

W.P(MD)No.7676 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7676 of 2015

and

W.M.P(MD)No.12986 of 2017

Jothi

... Petitioner

vs.

- 1.The State represented by
The Secretary,
Department of Health and Family Welfare,
St.George Fort, Chennai.
- 2.The Director of Health and
Preventive Medicine,
Teynampet, Chennai.
- 3.The Joint Director of Health Service,
Collectorate Buildings, Ramanathapuram.
- 4.The Medical Officer,
Government Hospital,
Mudukulathur, Ramanathapuram District.
- 5.Dr.Tamilselvi, Duty Doctor,
Government Hospital,
Mudukulathur,
Ramanathapuram District.
- 6.Dr.M.Kunjaram,
Duty Nurse, Government Hospital,
Kamuthi,
Ramanathapuram District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to take appropriate action upon the respondents 5 and 6 for their negligent act incurring death to a new born child of the petitioner herein and further direct the respondents 1 to 4 to pay compensation of a sum of Rs.15,00,000/- to the petitioner for the physical and mental agony incurred due to the negligent act of the respondents 5 and 6.

For Petitioner : Mr.K.R.Laxman
For Respondents : Mr.D.Gandhiraj
Special Government Pleader
for R.1 to R.4

Mr.K.Appadurai for R.5

Mr.K.C.Ramalingam for R.6

ORDER

Kaushik Basu, a well-known economist, joined the Government of India as its Chief Economic Advisor in the year 2009. He went to the State-run Ram Manohar Lohia Hospital, New Delhi on 06.01.2010 to obtain the mandatory medical fitness certificate. He recounts his encounter in his book "***Policymaker's Journal***". Let me quote it in full :



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“It was a dreadful experience. I was instructed to come by 9 am on an empty stomach, and I did as advised. I soon discovered that the first task was being shunted from one room to another and even from one building to another, filling forms and signing my name in various places. I counted I signed in six different registers in different rooms. Since the keepers of the registers were often difficult to locate, this took an enormous amount of time.

After some time, with no X-rays, no blood tests, no medical examinations still done, I asked irritably, 'When can I eat? '. The hospital official smiled genially and said, 'You can eat now'. It was never clarified why one needed an empty stomach to sign. After a lot of time I was directed to the office of the head of the division, Dr.Chaturvedi. On my complaining to him that I had just filled forms and signed and no tests had yet been done, he said calmly that everything would be taken care of. I tried to chat him up a little, addressing him graciously as 'Dr.Chaturvedi ' hoping to energize him into quick action. But to no avail. I was later told by a nurse that Dr.Chaturvedi was not there that day. The person occupying his seat was Siddhu. In retrospect, I was very impressed by Siddhu's equanimity; he was completely comfortable with my addressing him as Chaturvedi and he even nodded as I tried to chat with him. Kafka should have been here. Siddhu told me to be in the waiting area and I would be taken care of.



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Around 11.30 am a junior staff explained to me that a patient feeling harassed by the hospital had beaten up a radiology staff member and, as a protest, all his radiology colleagues had gone on strike, and it seems the wave of sympathy was so great even some staff from other departments had (he added the word 'understandably ') stayed away from work. Hence, the hospital was somewhat chaotic today, he explained.

Seeing this junior staff member's inclination to at least talk properly and explain, I asked him, if the whole process would have been faster on another day. He replied, 'No, it would take the same amount of time'.

I suppose I should have cheered up that our Government has created a system which is impervious to strikes making any dent to its working.

I eventually left without any tests being done. My colleagues in the North Block berated me for going to the hospital without having someone high up in the Health Ministry call up first. I returned later after first speaking to the Secretary in the health ministry and have her call in. My experience was a little better. ”

If this could be the experience of a top bureaucrat reporting directly to the Hon'ble Prime Minister of India, one can imagine the fate of the lakhs of ordinary poor patients thronging the portals of government hospitals.



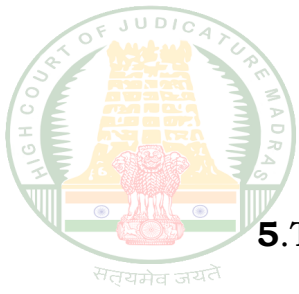
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2.The petitioner is a coolie. She got married to one Velmurugan. She became pregnant. She was admitted in G.H Mudukulathur on 17.05.2014 at around 09.00 AM after she developed labour pain. The duty doctor examined her and opined that the petitioner can have normal delivery as the parameters were in order. The petitioner delivered a female child at around 01.50 PM on the next day.

3.Since the baby developed asphyxia, the mother and the child were referred to Government Hospital, Paramakudi immediately where further treatment was given. Since the baby required ventilator support, they were referred to Government Rajaji Hospital, Madurai. They got admitted at around 09.00 P.M on 18.05.2014. Even though proper treatment was given, the child died on 20.05.2014 at around 10.40 P.M.

4.The allegation of the petitioner is that the child died due to medical negligence. Her father sent representations demanding action against the concerned doctors and paramedical staff. Information was sought under the provisions of the Right to Information Act, 2005. Since the efforts did not yield any response, the present writ petition came to be filed.



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5.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. He went to the extent of alleging that the child was born dead and that to avoid controversy, the mother was referred to one hospital after another. He also pointed out that the medical records have been withheld. His core contention is that if caesarean operation had been performed on the petitioner, the child would have been saved. He called upon this Court to grant compensation as prayed for.

6.The respondents 1 to 4 have filed counter affidavit. The doctor who delivered the child and the nurse who attended on the petitioner have been named in person and they have also filed counter-affidavits. The learned Additional Government Pleader as well as the learned counsel for the private respondents denied all the allegations made by the petitioner and prayed for dismissal of this writ petition. Dr.Karlin, the duty doctor who admitted the petitioner on 17.05.2014 appeared in person and ably assisted the court.

7.Before I adjudicate the issue, it is necessary to take note of the legal position. All of us require the services of medical professionals at various stages of life. Doctors and hospitals play an indispensable role in our lives. Chapter 95 of Thirukural deals with disease, diagnosis



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and treatment. Not everyone gets the same kind of treatment. The doors of Kauvery Hospital and Apollo will open only to the monied. A person wanting in resources will have to go only to a government hospital. Can we catalogue the rights of such patients?. Only then, we can test if the petitioner's rights have been breached.

8.Of course, there cannot be an exhaustive enumeration of the rights. Let me go back to Kaushik Basu again. Quoting Kant, the economist remarks that only those rights that are capable of being enforced can be recognized.

9.One proposition can be taken as axiomatic. It does not make a difference if the doctor is working in a government or a private hospital. The same duty of care is expected wherever he serves. The professional standards cannot be lowered. There has been a paradigm shift worldwide. Patients are now widely regarded as persons holding rights, rather than as the passive recipients of the care of the medical profession vide **Montgomery v. Lanarkshire Health Board (2015 AC 1430)**. Article 47 of the Constitution of India envisages improvement of public health as among the primary duties of the State. Decent medical treatment is an integral part of Article 21 of the Constitution of India (**Dr.Silamban Vs. Government of Tamil Nadu in W.P.No.**



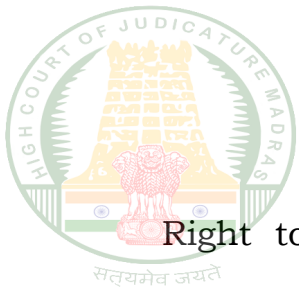
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3477 of 2019 dated 13.03.2019). Any patient is entitled to a civil

and courteous treatment at the hands of all the staff including doctors in a government hospital. This flows from right to be treated with dignity enshrined in Article 21 of the Constitution of India.

10.When a patient enters a government hospital, he or she is examined first. The symptoms are recorded. The condition is noted. Scan or X-ray is taken. A diagnosis is made. Treatment is prescribed. Medicines (if available!!) are given. Every stage will have to be contemporaneously and accurately recorded. In the case of inpatients, discharge summary should contain all the relevant particulars. We have moved into the digital age. It should therefore not be difficult to store all the information in the digital mode. A patient is entitled to be furnished all the relevant records pertaining to his or her treatment. This right can be effectuated only if the information is stored digitally. Proper maintenance of record is an integral part of the medical services (***Federation of Obstetrics & Gynecological Societies of India Vs UOI (2019 6 SCC 283)***).

11.Article 19(1)(a) of the Constitution includes within its sweep the right to receive information. Obviously, a patient is entitled to invoke this right. In any event, following the promulgation of the



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Right to Information Act, 2005, the government hospitals can no longer withhold information from the patients or their attendants.

Withholding would amount to professional misconduct and result in tortious liability as it constitutes an infringement of the patients' rights. All hospitals, whether Government or private are liable to maintain the medical records and provide the same to the patient or their attendants within 72 hours of the request and failure to do so constitutes an infringement of the patient's right (vide **(2020) 6 SCC 501, Maharaja Agrasen Hospital v. Rishabh Sharma**).

12.The Ministry of Health and Family Welfare, Government of India has laid down “Indian Public Health Standards for Sub District Hospitals and District Hospitals”. Para 7.1.2.9 states that a gender-sensitive and disable friendly, functional and clean toilets with 24x7 facility for running water and flush should be provided. A patient is entitled to the use of such toilets.

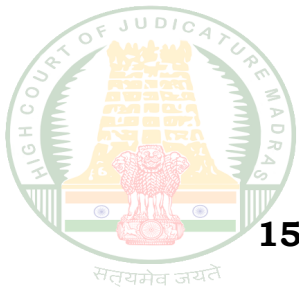
13.Now, let me test if liability can be fastened on the respondents. The petitioner's counsel's allegation that the child was born dead cannot be accepted. Admittedly, the child was taken along with the mother first to Paramakudi Government Hospital and then to Madurai Rajaji Government Hospital. The doctors in both these



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hospitals have recorded that treatment was given to the child. A specific endorsement has been made that the child passed away at 10.40 A.M on 20.05.2014. If the child was born dead, it is improbable that the doctors in the referred hospitals would have made the entries setting out the treatment particulars.

14. The stand of the petitioner is that if caesarian operation had been done, the occurrence would not have taken place at all. It may be so. But can the court impute the respondents 5 and 6 with negligence on this score ?. The endeavor of any gynecologist would be to see if the child can be delivered in the normal mode unless there are some features which make caesarian operation necessary. Dr.Karlin categorically stated that scan was taken and no abnormality was detected. The opinion of the doctor had also been contemporaneously conveyed to the petitioner's family. Though the petitioner alleged that the child was overweight (3.5 kgs), the records indicate that the child weighed 2.9 kgs. According to Dr.Karlin, only if the child weighs above 4 kg, they would resort to caesarian operation in the first instance itself. The decision taken by the doctors at G.H, Mudukulathur that the petitioner can have a normal delivery cannot be faulted. I may add that even among the general public, the desire as well as prayer is that there must be normal delivery. Merely because of the untoward outcome, the doctors cannot be blamed with the benefit of hindsight.



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15.A child normally delivered can still die due to a variety of causes. Asphyxia can be one. Reports indicate that the current infant mortality rate for India is 26.619 deaths per 1000 live births. It was higher previously. The death rate due to asphyxia is around 9.9% as per the statistics set out in National Health Mission's website. Asphyxia can occur for more reasons than one. The mother's condition can also contribute to it. I would not be justified in fastening liability on the doctors on the sole ground of the child's death. In fact, a departmental enquiry was conducted. The sixth respondent was even suspended from service. The Joint Director of Health Services, Ramanathapuram enquired into the petitioner's complaint. He concluded that the doctors and the paramedical staff at G.H, Mudukulathur had discharged their responsibilities. The complaint was rejected.

16.In the affidavit filed in support of this writ petition, it has been alleged that the petitioner was ill-treated by the paramedical staff. It is not possible to go into the veracity of the petitioner's allegations. Her right, however, has been declared.

17.One aspect of the matter deserves to be noticed. The petitioner has been demanding copies of the medical records



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pertaining to the treatment given to her at G.H, Mudukulathur.

Nothing was furnished. During the last hearing, I directed their production. The respondents claim that the records are missing and that police complaint was lodged long back. I am not able to appreciate the defence taken. If the information had been stored digitally, it would have been possible to retrieve and access them at any point of time. The failure to furnish information by the authorities of G.H, Mudukulathur does constitute an infringement of the petitioner's right. If ventilator support had been available at Paramakudi, the petitioner need not have been forced to travel long distance to get admitted at Government Rajaji Hospital, Madurai. I can imagine the physical strain the petitioner who had just then delivered a baby would have undergone. Any government hospital should be equipped with the basic infrastructural facilities and a patient can legitimately expect that they are available and functional. It is unfortunate that ventilator support was not available at Paramakudi. The petitioner is entitled to compensation on these twin grounds. I quantify the same at Rs.75,000/-. The first respondent is directed to pay the same to the petitioner within a period of eight weeks from the date of receipt of copy of this order.



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18.This writ petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
skm

To

- 1.The Secretary, Department of Health and Family Welfare,
St.George Fort, Chennai.
- 2.The Director of Health and Preventive Medicine,
Teynampet, Chennai.
- 3.The Joint Director of Health Service,
Collectorate Buildings, Ramanathapuram.
- 4.The Medical Officer, Government Hospital,
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