by name Sheela Selvarani was admitted in Raja Mirasudar Government Hospital, Thanjavur, on 20.01.2009 for safe delivery of her baby. It is further stated in the complaint that the complainant was forced to sign the consent form, as the patient was suffering from heart disease. On 23.01.2009, the 1st respondent's daughter was also referred to Thanjavur Medical College Hospital, to get second opinion of the Cardiologist. It was only after the opinion of the Cardiologist that the 1st respondent's daughter was hale and healthy, the Labour Ward Doctors planned to carry out Caesarian Operation on the 1st respondent's daughter. It is unfortunate that the 1st respondent's daughter died in the hospital during medical procedures. Though the Hospital authorities informed that the patient died of heart attack during anaesthesia, the 1st respondent filed a complaint stating that the death of his daughter was due to medical negligence, as duty Doctors did not attend his daughter.



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3.It is now admitted before this Court that the 1st respondent earlier filed a civil suit in O.S.No.267 of 2011 for directing the petitioners and other Doctors including the Dean and State to pay a compensation of Rs.5,00,000/- for the pain and suffering and mental agony of the petitioner on account of death of first respondent's daughter due to the medical negligence of the defendants.

4.It is to be noted that, in the said suit, the following issues were framed:

- i. Whether the defendants 1 to 4 have committed negligence as alleged by the plaintiffs ?*
- ii. Whether the plaintiff is entitled to damages of Rs.5,00,000/- from the defendants ?*
- iii. To what relief the plaintiff is entitled ?*

5.On the first issue whether the defendants 1 to 4 had committed medical negligence, the Civil Court has given a categorical finding that the patient suffered cardiac arrest on the Operation Table and that there is no



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direct evidence to prove breach of duty of defendants which caused the death. The Civil Court also found that the evidence before the Court are not sufficient to prove either the fact that the death was caused due to breach of duty or medical negligence, or that the death was directly attributable to such negligence of Doctors when they performed their duty. The suit was dismissed after finding that the plaintiff is not entitled to any damages from any of the defendants. The defendants 1 and 4 in the suit are the petitioners in the above writ petitions, as against whom, complaint was also lodged before the 2nd respondent.

6.It is to be noted that the petitioner in W.P.No.22657 of 2023 earlier filed an Unnumbered I.A. before the State Human Rights Commission in H.S.R.C. Case No.4482 of 2009 dated 06.09.2018. The Unnumbered I.A. is to dismiss the complaint on the ground that the complaint is not maintainable in view of the decision on merits in the Civil Suit which was dismissed on 20.04.2018 and on other grounds. The said Interlocutory Application was dismissed by the Commission. As against the said order, the petitioner in W.P.No.22657 of 2023 filed a writ petition in W.P.No.27397



of 2019. The said writ petition was dismissed by this Court in the

following lines :

“9. Admittedly, the complaint was preferred by the second respondent before the first respondent/Commission in the year 2009, well before the institution of the suit in O.S.No.267 of 2011, alleging human rights violation on the part of the petitioner and other Doctors. Of course, the suit was dismissed on 20.04.2018 and it attained a finality. Thus, during the pendency of the complaint filed by the complainant/petitioner herein before the first respondent/Commission, the suit was filed by the second respondent/complainant for damages and it was also dismissed by the Civil Court. Therefore, the subsequent development after the filing of the complaint has to be taken note of by the Commission while disposing of the complaint pending before it. However, by citing the dismissal of the suit filed by the second respondent/complainant during the pendency of the complaint, the complaint cannot be dismissed, as pleaded by the petitioner. The plea of the petitioner as to the applicability of the principles of res judicata can also be gone into by the Commission at the time of final disposal of the complaint. We also notice that the complaint preferred by the second respondent is at a nascent stage and the order, which is



impugned in this writ petition, is not a final order deciding the rights of the parties. While so, we are of the view that the Petitioner can raise all the points which are raised in this writ petition before the first respondent/Commission and the Commission has to go into the complaint preferred by the second respondent, independently on merits. In such view of the matter, we do not find any merits in the contentions urged on behalf of the petitioner in this writ petition. The writ petition is therefore liable to be dismissed.”

7.From the above order, it is seen that the writ petition was not dismissed on merits, but by giving liberty to the writ petitioner to raise all the points which are raised in the writ petition before the Commission and the Commission has to go into the points independently on merits. The Commission, however, failed to consider the issue whether the complaint is barred by *res judicata*, despite a specific direction was given by this Court in the writ petition filed by one of the petitioners.

8.It is also contended by the petitioners before this Court that, before filing the suit, the 1st respondent preferred a complaint before the District



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Collector, who forwarded the same to the Dean, Thanjavur Medical College Hospital, to conduct an enquiry. It is also seen from the documents that the Dean of Thanjavur Medical College Hospital constituted an Enquiry Committee consisting of five Senior Professors. The Enquiry Committee came to the conclusion that there was no negligence in the treatment given to the 1st respondent's daughter.

9. Similar complaint was also given to the Director of Medical Education, who also directed an enquiry to be conducted. The Deputy Director of Medical Education, conducted an enquiry and the complaint was closed by recording no further action is required. Similarly, the FIR registered in Crime No.420 of 2009 following the complaint by the 1st respondent, was also dropped.

10. Therefore, the 1st respondent appears to have approached every forum and was unsuccessful in establishing his claim on the basis of medical negligence against any of the petitioners. The 1st respondent, who is well aware of all these proceedings, again prosecuted the complaint



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before the 2nd respondent who found that the 1st respondent is entitled for damages, after holding that the medical negligence cannot be ruled out.

11. This Court, having regard to the findings of the Civil Court, is not inclined to go into the details on merits. The 2nd respondent Commission came to the conclusion that the 1st respondent has established beyond doubt that there was clear violation of the basic right to life of the patient and that the complainant should be compensated for the mental agony that he has been subjected to. It is to be noted that the Commission put the burden on the writ petitioners and observed that no documentary evidence is filed by the Doctors to show that the duty Doctor was present and that he had done everything possible either by way of monitoring or by taking care of the patient on the date of incident. This Court is unable to see any logic in the conclusions reached by the Commission. From the reading of the impugned order, without much discussion, the facts have been presumed and this Court is compelled to record that the findings of the Commission are perverse and the conclusions reached are not supported by any cogent evidence or reasons. The Commission has failed to appreciate the case of



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the writ petitioners, the evidence of other witnesses before the Civil Court, and the documents considered by the Civil Court. Even assuming that the Civil Court's verdict was not brought to the notice of the Commission, this Court finds that the Commission has not considered the disputed questions of fact in a fair and reasonable manner.

12.The issue whether the Civil Court's judgment will operate as *res judicata* has to be considered in the light of settled principles. When an issue is decided between the parties in a proceedings before a forum which is competent to decide the same, and the same, if it attains finality, will operate as *res judicata* in a subsequent proceeding. There cannot be re-litigation. In the present case, the principle of *res judicata* is followed in every proceedings and this Court has no reason to see any exception for the applicability of the principle of *res judicata*. The specific issue raised before the Civil Court is whether the Doctors have committed negligence as alleged by the plaintiff in the Civil Suit. That issue was answered by the Civil Court by considering the documents and other evidence. Before the Civil Court, two witnesses have been examined on the side of plaintiff, the



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1st respondent herein, and six witnesses have been examined on the side of defendants in the suit. When the plaintiff did not mark any document, the defendants marked Exs.B1 and B2 which are Attendance Register for January 2009 of Government Raj Mirasudar Hospital and the Investigation Report. Apart from that, Ex.X1 was marked containing the Minutes of Meeting, dated 19.03.2009. When the Civil Court has elaborately considered all the evidence on merits to arrive at a conclusion on the specific issue, this Court finds that the issue before the Commission on the basis of medical negligence, had already been decided against the 1st respondent and the same had attained finality. Therefore, the judgment and decree in the suit in OS.No.267/2011 will operate as *res judicata* to non suit the 1st respondent in subsequent proceedings.

13.Apart from that, the learned counsel for the petitioners submitted that, in the cases where medical negligence is alleged, the State Commission will have no jurisdiction. However, the learned counsel appearing for the 2nd respondent Commission has pointed out that, in the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997, Appendix-I, the



'Malfunctioning of medical professionals' has been shown under the heading "Health", indicating that any complaint relating to malfunctioning of medical professionals will give rise to a cause of action for filing complaint or to take *suo motu* action. Though this Court is unable to bring 'medical negligence' as alleged in this case as one equal to 'malfunctioning of medical professionals' is not inclined to consider the issue whether a complaint is maintainable or not, on medical negligence.

14.However, it is to be noted that Regulation 9 of the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997, reads as follows :

“9.Complaints not ordinarily entertainable : The Commission may dismiss in limini complaints of the following nature :

- (a) Vague, anonymous or pseudonymous or illegible trivial or frivolous;*
- (b) Barred under Section 36(1) of the Act;*
- (c) Barred under Section 36(2) of the Act;*
- (d) Relates to civil dispute, such as property rights, contractual obligations;*



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- (e) Relates to service matters or labour or industrial disputes;*
- (f) Allegations do not make out any specific violation of human rights;*
- (g) Matter is sub judice before a Court or Tribunal;*
- (h) Matter is covered by a judicial verdict or decision of the Commission;*
- (i) Where copy of the complaint addressed to some other authority is received by the Commission;*
- (j) Matter is outside the purview of the Commission.”*

15. When a matter is covered by a judicial verdict or decision of the Commission or where the matter which is sub judice before the Civil Court or Tribunal comes up again for consideration before the Commission, the same is liable to be dismissed *in limini* in view of Regulation 9. This Regulation is also in tune with the principles of *res judicata*. Therefore, this Court finds that the impugned order passed by the Commission is illegal and unsustainable in law.



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16. Therefore, **these writ petitions are allowed**, holding that the impugned order of State Commission is unsustainable not only on the ground that it is barred by *res judicata*, but also on the ground that it is unsustainable in view of Regulation 9 of the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997, and also on merits. It is brought to our notice that the amount as directed by Commission has been paid. Having regard to the unfortunate situation for the family of deceased, we are not permitting the State to recover the amount from the 1st respondent. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
20.02.2024

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To

The Secretary/Registrar,
Tamil Nadu State Human Rights Commission,
Greenways Road,
Chennai – 600 028.



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and
N. SENTHILKUMAR, J.

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