



W.P.Nos.11536 of 2017 & 7354 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM :

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.Nos.11536 of 2017 & 7354 of 2020

and

WMP.Nos.12526 & 12527 of 2017

N.Gowrisankar
W.P's.

...Petitioner in both

Vs.

1. The Board of Governors in Supersession of the
Medical Council of India,
Pocket 14, Sector 8,
Dwarka, New Delhi – 110 077. ...R1 in W.P.No.7354 of
2020
2. The Tamil Nadu Medical Council,
Rep. by its Registrar,
No.914, Poonamallee High Road,
Arumbakkam, Chennai – 600 106. ...R1 in W.P.No.11536 of 2017
&
R2 in W.P.No.7354 of 2020
3. The Medical Council of India,
Pocket 14, Sector 8, Dwarka,
New Delhi – 110 077. ...R2 in W.P.No.11536 of
2017
4. The Union of India,
Rep. by its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, C-Wing,



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New Delhi – 110 001.

...R3 in W.P.No.11536 of

5. Dr.Natesan,
Chairman & Managing Director,
Bharathi Rajaa Speciality Hospital & Research Centre Pvt. Ltd.,
T.Nagar, Chennai – 600 017.
6. Dr.Maran,
Director,
Minimal Access & GI Endo-Surgery Centre for Weight Control,
Bharathi Rajaa Speciality Hospital & Research Centre Pvt. Ltd.,
T.Nagar, Chennai – 600 017.
7. Dr.Pushparajan,
Consultant Radiologist,
Bharathi Rajaa Speciality Hospital & Research Centre Pvt. Ltd.,
T.Nagar, Chennai – 600 017.

...R4 to R6 in W.P.No.11536 of 2017
& R3 to R5 in W.P.No.7354 of 2020

Prayer in W.P.No.11536 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records in Ref.No.TNMC/D.C.No.80/2014 dated 26.8.2016 on the file of the 1st respondent, quash the same and direct the 1st respondent to conduct an enquiry into the death of the petitioner's wife – G.Amutha, due to the medical negligence on the part of respondents 4 to 6 in conducting surgery after giving reasonable opportunity of being heard.

Prayer in W.P.No.7354 of 2020: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Proceeding No. MCI-2011(2)(32-Appeal)/2016-Ethics/149773 dated 23.9.2019, quash the same and direct the 1st respondent to suspend the 4th respondent from the rolls of the Tamil Nadu Medical Council for his unethical and negligent



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practice, which led to death of Mrs.Amutha Gowrisankar.

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In both W.P's.:

For Petitioner	: Mr.S.Kumar (in W.P.No.7354 of 2020)
	: Appearing in person (in W.P.No.11536 of 2017)
For the Medical Council of India	: Ms.Shubaranjani Ananth, CGSC
For the Medical Council of Tamil Nadu	: Mr.U.Bharanidharan
For the Union of India	: Mr.J.Madhanagopal Rao, CGSC
For R4 in W.P.No.11536/2017 & R3 in W.P.No.7354/2020	: Ms.R.V.Gayathri
For R5 in W.P.No.11536/2017 & R4 in W.P.No.7354/2020	: Mr.S.Vijayaraghavan
For R6 in W.P.No.11536/2017 & R5 in W.P.No.7354/2020	: Mr.P.R.Thiruneelakandan

COMMON ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common orderThis is an



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unfortunate case wherein the victim died, leaving two small children in distress, due to the after effects of undergoing weight loss surgery.

2. W.P.No.11536 of 2017 has been filed by the husband of the victim - one Mrs.Amutha Gowrisankar, who died on 19.5.2015, challenging the proceedings dated 26.8.2016, by which, the Tamil Nadu Medical Council, in the Extra Ordinary Special Business meeting held on 22.7.2016, resolved to condone the suspension period of one Dr.Maran from one year to six months and consequently, the name of the said Dr.Maran was restored to the file of the Tamil Nadu Medical Council from 14.8.2016 and for a consequential direction to the 1st respondent to conduct an inquiry into the death of the wife of the petitioner due to medical negligence on the part of the private respondents in conducting the surgery.

3. W.P.No.7354 of 2020 has been filed by the same petitioner challenging the proceedings dated 23.9.2019, by which, in the meeting held on 11.5.2019, the Board of Governors in Supersession of the Medical Council of India accorded approval to the recommendations of the Ethics Committee finding that there was no negligence on the part of the treating



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doctors and that therefore, the prayer of the petitioner for enhancing the punishment for other doctors was not maintainable.

4. Heard the petitioner and the respective learned counsel appearing on either side.

5. The case of the petitioner is that the petitioner got married with one Ms.Amudha in the year 1999. Due to the wedlock, they had two male children. When the petitioner's wife went for a general check up to M/s.Bharathi Rajaa Speciality Hospital & Research Centre Private Limited (for short, the hospital), where one Dr.Natesan and one Dr.Maran advised the victim to undergo obesity operation after making a promise that her ailments would be cured if the obesity operation was performed. Accordingly, a surgery was done on 11.8.2014 to the petitioner's wife and she got discharged from the hospital on 14.8.2014. A few days later, after her discharge, the victim developed severe pain, in the place, in which the surgery was done and later, it was found that pus was oozing out from the operation wound. She was advised to undergo the second operation, which was also done on 01.9.2014 and she was discharged on 10.9.2014. Within a week, she was again taken to the hospital and the third surgery was done on



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22.9.2014. Thereafter, the victim was advised further treatment and hence,

she was taken to the Apollo Hospital at Greaves Road, Chennai where she underwent one more surgery. According to the petitioner, the team of doctors at the Apollo Hospital was of the opinion that due to the medical negligence on the part of the private respondents, the victim suffered severe complications. Even thereafter, she could not recover from the illness and she died ultimately on 19.5.2015 at the Apollo Hospital. The matter was reported in the local newspapers and the social media. The petitioner also spent huge sum towards the surgeries and for post operative care of the victim. During the interregnum period, the petitioner sent a representation dated 11.11.2014 to the Secretary to Union of India, Ministry of Health & Family Welfare, the Medical Council of India and the Tamil Nadu Medical Council and others seeking to take severe action against the private respondents and for payment of compensation for the deficiency in their services. After one year battle, by proceedings dated 18.2.2016, the Tamil Nadu Medical Council resolved to erase the name of the said Dr. Maran from the register of the Tamil Nadu Medical Council for a period of one year. However, no punishment was imposed on the two other private respondents. To the shock and surprise of the petitioner, by proceedings dated 26.8.2016, the Tamil Nadu Medical Council resolved to condone the suspension period



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imposed on the said Dr.Maran from one year to six months and further recorded that the name of the said Dr.Maran was restored to its file with effect from 14.8.2016. The petitioner was informed about the order dated 26.8.2016 only under the Right to Information Act vide communication dated 15.2.2017. Hence, challenging the order dated 26.8,2016, the petitioner filed W.P.No.11536 of 2017.

5.1. Not satisfied with the order dated 18.2.2016 passed by the 1st respondent, the petitioner filed an appeal dated 24.2.2017 before the Medical Council of India and the petitioner also attended for the inquiry. However, by the proceedings dated 23.9.2019, of the Medical Council of India accorded approval to the recommendations of its Ethics Committee and ultimately recorded that there was no negligence on the part of the treating doctors, that therefore, the prayer for enhancement of punishment for other doctors was not maintainable and that no issue of bribing was also there. Challenging the proceedings dated 23.9.2019 of the Medical Council of India, the petitioner filed W.P.No.7354 of 2020.

6. Learned counsel appearing on behalf of the said Dr.Natesan submitted that the said Dr.Natesan has been the Managing director of the



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hospital since 2005 and he is neither a necessary party nor a formal party to these writ petitions and the medical negligence is personal to the doctor, who gave treatment, whereas the hospital and its Director could not be held liable for any deficiency in the services. Learned counsel further submitted that, the surgery was performed by the said Dr.Maran and not the said Dr.Natesan and these writ petitions were filed with an ulterior motive to tarnish the image of the hospital and the victim died in the Apollo Hospital only after nine months since the date of discharge from the hospital and the victim was stable and in good health when she got discharged from the hospital on 23.9.2014. Ultimately, she sought for dismissal of these writ petitions.

7. Learned Standing Counsel appearing for the Board of Governors in Supersession of the Medical Council of India submitted that the Ministry of Health and Family Welfare, Department, New Delhi formed a Board of Governors, vide Notification dated 26.9.2018 under the Indian Medical Council (Amendment) Ordinance, 2018 comprised of experts, who have opined, in the appeal filed by the petitioner as against the order dated 18.2.2016 imposing one year suspension on the said Dr.Maran and come to an unanimous conclusion that there was no negligence on the part of the



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treating doctors and that therefore, the prayer in appeal filed by the petitioner seeking for enhancement of the punishment for other doctors was not maintainable.

8. This Court has carefully considered the submissions put forth on behalf of the petitioner and the respective learned counsel for the respondents and perused the materials available on record and more particularly the impugned orders.

9. In view of the consequential order passed by the Board of Governors in Supersession of the Medical Council of India dated 23.9.2019, **W.P.No.11536 of 2017 has become infructuous and is dismissed as such.**

10. Coming to W.P.No.7354 of 2020, as rightly contended by the learned Standing Counsel appearing for the Board of Governors in Supersession of Medical Council of India, it is seen that after hearing both the parties, the Ethics Committee comprised of experts in the field came to the definite conclusion that there was no negligence on the part of the treating doctors and that therefore, the prayer in the appeal dated 24.2.2017 filed by the petitioner seeking for enhancement of the punishment to the



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private respondents was found to be not maintainable. Further, the allegation of getting bribe also found to be not available.

11. When the Ethics Committee of the Board of Governors of the Medical Council of India, which comprised of experts such as (i) the Member of the National Institution for Transforming India, Aayog **as the Chairman and** (ii) the Director of the All India Institute of Medical Sciences, New Delhi, (iii) the Director of Postgraduate Institute of Medical Education and Research, Chandigarh, (iv) the Director of National Institute of Mental Health and Neurosciences, Bangalore, (v) the Professor from the Department of Endocrinology & Metabolism, AIIMS, New Delhi **as its Members and** (vi) the Director General of Health Services, Ministry of Health & Family Welfare and (vii) the Secretary, Department of Health Research & Director General, Indian Council of Medical Research, New Delhi **as its Ex-Officio Members**, rendered the definite finding, this Court cannot go into the issue nor interfere with the impugned order.

12. The victim died on 19.5.2015. It is too late on the part of this Court to interfere with such an expert opinion as it will unsettle the settled things. However, if the petitioner has any grievance with regard to payment



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of compensation or with regard to the punishment imposed on the erred doctor, it is open to him to approach the appropriate judicial forum seeking for suitable relief in a manner known law. It is needless to point out that if any such suit is filed by the petitioner, the civil court may entertain the same, without insisting upon the delay, if any. It is also made clear that the civil court may dispose of the suit on merits and in accordance with law without being influenced by any of the observations made in the impugned orders.

13. With the above directions and observations, W.P.No.7354 of 2020 stands disposed of, while W.P.No.11536 of 2017 stands dismissed as infructuous. No costs. Consequently, the connected Miscellaneous petitions are closed.

02.09.2024

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Index	: Yes (or) No
Neutral Citation	: Yes (or) No
NCC	: Yes (or) No



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M.DHANDAPANI, J.

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