

(2009) 11 MAD CK 0210

Madras High Court

Case No: Writ Petition (MD) No. 1242 of 2005

V. Ramar

APPELLANT

Vs

Director of Medical and Rural
Health Services, D.M.S., Chennai
and Others

RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

- Constitution of India, 1950 - Article 21, 47

Citation: (2012) 4 JCC 2357 : (2012) 2 RCR(Civil) 583

Hon'ble Judges: D. Murugesan, J

Bench: Single Bench

Advocate: G.R. Swaminathan, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Murugesan, J.

The petitioner is a poor coolie worker, working in a brick kiln in Vandari village. He approached this Court with this petition for a direction to the Director of Medical and Rural Health Services, Teynampet, Chennai, the Medical Officer, Saptoor Primary Health Centre, Madurai, the District Collector, Madurai and the Joint Director, Health Department, Viswanathapuram, Madurai, to pay a sum of Rs. 5,00,000/- as compensation. The sad story of the petitioner goes thus :-

The petitioner's daughter by name Alagu Mayil, aged about 22 years, was married to one Paraman. As she became pregnant, as per the prevailing custom, she came to his house for delivery. At about 4.30 p.m. on 20.07.2004, she developed labour pain and therefore she was taken to the Primary Health Centre, Saptoor and got herself admitted at 4.30 p.m. At that time, there was no Duty Doctor available,

except a Staff Nurse and a midwife. The daughter of the petitioner could not be given proper, medical treatment for want of Doctors and she gave birth to a male child at about 5.45 p.m. Thereafter her condition worsened and at about 7.30 p.m., the petitioner went to the Staff Nurse and appraised her of the condition of his daughter and sought for immediate attention. The Staff Nurse prescribed certain medicines and informed the petitioner to purchase the same. In spite of his best efforts, the medicines could not be purchased and when he returned at about 10.30 p.m., there was nobody available in the Health Centre and at about 11 p.m., the child died and within the next 30 minutes, i.e. at about 11.30 p.m., the mother also died. In the circumstances, the petitioner gave a complaint to the Hon'ble Chief Minister on 22.07.2007 for appropriate action against the persons responsible for the deaths. He was informed, by the Deputy Director of Health Services, Madurai vide his Proceedings dated 08.12.2004 that an enquiry was conducted on 25.11.2004 and on the basis of the enquiry, it was decided to take action against the erring Doctors and the staff. In spite of the above, no action was taken. Again, he made another complaint to the Director of Medical and Rural Health Services, Teynampet, Chennai on 27.12.2004. The petitioner also stated that due to the death of his daughter and her child, his son-in-law had also been mentally affected. He had also requested that he should be compensated in terms of Rs. 5,00,000/-. As the above requests were not acceded to, he is constrained to approach this Court by filing the present writ petition.

2. In response to the notice, a counter-affidavit is filed by the Deputy Director of Health Services, Madurai dated 17.11.2009. In the counter- affidavit it is stated that the daughter of the petitioner came to the Primary Health Centre, Saptoor, on 16.07.2004 at about 6.30 a.m. complaining abdominal pain and she was treated by giving enema in order to prepare for delivery. As there was no labour pain required for delivery, she was asked to go back home. At about 5.20 p.m. on 20.07.2004, she was again admitted in the Centre with membrane ruptured with caput formation with prolonged labour condition. She was attended to and a male baby was delivered at 5.30 p.m. with the assistance of a Health Nurse and ANM (Auxiliary Nurse Mid Wife). As the mother had been in prolonged labour pain, the baby was born with deep birth asphyxia (suffocation). In spite of all resuscitation measures, the baby died at 6.00 p.m. Subsequently at about 7.00 p.m., the mother developed profuse uterine bleeding and the Duty Staff Nurse gave Dextrose with Normal Saline and Ringer Lactate and referred the mother to Government Hospital, Thirumangalam. The condition of the mother worsened at 8.30 p.m., and again the Duty Staff Nurse insisted that the mother should be taken to higher medical institution. The condition of the mother was informed to the relatives. As the relatives have not taken the mother, she died. In the counter-affidavit, the allegation regarding the failure of the staff to give treatment is denied.

3. According to the counter-affidavit, all the medical care that could be provided at the Centre was given to the mother, namely, the daughter of the petitioner and

there was no negligence on the part of the medical staff in providing medical care.

4. Learned Counsel for the petitioner and the learned Government Advocate appearing for the respondents advanced their arguments on the above lines.

5. Before I delve upon the grievance and the response to that grievance, two facts are to be pointed out. Firstly, considering the earlier stand taken by the respondents, as communicated to the petitioner on 08.12.2004, it appears that an enquiry was conducted on 25.11.2004 at 4.30 p.m., and a decision was taken to departmentally proceed against those who had involved in the episode. In order to find out whether any such action was taken, this Court directed the respondents to furnish the details of such action. As the same was not forth-coming even after number of adjournments, this Court ultimately, by order dated 13.11.2009 directed the Deputy Director, Health Department, Viswanathapuram, Madurai to appear before this Court. Only when such an order was passed, the counter-affidavit has been filed now, in the writ petition filed in the year 2005. Further, the Deputy Director did not appear before this Court on the ground that he has other better assignments.

6. Secondly, the actual time of death of the mother is not stated in the counter-affidavit. Learned Government Advocate has produced the file relating to this case. From the file, it is seen that an enquiry was conducted on 13.09.2004 by the Block Medical Officer of the Primary Health Centre, Elumalai. lie has examined almost 10 staffs including 2 Doctors who were supposed to be available at the Centre. In the report, it is stated that at the time when both the mother and the child died, there was no medical Doctor on Duty. Only due to the non-availability of the Doctors, the Staff Nurses could not take any decision as to the further treatment. Further, from the file, it is seen that even after the death of the child at 6.00 p.m., there was no attempt on the part of the staff to inform the Doctors to come and attend the mother who developed some complications. Those complications resulted in profuse uterine bleeding around 8.00 p.m. on that date. Further, there was a request made by the relatives for a vehicle which is maintained in the Primary Health Centre, and the same could not be made available for want of a driver, since the driver was deputed for some other purpose. Ultimately, the mother collapsed at 10.00 p.m. These are all certain informations available to the Court from the file, for consideration and disposal of this writ petition.

7. On the above factual documents and averments, the grievance of the petitioner must be considered. Except some differences in timings as to the admission of the daughter of the petitioner and the time of death, other allegations are not in dispute. The daughter of the petitioner was admitted on 20.07.2004 in the Primary Health Centre, Saptoor for delivery. Even going by the counter-affidavit, it is seen that at the time when she was admitted, membrane was ruptured with caput formation with prolonged labour condition. That was an indication for the staff who were available at the Centre to immediately become alert and to seek the assistance

of the Doctors. Firstly, the Doctors were not available at the Primary Health Centre right from the time when the mother was admitted and secondly, even when the delivery was attended by the Staff Nurse with the help of ANM (Auxiliary Nurse Mid Wife). Even assuming that the delivery was attended by the official staff to meet the situation, having regard to the asphyxia (suffocation) that the baby had developed, the staff who were available had another opportunity to seek the help of the Doctors, but they did not do it, which resulted in the death of the child at 6.00 p.m. The staff available had yet another chance to seek the help of the Doctors at the time when the mother also developed complications, but they did not do it. From the counter-affidavit it is seen that at about 7.00 p.m., the mother had profuse uterine bleeding and at about 8.30 p.m., the condition of the mother worsened. Even then, there is no indication in the counter as to any attempt made by the staff to intimate the Doctors for proper medical attention, rather, the Duty Nurse herself had chosen to administer certain medicine, which had resulted in further deterioration of the condition of the mother at about 8.30 p.m. At that point of time, the only advise that the Duty Nurse gave was to shift the mother to the higher medical institution. Even that decision cannot be taken by a Staff Nurse without proper advise from the Doctors concerned. From 5.20 p.m. to 10.00 p.m., the mother was treated only by the nurses and ANM without any indication as to the advise obtained by them from the Doctors in their absence. Further, when a plea was made to the Centre for making the ambulance available, it could not be made available for want of the driver who is otherwise expected to be there. This has prevented the petitioner and his relatives, who according to their affidavit were only coolies, from taking away the daughter of the petitioner for further treatment in higher medical institution. The daughter of the petitioner was kept in the Centre till she collapsed to the worsened health condition. The above facts would indicate the negligence on the part of the staff concerned, for which the State is to be held responsible.

8. First of all, there were two Duty Doctors allotted for the Primary Health Centre. In the case sheet, it is seen that one Duty Doctor by name Dr. C. Kavitha was happened to be in-charge of the Centre at the relevant point of time. Admittedly she was not available. Secondly, the nurses who were supposed to only assist the Doctors, had ventured in giving treatment to the mother right from the time she was admitted at 5.20 p.m. on 20.07.2004 till she collapsed at about 10.00 p.m. on that day. The method of functioning of the staff would reveal utter carelessness in treatment given to the patients approaching the Centre. The Staff Nurse had taken decisions on her own, which she was not expected to take. That apart, an enquiry was conducted on the representation of the petitioner and it was finally decided to departmentally proceed against those persons who have involved in the incident. Nevertheless, the officials have not taken any care to see at least such proceedings are initiated to prevent recurrence of such an incident. Such inaction on the part of the higher officials would also add to the misery of the petitioner. Further, the

petitioner has specifically averred in his representation to the Director of Medical and Rural Health Services, Chennai dated 27.12.2004 that because of the death of the mother and child, the father, of the child, i.e., the son-in-law of the petitioner, has become mentally retarded.

9. From the above, it is seen that the death of not only the daughter of the petitioner, but also his grandson was due to the medical negligence of the Doctors, who are supposed to be available in the Primary Health Centre and the Nurses and mid-wife have given treatment which they are not supposed to take, any such decision for administering medicine, except assisting the Doctors, at the relevant point of time. The non-availability of the transport facility for want of driver, has also added to the misery. Hence the petitioner is entitled for adequate compensation.

10. The Constitution envisages the establishment of a welfare state as the federal level as well as the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centers which provide medical care to the persons seeking to avail those facilities.

11. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated that position. A doctor at the Government hospital positioned to meet this state obligation is therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained. Failure on the part of a Government hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of the right to life. In this context, I may also refer to Article 47 of the Constitution of India imposing a duty on the State to raise the standard of living and improve the public health.

12. In Pt. Parmanand Katara Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court has held as under:-

Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise cannot be sustained and, therefore, must give way.

In this context, I may also refer to the decision in the case of Ranjit Kumar Das v. Medical Officer, ESI Hospital & Others, reported in III (1997) CPJ 336 (CDRC West Bengal) wherein it has been held that even the failure of the hospital to treat the card holder on the ground of absence of bed, would amount to negligence and therefore, adequate compensation must be provided. In a Canadian case reported in 1964 (5), DLR (2d) 225, in the case of Lepine v. University Hospital Board, the Court held that the hospital was liable for negligence when, in the absence of nurse, a seven year old boy fell out of the window and suffered personal injuries. In (1952) 2 All ER 125 (CA), in the case of Jones v. Manchester Corporation, again it has been held that the hospital authority can be held liable if it fails to provide sufficient or properly qualified and competent medical staff for a unit.

13. In the present context, I may also observe that the duty of the Doctor to act in emergency is to begin the treatment without even expecting the arrival of the police or to complete formalities. Such refusal would be considered only as negligence for which the State to be held responsible.

14. The quantum of compensation is to be determined solely on the discretion of the Court, as there cannot be any hard and fast rule that could be made available in cases like this, as the lives of the individuals are valueless. The petitioner has prayed for a sum of Rs. 5,00,000/- only, as compensation, not only for the death of his daughter, but also his grandson, apart from the fact that his son-in-law has become mentally retarded. Therefore, in my opinion, such amount is not in any way on the higher side. Accordingly, this Court holds that the petitioner is entitled to Rs. 5,00,000/- (Rupees Five Lakhs Only) as compensation.

15. As far as the departmental enquiry is concerned, the Block Medical Officer conducted an enquiry on 13.09.2004 followed by some of the statements recorded on 25.11.2004 at 4.30 p.m., and *prima facie* arrived at the conclusion that disciplinary proceedings would be initiated. Such report was filed as early as in the year 2004. Even now, the respondents have not taken such action against the erring persons. In the circumstances, I am of the considered opinion that appropriate action should be taken in this regard as well. Accordingly, the District Collector, Madurai is directed to pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) to the petitioner towards compensation.

16. The Director of Medical and Rural Health Services, Chennai is directed to take action against the erring persons who were responsible for the incident.

17. Before I part with this writ petition, I may also mention that action has not been initiated on the erring officials by the Deputy Director, Health Department, Madurai.

The Deputy Director has also not responded to the orders of this Court to appear in person and to explain why such action has not been taken. I record my displeasure over the above attitude of the officer concerned. The amount which is directed to be paid, shall be paid to the petitioner on or before 31st December 2009 and equally, the disciplinary proceedings also has to be initiated within the said period. The writ petition is allowed. No costs.