



WP.No.26327 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WP.No.26327 of 2021
WMP.No.27798 of 2021

The City Medical Officer
Medical Services Department
Greater Chennai Corporation, Chennai-3

Petitioner

Vs

1. The State Human Rights Commission, by its Registrar
Tamil Nadu, Chennai-28

2. L.Manimegalai

3. Dr.Dhanalakshmi, Health Centre, Greater Chennai Corporation

4. Babu Rajendra Bose, Inspector of Police
Tondiarpet Police Station, Greater Chennai Corporation
Chennai

Respondents

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order made in SHRC.No.2204 of 2015 dated 22.09.2021 passed by the 1st Respondent and to quash the same as illegal and arbitrary.

For Petitioner : Ms/Aswini Devi K.

For Respondents : Mr.G.Nanmaran, SGP-R1
Mr.G.Krishnamurthy-R2
RR3 and 4 - No Appearance



WP.No.26327 of 2021

ORDER

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

1. This Writ Petition is filed to issue a Writ of Certiorari to call for the records relating to the impugned order made in SHRC.No.2204 of 2015 dated 22.09.2021 passed by the 1st Respondent and to quash the same as illegal and arbitrary.
2. This Court heard the learned counsel for the Petitioner and the learned counsel for the Respondents 1 and 2.
3. The 2nd Respondent herein is the complainant before the State Human Rights Commission, Tamil Nadu (hereinafter referred to as the Commission).

The case of the complainant in the complaint is as follows:-

- (a) The complainant became pregnant and took treatment in Corporation Health Centre, Grace Garden, Old Washermenpet from 10.06.2014. She gave birth to a male child on 12.12.2014 pursuant to the caesarean performed by the 1st Respondent in the complaint, who is the 3rd Respondent in this Writ Petition. The 1st Respondent also performed family planning operation to the complainant on the same day. The male child born to the complainant was not properly taken care of by the Staff. When the child had developed some problem in breathing, he was taken to Stanely Medical College Hospital and the child died in the Hospital.
- (b) The child died due to the negligence of the 1st Respondent. Therefore, the complainant lodged a criminal complaint before the



WP.No.26327 of 2021

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2nd Respondent Police on 16.03.2014. Though the complaint was acknowledged, the 2nd Respondent Police did not conduct any investigation on the complaint. The Respondents 1 and 2 failed to discharge their duties in a lawful manner. Hence, they have violated the human rights of the complainant and the deceased child.

4. Though the allegations of medical negligence and violation of human rights are specifically denied by the 1st Respondent in the complaint, the Commission allowed the petition by directing the Government of Tamil Nadu to pay a compensation of Rs.3,00,000/- to the complainant. In paragraph 30, of the impugned order, the Commission has passed the order in the following lines:-

“30. While answering the Point No.1 and considering the pathetic condition of the complainant, the complainant is entitled to receive a compensation of Rs.3,00,000/-. The complainant is having one male child, aged 2 ½ years at the time of incident and after the 2nd delivery, a family planning also completed. Now she lost her 2nd baby. Therefore, she has mentally affected more. Hence this Commission is of the considered view and also taking the circumstances of the case, on behalf of the 1st Respondent to the Government of Tamil Nadu is vicariously liable to pay compensation to the complainant and she is entitled to receive compensation for the violation of human rights committed by the 1st Respondent and fixing of Rs.3,00,000/- (Rupees three lakhs only) as compensation to her would be fair and reasonable and would meet the ends of justice. The complaint against the 2nd Respondent is dismissed. This point is answered accordingly.”

5. The 1st Respondent has produced before this Court the complaint as well as the enquiry report submitted by a team of Doctors, after holding an enquiry regarding the alleged incident. The enquiry report reveals that the allegations are not true. The Commission, without considering what is human rights and



WP.No.26327 of 2021

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whether the complainant has suffered any violation of human rights, granted the relief by presuming medical negligence and that the Government of Tamil Nadu is vicariously liable to pay the compensation. In this case, the medical negligence is neither proved nor established. When medical negligence is not even established, there is no scope for granting any relief. The Commission probably moved by the fact that the complainant had lost her child and cannot bear another child and that therefore, she is entitled to some compensation.

6. The function and powers of the Commission are provided in Section 12 of the Protection of Human Rights Act, 1993 to ensure protection of human rights. Section 12 of the Protection of Human Rights Act, 1993 reads as follows:-

“12. Functions of the Commission:- The Commission shall perform all or any of the following functions, namely,

- (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any Court into complaint of-
 - i. violation of human rights or abetment thereof; or
 - ii. negligence in the prevention of such violation by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;
- (c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other Institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make



WP.No.26327 of 2021

recommendations thereon to the Government.

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- (d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- (e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of Society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organisations and Institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the promotion of human rights.”

7. Section 30 of the Protection of Human Rights Act, 1993 defines what is “Human Rights Courts.” Section 2(d) defines “human rights”. Only the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India would come under the definition of “human rights”. Any individual aggrieved by a tortious act may have actionable claim against the tortfeasor. In the present case, on the allegations of the complaint, this Court is unable to find any cause for the complainant to file the complaint before the Commission. In the absence of any factual findings



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WP.No.26327 of 2021

S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

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of the Commission and in the absence of a cause for the complainant to raise violation of human rights, this Court finds that the impugned order of the Commission is without jurisdiction and hence, it is liable to be set aside.

8. In fine, this Writ Petition is allowed, setting aside the impugned order made in SHRC.No.2204 of 2015 dated 22.09.2021 passed by the 1st Respondent. However, it is open to the Petitioner to seek appropriate remedy before appropriate forum. No costs. Consequently, the connected WMP is closed.

(S.S.S.R.J.) & (N.S.J.)
05.06.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To

1. The State Human Rights Commission, by its Registrar, Tamil Nadu, Chennai-28
2. Dr.Dhanalakshmi, Health Centre, Greater Chennai Corporation
3. Babu Rajendra Bose, Inspector of Police, Tondiarpet Police Station, Greater Chennai Corporation, Chennai

WP.No.26327 of 2021