



W.P.No.14801 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.06.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

W.P.No.14801 of 2017

and

W.M.P.No.16048 of 2017

K.MubeenaBanu

... Petitioner

**Vs.**

1. Tamil Nadu Health & Family Welfare Department,  
Rep.by its Secretary,  
Fort St.George,  
Chennai 600 001.

2. The Medical Office,  
Primary Health Centre,  
Cherian Nagar,  
New Washermenpet,  
Chennai 81.

3. Institute of Child Health and Hospital for Children,  
Rep.by its Dean,  
Halls Road Egmore,  
Chennai-600 008.

...Respondents

**Prayer:-** Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the respondents to pay a compensation to the tune of Rs.25,00,000/- against the acts of negligence committed by them and further to direct the respondents to keep



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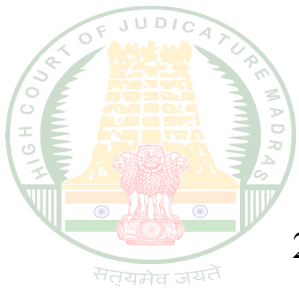
the Special Committee of medical experts appointed by the order of the respondent as perennial to monitor the further treatment of the petitioner's son Mohamed Affroze, S/o. K.Mubeena Banu, up to the period of surgical intervention at ideal age and further treatment required thereof.

*[Prayer amended as per order dated 24.01.2020 made in W.M.P.No.1140 of 2020 in W.P.No.14801 of 2017 by AQJ]*

For Petitioner : Mr.P.G.Thiyagu  
For Respondents :  
(for R1 & R2) : Mr.P.Kumaresan, AAG,  
assisted by Mr.S.Ravichandran, AGP  
(for R.3) : M/s.Aswini Devi K., Standing Counsel

### **ORDER**

The writ on hand has been instituted to direct the respondents to pay a compensation to the tune of Rs.25,00,000/- (Rupees Twenty-five lakhs only) against the act of negligence committed by the respondents and to direct the respondents to keep the Special Committee of Medical Experts appointed by the order of the respondent as perennial to monitor the further treatment of the petitioner's son, viz. Mohamed Affroze, S/o. K.Mubeena Banu, up to the period of surgical intervention at ideal age and further treatment required thereof.



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2.The petitioner states that she got married in September 2009 and gave birth to her first child on 22.11.2010, through C-Section and the baby was hale and healthy. The petitioner has no family history relating to pregnancy issues. She again became pregnant with her second child and the same was confirmed by the second respondent. She continuously visited the second respondent Primary Health Centre for regular check-ups and the petitioner was issued with Treatment Card. All the visits to the Doctor had been endorsed in the said Treatment Card. On 25.02.2015, Early Pregnancy Test – first scan was taken in second respondent Primary Health Centre, confirming the pregnancy with 8 weeks and 4 days gestational age of foetus. On 08.04.2015, 13 to 15 weeks scan was taken at second respondent Centre with 13 weeks gestational age – First Trimester. The petitioner, on 11.06.2015, appeared before the second respondent Primary Health Centre with 18 weeks 5 days gestational age instead of anomaly scan, a regular scan was taken place. The petitioner had visited the Primary Health Centre regularly for follow up.

3.On 22.08.2015 a regular scan was taken. Since the second respondent Primary Health Centre does not have delivery facility, the petitioner had been directed to register at RSRM Hospital and the petitioner



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visited the RSRM Hospital as per the Estimated Due Date (EDD) where the

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Hospital clarified that EDD had been wrongly calculated by the second respondent. The petitioner visited the RSRM Hospital as an Out-patient as due of delivery. On 08.09.2015, she visited the RSRM Hospital for Pre-delivery. On 15.09.2015, the petitioner was admitted at RSRM Hospital as an In-patient by Physicians for evaluation before the delivery and she was discharged on 17.09.2015 after evaluation. It was pointed that that 18 weeks anomaly scan had not been done and endorsed in the records. On 16.09.2015, regular doppler normal scan at RSRM Hospital on 38 weeks gestational age was taken. On 17.09.2015, the petitioner was discharged from RSRM Hospital with a direction to the petitioner to come as an In-patient after a week. Accordingly, on 23.09.2015, the petitioner was admitted to RSRM Hospital and delivered a male child, namely Mohammed Afforse at 15.20 hours.

4.The new born baby was born with facial deformities and he had been referred to Stanley Hospital to be assessed by Echo. The result revealed that the baby is having cardiac anomaly called “Truncus Arteriosus Type-1” and then he was referred to the 3rd respondent. The petitioner visited the third respondent/ Institute of Child Health and



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Hospital for Children and the child was admitted into IMCU Ward. After

preliminary test, the child was referred to take Echo Cardiogram and the reports were similar to the reports provided by Stanley Hospital and was referred for CTS (Cardio Thoracic Surgery) opinion for further treatment.

The child was there at the third respondent Hospital for 5 days from 13.09.2015 and during that period, no referrals were made for CTS Opinion and the petitioner and the child had been discharged from the Hospital without any further instructions and were asked to visit the Hospital if situation requires an emergency. Some medicines were prescribed and the petitioner was directed to appear along with the child after one month. The petitioner again visited the third respondent Hospital on 20.11.2015 along with the child but no instructions were given except the regular medicines. On 21.01.2015, the petitioner and the child visited the Cardiac Surgery Ward of the third respondent Hospital and was eagerly waiting to get the opinion on referral of CTS Opinion, but the Physician who was on duty on that day refused to treat the child and directed the petitioner to leave the Hospital and further informed her that there is no scope of life of the child. Thus the petitioner concerned moved the present writ petition.



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5.The learned counsel for the petitioner strenuously contended that the Primary Health Centre committed an act of negligence which caused serious illness to the baby. After filing of the writ petition, the first respondent issued a direction to the 3rd respondent to advance further treatment to the child and accordingly, the 3rd respondent Institute of Health and Hospital for Children constituted a committee of Doctors consisting Dr.Kamlarathinam, Dr.B.Kasinathan and Dr.S.Gnanasambandhan. On 31.08.2017, a committee of Doctors were formed by the Directorate of Medical Education and they issued summons to the petitioner and the petitioner appeared before the Committee with all the documents and the petitioner was directed to admit the child as In-patient. The child once again underwent Echo and ECG. The Echo opinion revealed that surgery at present hours was not feasible and the petitioner was directed to opt for medication. The petitioner visited the Private Hospitals such as MMM Foundation, Mogappair and Fortis Malar, Adyar, to assess the status of the child and the Pediatric Cardiac Surgeons attached to the said Hospitals rendered that the surgery procedures should have been advised within 4 to 6 months as per protocol. Since the child has crossed that age, it is not viable to treat the disease. On 19.05.2019, the third



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respondent referred the child for Genetic Investigation in order to diagnose

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whether the issues are inherited by genetic means through parents. The

child was subjected to Genetic investigations at the Department of Medical

Genetics at the Tamil Nadu Dr.MGR Medical University and the report

revealed that “No Chromosomal abnormality detected”. This Court on

17.11.2022 directed the petitioner to produce the child before the Dean, the

Rajiv Gandhi Government General Hospital and the Dean shall constitute a

committee of Doctors, preferably experts in the field, and monitor the child

for further treatment and to file a report. Committee of Doctors, comprising

of Dr.Gnanasambandam, Professor of Cardiology and Dr.Jaikiran,

Professor of Cardio Thoracic Surgery were constituted and the child was

produced before the committee for examination. On 07.02.2023, the child

was admitted in the Hospital and Cath Study was done and it revealed that

the condition of the child is inoperable. Accordingly, the status report was

filed by the committee on 21.02.2023.

6.Relying on the status report, the learned counsel for the petitioner

further contended that the health of the child was deteriorated on account

of negligence committed by the Doctors at Primary Health Centre and

proper timely treatments were not provided to the petitioner as well as the



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child after birth.

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7.The learned counsel for the petitioner with thorough research on medical treatment and analysis presented the papers to establish that the treatment provided to the petitioner was improper and the opinion of the Doctors during the relevant point of time caused such agony to the petitioner and to the child.

8.The learned Additional Government Pleader appearing on behalf of the respondent raised an objection by stating that the Government Primary Health Centres are having limited facilities and the Doctors who examined the patients refer the cases, if necessary, to the speciality Hospitals at urban areas. In the present case, at that point of time, the Primary Health Centre Doctor referred the case of the petitioner and the child to RSRM Hospital wherein the treatments were continued. Except certain medical terminologies, the petitioner could not establish that there is a negligence on the part of the Doctors in treating the petitioner and the new born baby. Such broad allegations raised with reference to the medical terminologies cannot be a ground to grant compensation. After the interim orders of this Court, even a Special Committee was constituted to treat the child and the





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doctors are providing sophisticated and advance treatment to the child in the Government Hospital at free of cost and therefore, the petitioner cannot expect anything more from the Government as the Government has to treat all the citizens equally in the matter of providing medical treatments.

9.Considering the arguments, this Court is of the considered opinion that scope of writ of mandamus for grant of compensation cannot be expected. The High Court cannot adjudicate disputed facts regarding the medical negligence or otherwise. The petitioner was continuously taking treatment, initially in the Primary Health Centres and for delivery she had been admitted to RSRM Hospital. Thereafter, the child was admitted in the 3rd respondent Institute of Child Health and Hospital for Children for speciality treatment. The Government Doctors working there had attended the child and provided treatment. The nature of treatment provided to the mother and the child cannot be questioned in a writ proceedings, since the High Court cannot act as an expert body with reference to the medical terminology and expert opinion of the speciality Doctors for treating patients are final unless the contrary is proved. Trial natured proceedings cannot be undertaken in writ proceedings under Article 226 of the Constitution of India. Further, plain understanding of the case would reveal



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that the petitioner was taking continuous treatment in the Primary Health

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Centre as per the advice of the Doctors and thereafter, she was admitted in RSRM Hospital, wherein, she delivered a baby and in respect of the illness of the baby, the petitioner had been directed to take treatment in the 3rd respondent Speciality Institute. Team of doctors were constituted and they assessed to provide treatment to the son of the petitioner. That itself is a concession granted to the petitioner.

10.Hundreds of children are provided treatment in the Institute of Child Health and Hospital for Children. Our Great Nation has got huge population and the Government Hospital is flooded with patients for treatment. The Government Hospitals are bound to provide treatment to all the patients visiting the Hospitals. No doubt, speciality treatments are to be provided with reference to certain peculiar cases and such decisions are taken by the Speciality Doctors on assessment of patient.

11.The High Court cannot interfere with such decisions taken by the Speciality Doctors for providing treatment. Presuming there is a medical negligence, the parties are bound to approach different Forum and not the High Court under Article 226 of the Constitution of India.



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12. However, in the present case, pursuant to the interim orders of this Court, a committee of Speciality Doctors examined the child and suggested treatments. That being the factum, the petitioner cannot expect anything more from the Government Hospitals, wherein large number of patients are treated at free of cost and pertinently all the patients are to be treated equally, which is a Constitutional mandate.

13. In the case of the petitioner, the child was examined on several occasions by the team of Doctors, both at RSRM Hospital and in the 3rd respondent / Institute for Child Health and Hospital for Children and they continue to provide treatment to the child even now.

14. The learned counsel for the petitioner and the learned Additional Government Pleader contended that even now the treatments are continuing for the child and the Doctors are taking special care. As medical Professionals, they are thriving hard and providing treatment to the child. When the Doctors are treating the son of the petitioner by following the medical protocol and ethics, there is no reason to interfere with such treatments or otherwise by the High Court. More so, the petitioner cannot



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expect any such preference only for her child as there are many number of

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children also, taking treatment in the Government Hospitals.

Discrimination in treating the patients in the Government Hospitals are impermissible and any such discrimination would result in unconstitutionality. Medical facility is an integral part of Article 21 of the Constitution of India. "Life" includes decent medical treatment. Therefore, all the patients are to be treated equally and equal medical facilities are to be ensured to the patients in the Government Hospitals. So far the petitioner has enjoyed special privilege in the Hospital with the assistance of the team of Doctors constituted by this Court. Thus, it is for the Doctors to take a decision and continue the treatment by following the medical protocols. Contrarily, High Court cannot interfere with the opinion of the medical experts by acting as an expert body which is not desirable and it will lead to excess exercise of powers of judicial review conferred under Article 226 of the Constitution of India.

15. In view of the facts and circumstances, the petitioner can avail the medical facilities available in the Government Hospitals on par with other children, who all are taking treatment in the Speciality Hospitals. This Court is confident on Speciality Doctors and trust that they will provide



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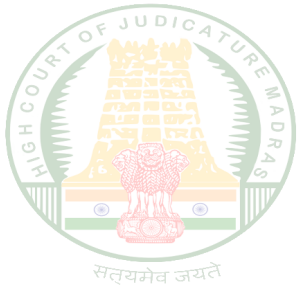
best treatment to all the patients, who all are admitted in the Government Hospitals.

16.As far as the compensation is concerned, this Court do not find any reason to consider the same and accordingly, the respondents are directed to provide continuous treatment to the child by following the medical protocol and by extending best available medical facilities.

17.With these observations, this Writ Petition stands disposed of. However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

(sha/jeni)  
Index : Yes  
Speaking Order  
Neutral Citation : Yes

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**S.M.SUBRAMANIAM. J.,**

(sha/jeni)

To

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