

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**W.P.(MD).No.13326 of 2012
and M.P.(MD).No.1 of 2012**

T.Rajagopal

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary,
Department of Public Health and Family Welfare,
Secretariat, St. George Fort,
Chennai.

2.The District Collector,
Kanniyakumari,
Kanniyakumari District.

3.District Medical Officer,
Medical and Rural Health Service,
Kanniyakumari,
Kanniyakumari District.

4.Dr.S.Pirina Sugumar
Surgeon,
Primary Health Centre,
Rajakamangalam,
Kanniyakumari District.

5.Selvi A.Uma Devi,
Nurse,
Primary Health Centre,
Rajakamangalam,
Kanniyakumari District.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents No.1 to pay a total compensation of Rs.25,00,000/- (Twenty Five Lakhs only) to the petitioner.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Lingadurai for R1 to R3
Government Advocate

Mr.M.P.Senthil for R4 & R5

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the first respondent to pay compensation to the petitioner on the ground that the petitioner lost his wife due to the negligence on the part of the respondents.

2.The case of the petitioner is that his wife was admitted for delivery before the fourth respondent Primary Health Centre, on 25.06.2012 at 06.00 p.m. The petitioner's wife gave birth to a female child, on 26.06.2012, at about 04.24 a.m. After delivery, there was excessive bleeding suffered by the wife of the petitioner. The fourth respondent in spite of attending the wife of the petitioner and administering her with necessary drugs, found that the victim required a blood transfusion and hence, recommended for shifting the

wife of the petitioner to Medical College, Asaripallam. There was no ambulance available in the Primary Health Centre and hence, the Staff Nurse had to call a 108 ambulance at about 05.15 a.m. Ultimately, the ambulance reached the Primary Health Centre at 05.45 a.m. The wife of the petitioner reached the Medical College, Asaripallam, at about 06.30 a.m. She was admitted and thereafter, she was declared as dead. The cause of death was attributed to 'postpartum haemorrhage'.

3. According to the petitioner, he lost his wife only due to the delay caused due to the non availability of the ambulance and by the time his wife reached the Medical College, the situation became very serious and she was declared dead. Therefore, the petitioner has approached this Court, seeking for compensation.

4. The third respondent has filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

“4. I submit that the averments that after intimation about the excessive blood, there was no Medical help from the above said duty Doctor and Nurse are denied. It is clear that the 4th respondent and 5th respondent were with the

petitioner's wife throughout in the Labour room and they noted the status of the patient after the delivery. I humbly submit that they have given the adequate treatment for the patient immediately after the delivery so as to control the bleeding. It is false to state that the patient was not allowed to shift over to the Asaripallam Medical College Hospital. As a matter of fact, the duty Doctor and Nurse have jointly planned to refer the patient to Kanniyakumari Medical College Hospital. Asaripallam and there after they have made a call to the Ambulance, i.e., 108 Ambulance over phone. In furtherance of their call, the 108 Ambulance came immediately. It is submitted that 108 Ambulance is not available in PRIMARY HEALTH CENTRE. The PRIMARY HEALTH CENTRE has only Hospital on Wheels Vehicle Van which functions only in day time by providing medical facilities to remote area people which is not an ambulance it only a mobile van which is used to travel to remote area by medical personnel which functions from 9.30 A.M. to 4.30 P.M.

5.I humbly submit that at the time of boarding the patient into the Ambulance, it was noted that she was stable. Further, while the petitioner's wife was alighted from Ambulance at Hospital, Asaripallam, it was reported that she

was stable. Thereafter, she was admitted at Medical College Hospital, Asaripallam, where she was declared as dead. In connection with the death of the petitioner's wife, F.I.R. was registered in Crime No.332/2012 on the file of the Rajakamangalam Police Station, Kanniyakumari District by the petitioner.

.....

7. With reference to averments made in paragraphs 7 to 10 of the affidavit. I humbly submit that according to abstracts made in the book written by Dutta, it is no doubt that 4 to 6 % cases can have Postpartum Haemorrhage. The common cause for the maternal death after the delivery in India is Haemorrhage which account for 38% causes of maternal death.

Therefore, it is crystal clear that the cause of death of the petitioner's wife is Postpartum Haemorrhage only. The duty Doctor and Nurse i.e., 4th and 5th respondents had done their duty to their level best to the petitioner's wife. In these circumstances, the allegation as against the respondents in more particularly respondents 4 & 5 is not acceptable.”

5.The fourth respondent has also filed a counter affidavit and the relevant portions are extracted hereunder:

7.I submit that the further averments in para No.3 as if the petitioner's wife Kalaiselvi was admitted at 6.00 p.m. in Primary Health Centre is absolutely false as she was admitted only at 9.30 p.m. on 25.06.2012. It is true that she gave birth to a female child at early morning 4.24 a.m. on 26.06.2012. After the delivery of placenta at around 4.45 a.m., I noticed the bleeding was little bit excessive than the normal cases. However, the bleeding was approximately within 500 ml. As stated above since bleeding was excessive, I immediately administered the necessary drugs as well as the first aid which was required to be given. The following treatment was given immediately:

- Uterine massage was given and per Vaginal examination was done through speculum to rule out any tear; but there was no tear, the placenta and its membranes were expelled entirely.*
- Inj. Oxytocin 10 times (2 ampoules) Intra muscularly given.*
- Intra Venous fluid, Ringer lactate 1 Pint was already on flow with Inj. Oxytocin 5 units through 18 guage needle.*

- *Inj. Oxytocin 10 units intravenously in 500 ml R.L. 2nd Pint was infused at the rate of 60 drops per minute.*
- *The patient was catheterized and drained out clear 300 ml of urine.*
- *Inj. Methergine 2 ampoules I.V given.*
- *Tablet misoprost 800 mcg (4 tablets of 200 mcg) were kept per Rectum.*
- *Inj. Ampicillin 500 mg. I.V. After Test Dose given.*
- *Inj. Gentamycin 80 mg I.V.given.*

8.I submit that however, in order to avoid any untoward incident as a precautionary measure, I informed the relatives of the victim including the mother and husband of the deceased for shifting the patient to the Medical College, Asaripallam for blood transfusion as well as for further management. Since there was no ambulance in Primary Health Centre, the staff nurse who has been arrayed as 5th respondent herein called the 108 ambulance at around 5.15 a.m. The ambulance reached the Primary Health Centre at around 5.45 a.m. and the patient was immediately shifted to the Government Medical College, Asaripallam. In fact, the patient was stable at the time of the patient was stable at the time of shifting and she was communicating with the

relatives. The condition of the patient was stable which could be discerned from the pre-hospital care record maintained by the staff of emergency management and Research Institute, the 108 ambulance. In such circumstances, it is not known on what basis the allegation has been made as if the death of the petitioner's wife is due to the negligence of myself and the 5th respondent.

9.I submit that the further averments in para No.4 that myself as well as the staff nurse did not provide medical help due to callousness is totally baseless and false. As stated above, in fact, we have immediately provided the necessary medical care for the active management of the patient. As such, it is totally unjust and baseless to allege that we have not provided the medical help. The further averments in para No.4 that the petitioner and his relatives tried to shift the patient to the Asaripallam Hospital and we did not allow on the patient that there was not ambulance driver is absolutely false, untenable and contrary to records. In fact, it was the 5th respondent on my instructions informed the ambulance and only thereafter, the ambulance rushed to the Primary Health Centre, from Kottar, Nagercoil Town. In such circumstances, the above averments including the averments in para Nos.5 & 6 that we did not

allow them to transport is totally false. It is submitted that we did not refuse any one to shift the patient to any other hospital. We only contacted 108 ambulance through phone to shift the patient to Kanniyakumari Medical College Hospita, Asaripallam. It is important to state here that, in the last sentence of the 5th paragraph of the affidavit it has been stated that the deceased was taken to Asaripallam Hospital at 6.30 p.m., which is an error; in fact, the deceased was taken in the ambulance by 5.45 a.m. itself.

10.I submit that the averments in para No.7 are relating to legal issues which I am not disputing. The averments in para No.8 are relating to Medical management in case of Postpartum Haemorrhage (PPH) is concerned, I have meticulously followed all the issues and there is absolutely no negligence on my part in treating the deceased. I have exercised sufficient due care which any ordinary prudent doctor would normally do and there is absolutely no negligence on my part. Besides, within few minutes, I have taken all steps to shift the patient to Asaripallam Medical College and at that time, the patient was stable. In such circumstances the petitioner has completely misconstrued the whole issue and the very writ petition is untenable. It is crucial to state here that

except few allegations against me, which are also very vague, the petitioner himself has not stated that the treatment given by me are not correct. Besides, there is absolutely no averments (or) documents placed before the Hon'ble Court to substantiate by way of any opinion. In such circumstances, the whole writ petition is filed on surmises and presumptions.”

6. When the matter came up for hearing, on 29.04.2021, this Court passed the following order.

“The learned counsel appearing for the petitioner brought to the notice of this Court the earlier order passed by this Court in W.P. (MD).No.2721 of 2017, dated 01.02.2021, wherein, this Court had granted compensation to the tune of Rs.5,00,000/- (Rupees Five Lakhs only) relying upon G.O.Ms.No.395, dated 04.09.2018. If the facts of the present case is also confined to the Government Order, there is no requirement for this Court to go into the issue of negligence. It will be possible to give necessary directions based on the Government Order and the earlier order passed by this Court. The learned Government Advocate shall take instructions in this regard.

2. Registry is directed to post this case under the caption "For Orders" on 09.06.2021."

7. When the matter was taken up for hearing today, the learned Government Advocate based on the written instructions received from the Deputy Director, Health Services, Nagercoil, submitted that the petitioner cannot be given compensation as per G.O.Ms.No.395, Health and Family Welfare (H1) Department, dated 04.09.2018, since the death of the petitioner's wife was not caused due to negligence.

8. Before proceeding further to deal with the issue raised in the present writ petition, it will also be beneficial to extract the relevant portion in the Government Order hereunder:

"G. Reiterations:

- i. The extent of coverage shall apply to all cases of doctors negligence in all surgical procedural and other medical activities in the Government Institutions as per the Government Order.*
- ii. In all the cases claiming compensation with the treating doctors(s) as respondent(s) or in cases against institution alleging lapse by*

the medical officer(s) concerned / aggrieved Medical Officer(s) should apply to the appropriate committee, in writing, through proper channel, duly marking an advance copy.

iii. Tamil Nadu Government Doctors Corpus Fund will cover limitation in all judicial forums, from the lowest to the highest, in cases against lapse of Medical Officer(s).”

9. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.M.Lingadurai, learned Government Advocate, appearing for the respondents 1 to 3 and Mr.M.P.Senthil, learned counsel appearing for the respondents 4 & 5.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. This is an unfortunate case, where, the petitioner lost his wife after she delivered a child, due to excessive bleeding and the cause of death is mentioned in the counter affidavit filed by the third respondent as 'postpartum haemorrhage'. It could be ascertained from the counter affidavit filed by the

fourth respondent that nearly 4 to 6 percent of the cases can encounter 'postpartum haemorrhage' during delivery and it is a common cause for maternal deaths after delivery in India. Even in 'DC.Dutta's Text Book of Obstetrics' this has been explained and it has been mentioned that nearly 23 percent of the persons, who suffer from such a haemorrhage also die due to complications. It is clear from the above that the condition that was suffered by the petitioner's wife is not uncommon and unfortunately the wife of the petitioner fell under the category of 4 to 6 percent cases, who undergo such complications.

12.The next issue that has to be taken into consideration is as to whether there was any negligence on the part of the fourth respondent in attending to the petitioner's wife when she was suffering from excessive bleeding. The counter affidavit filed by the fourth respondent shows that the fourth respondent had administered necessary drugs as a first aid to the petitioner's wife and attempts were made to bring the situation under control. This process was undertaken between 04.45 a.m. to 05.15 a.m. In spite of the same, the bleeding never stopped and therefore, the fourth respondent had advised the victim to be shifted to the Medical College, Asaripallam for blood transfusion. This is where the entire problem started. There was no

ambulance available at the Primary Health Centre and the Staff Nurse belonging to the Primary Health Centre was desperately attempting to get an ambulance by calling 108 and the ambulance reached the Primary Health Centre only around 05.45 a.m. In this process nearly 30 minutes of precious time was lost. Thereafter, the petitioner's wife was shifted to the Medical College only at about 06.30 a.m. By then, nearly 1 hour and 15 minutes had passed. Unfortunately, when she was tested by the Doctor at the Medical College, they declared her dead.

13.It is clear from the above that there was a delay in shifting the deceased from the Primary Health Centre to the Medical College, Asaripallam. When it comes to saving life, every second counts and delay by even few minutes can cause the death of a person. Therefore, when it comes to medical emergency, delay can never be condoned like how leniently we condone in Courts. Every Primary Health Centre is supposed to have an ambulance readily available to shift patients in case of emergency. It is an admitted case that the Primary Health Centre was regularly dealing with delivery cases and they have to expect an emergency at any time and they cannot afford to run a Centre without ambulance.

14. At this juncture, this Court has to take note of the Judgment of the Hon'ble Supreme Court in the case of *P.B.Khet Mazdoor Samity Vs. State of West Bengal* reported in *AIR 1996 SC 2426*. The relevant portions in the Judgment are extracted hereunder:

15. We have considered the aforesaid submissions urged by Shri Dhavan. Apart from the recommendations made by the Committee in that regard and the action taken by the State Government in the memorandum dated August 22, 1995 on the basis of the recommendations of the Committee, we are of the view that in order that proper medical facilities are available for dealing with emergency cases it must be that:

- 1. Adequate facilities are available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stabilize his condition;*
- 2. Hospitals at the district level and Sub-Division level are upgraded so that serious cases can be treated there;*
- 3. Facilities for giving Specialist treatment are increased and are available at the hospitals at District level and Sub-Division level having regard to the growing needs;*
- 4. In order to ensure availability of bed in an*

emergency at State level hospitals there is a centralised communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment which is required;

- 5. Proper arrangement of ambulance is made for transport of a patient from the Primary Health Centre to the District Hospital or Sub-Division hospital and from the District Hospital or Sub Division hospital to the State hospital.*
- 6. The ambulance is adequately provided with necessary equipment and medical personnel;*
- 7. The Health Centres and the hospitals and the medical personnel attached to these Centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.”*

15.It is clear from the above Judgment that Primary Health Centres are expected to possess an ambulance to meet an emergency. This Judgment was also subsequently followed by this Court in the case of *Thangapandi Vs.*

Director of Primary Health Services reported in ***(2011) 1 MLJ 1329***.

16. In view of the above, even though this Court does not find any negligence on the part of the fourth respondent insofar as the treatment that was given to the petitioner's wife, there was definitely a delay in shifting the petitioner's wife from the Primary Health Centre to the Medical College, Asaripallam. Since the petitioner's wife was suffering from heavy bleeding, this delay had ultimately proved to be fatal resulting in her death. In Medical Parlance, it is referred to as golden hour. *R.Adams Cowley* who came up with this term called this time as the time between life and death.

17. It is for this purpose, G.O.Ms.No.395, dated 04.09.2018, was brought into force by the Government by creating a Corpus fund. The Government Doctors contribute a certain amount towards this Corpus Fund and whenever a case arises for payment of compensation, the amount can be paid from this Corpus fund without unnecessarily burdening any Doctor or Government Institution. Considering the entire facts and circumstances of the case, this Court is of the considered view that the case of the petitioner will fall within the requirements of Sub Clause II of Clause 4(G). Hence, the petitioner is entitled to be paid compensation under this Government Order to

the tune of Rs.5,00,000/- (Rupees Five Lakhs Only).

18. In the result, there shall be a direction to the first respondent to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner from the Corpus fund created under G.O.Ms.No.395, dated 04.09.2018, within a period of eight weeks from the date of receipt of a copy of this order.

19.This petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

29.06.2021

Internet : Yes/No
Index : Yes/No
TM

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The State of Tamil Nadu,
represented by its Principal Secretary,
Department of Public Health and Family Welfare,
Secretariat, St. George Fort,
Chennai.
- 2.The District Collector,
Kanniyakumari,
Kanniyakumari District.
- 3.District Medical Officer,
Medical and Rural Health Service,
Kanniyakumari,
Kanniyakumari District.

W.P.(MD).No.13326 of 2012

N.ANAND VENKATESH, J.

TM

Order made in

W.P.(MD).No.13326 of 2012

29.06.2021