IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.6859 of 2017 and
WMP.Nos.7912 of 2020 & 7436 of 2017

Sasikala ... Petitioner

Vs

1.The Secretary to Government,
Health Department, Tamil Nadu,
Fort St. George, Chennai.

2.The District Collector,
Salem District.

3.The Superintendent of Police,
Salem District.

4.The Sub-Collector,
Salem District.

5.The President,
The Tamil Nadu Medical Council,
No.914, P.H.Road, Arumbakkam, Chennai.

6.Joint Director,
Health Services, Salem District,
Salem District.

7.Chief Doctor,
Government Hospital, Mettur Taluk,
Salem District.

8.The Tasildhar,
Mettur Taluk, Salem District.

9.The Inspector of Police,
Mettur Dam-1, Salem District.

10.Dr.Ramesh, Doctor,
Government Hospital, Mettur Taluk,
Salem District.

11. Gem Hospital and Research Centre
Pvt. Limited
45-A, Pankaja Mill Road, Ramanathapuram,
Coimbatore – 641 045.
(R11 suo motu impleaded vide order
dated 22.02.2023)

12. Government Mohan Kumaramangalam
Medical College Hospital
Salem.
(R12 suo motu impleaded vide order dated 26.06.2023)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of Indiapraying to issue a Writ of Mandamus, to direct the 1st, 2nd, and 7th , respondent topay some reasonable compensation and to take appropriate action against the10th respondent.

For Petitioner : Mrs.S.Sasikala
Petitioner-in-person.

For Respondents: Mr.P.Kumaresan, Additional Advocate General
Assisted by Mr.Alagu Gowtham
Government Advocate
(for R1 to R4, R6 to R9 and R12)

Mr.R.Singaravelan, Senior Counsel

For Mr.R.Jayaprakash (for R10)

Mr.Nedunchezhiyan (for R5)
Mr.K.Thilageswaran (for R11)

O R D E R

This case has been presented by the petitioner in person in regard to the alleged mis-treatment given to her son Master Vishnu (hereinafter referred to as 'child'), who was at the time of institution of this Writ Petition in 2017, aged about 15 years.

2. The facts as put forth by the petitioner are as follows:

(i) The family belongs to an economically and financially backward section of society.

(ii) On 27.10.2016, the child complained of stomach pain and was taken to the Mettur Government Hospital (in short 'Mettur GH') for treatment.

(iii) R10, a doctor in the Mettur GH advised an emergency appendectomy and the child was admitted as an in-patient.

(iv) According to the petitioner, no consent was obtained for surgery, though the respondents have produced a copy of the consent obtained from the grandfather of the child who was in attendance with the child at that time. Thus, nothing adverse is noted on this score.

(v) Post surgery, the child was transferred to the Intensive Care Unit (ICU). During the stay in the ICU, the petitioner noticed bleeding in the stools and the child complained of constant pain.

(vi) The child was discharged on 31.10.2016.

(vii) Since the child continued to complain of constant pain, a scan was taken in a private hospital which revealed formation of puss in the stomach and thus the child was admitted on 05.11.2016 in the Salem Mohan Kumaramangalam Government Hospital (in short 'Salem GH').

(viii) The petitioner has filed a complaint before the Inspector of Police, Mettur Dam-I/R9 as against R10 on the day of admission in Salem GH.

(ix) On 10.11.2016, a laparoscopic surgery was performed which did not, the petitioner complains, result in any improvement in the child's condition.

(x) Since the doctors there advised yet another surgery, the child was shifted to a hospital in Erode (no particulars of the hospital or the treatment there have been given) and thereafter to GEM Hospital, Coimbatore when he was treated for about 15 days.

(xi) According to the petitioner, when the child was admitted in the private hospital in Erode, R10 was approached for a copy of the discharge summary as well as other treatment particulars, but the same were not supplied and instead the petitioner was threatened with dire consequences.

(xii) A representation was made by the petitioner on 06.01.2017 to the Hon'ble Chief Minister's cell followed by a letter to the Secretary to Government, Health Department/R1 along similar lines on 07.01.2017 enclosing a copy of the complaint.

(xiii) Though an acknowledgement has been received from the Sub-Collector, Mettur to whom the petitioner's complaint has been forwarded, no action has been taken thus far.

(xiv) The petitioner has also complained that despite requests, GEM Hospital, Coimbatore has not supplied either a copy of the discharge summary or the treatment records to the family.

3. Hence the present Writ Petition where the petitioner seeks i) reasonable compensation (which she does not quantify), ii) interim compensation of a sum of Rs.2.00 lakhs enhanced to Rs.30.00 lakhs pending Writ Petition in WMP No.7912 of 2020 and iii) appropriate action to be taken as against R10 and iv) any other suitable orders.

4. She has, in support of the Writ Petition filed some records from the Mettur GH, Devi Hospital at Mettur, Salem GH, City Hospital at Erode and GEM Hospital at Coimbatore. She has also enclosed some photographs along with a video recording of the child when in the ICU at Mettur GH and bills. She claims to have spent about Rs.2.00 lakhs during recovery.

5. Pending Writ Petition, WMP No.7912 of 2020 has been filed seeking amendment in the Direction Petition. As against the initial prayer for a sum of Rs.2.00 lakhs as interim compensation, an enhanced claim of Rs.30.00 lakhs as interim compensation has been sought. She also prays for a direction for providing a Government job to the child, now aged 22 years.

6. At the time of final hearing of the matter, since this Court thought it necessary to have the records from GEM Hospital, Coimbatore in order to ascertain the condition of the child at the time of his admission there, GEM Hospital was impleaded as R11 and the complete records in regard to the child from the time of admission on 17.11.2016 to his discharge on 01.12.2016 were sought on 22.02.2023, with proper authentication. The said records have been received on 09.05.2023.

7. The contents of the counters filed by the respondents are discussed below in seriatim.

8. R1 objects to the Writ Petition on the ground of maintainability, as according to him, the treatment afforded in Mettur GH is proper. They submit that the child has been treated with utmost care and with the highest standards of medical care and treatment.

9. Their version of events is that on admission on 27.10.2016, the duty medical officer had examined the child and admitted him. He was referred to

the surgeon for further opinion. R10 examined the child and informed the grandfather of the child, who was the attender at the time of admission, that immediate surgery was required.

10. Consent was obtained from the grandfather and after necessary medical lab tests, surgery was done by R10 on 27.10.2016. The child was shifted to the post operative ward. The same day at about 8.00 p.m., the child had dysentery. The duty medical officer consulted R10 and treated the child who was shifted from post operative ward to the ICU for better monitoring. He was administered necessary antibiotics, blood and glucose. He continued in the ICU on 28.10.2016 and 29.10.2016 under the care of another doctor one Dr.Arun Natesh, MD.

11. On 30.10.2016, R10 attended to the child when he was shifted from ICU to post operative ward. On 31.10.2016 the child was discharged at 5.00 p.m. At paragraph 3 of counter, R1 points out that at the time of discharge, the child's mother, the petitioner, has endorsed in the feedback book maintained by the Mettur GH in her own handwriting that the care in the hospital was good.

12. The child appears to have suffered stomach pain for which he was admitted on 05.11.2016 at Salem GH. He was then treated at a private hospital. Thus, in light of their version of the events, R1 maintains that Mettur GH was anything but negligent and had tendered utmost care to the child.

13. All pleadings are specific only to the treatment in Mettur GH. In fact, neither the Dean, Salem GH nor any of the doctors in the Salem GH were originally arrayed as respondents and it is only vide order dated 26.06.2024 that Government Mohan Kumaramangalam Medical College Hospital, Salem has been impleaded as R12. As a result, the counter of R1 is specific to the events that transpired in Mettur GH only and no counter has been filed by R12.

14. As far as the complaint of the petitioner is concerned, upon receipt thereof, the Joint Director of Health Services/R6 had appointed Dr.Senthilkumar, Medical Officer and Dr.Elavarasi, Assistant Surgeon as enquiry officers. Due and careful enquiry was conducted and an enquiry report submitted to R6 after capturing the facts which is essentially a reiteration of the events as set out in the counter and as recorded above. The enquiry concludes with the endorsement that the surgery was done properly with utmost care having been given to the child.

15. R1 relies upon a judgment of the Hon'ble Supreme Court in the case of *Jacob Mathew V. State of Punjab* (2006 (6) SCC 1). That judgment deals with liability in medical negligence and recognises the position that doctors are professionals, possessing and practicing special skills. They cannot assure or guarantee the result of their treatment.

16. Liability, if at all, would follow only if the complainant could establish that the treating doctor did not possess the requisite skills which he claims to have possessed, or did not exercise, with reasonable competence, the skill which he claims to possess. No such allegation is made in the present case.

17. The petitioner has been unable to establish either lack of care, as seen from her own certification at the time of discharge on 31.10.2016, nor has she established any lack of judgment on the part of the doctors.

18. That apart, reliance is also placed on the judgment in the case of *Dr.Chanda Rani V. Dr.M.A.Methusethupathi* (2022 Live Law (SC) 391) which also deals with liability in cases of medical negligence. Therein, the Court has held that liability cannot be fastened on a medical professional who has chosen one course of treatment in preference over another. Such a choice is attributable to the exercise of his medical skill and cannot be assailed, except if the complainant is able to prove that the choice was itself absurd, wholly incorrect and not a choice which a reasonably competent doctor can normally be expected to have made.

19. The counter of R2, who is the District Collector, Salem, is cryptic and also toes the line of the State pointing out that the Writ Petition is not maintainable as the enquiry conducted and the report submitted, establish that there was no negligence by R10 in the performance of his professional duties.

Incidentally, R2 also states that there is no provision for rendering financial support as funds are not available.

20. R3 is the Superintendent of police. He states in his counter that upon receipt of the complaint filed by the petitioner on 06.01.2017 to take appropriate action as against R6 qua the allegation of medical negligence, the same was forwarded to the jurisdictional Inspector of Police at Mettur Police Station, Mettur Sub-Division, Salem District.

21. A preliminary investigation was carried out as directed by the Hon'ble Supreme Court in the case of *Jacob Mathew* (supra). The medical opinion that was received did not contain any finding of negligence on the part of R10 and hence the complaint was not registered as there was no prima facie case made out pointing to negligence. To be noted that neither the preliminary report nor medical report referred to in counter dated 28.06.2017 have been supplied.

22. R4 has not filed any counter. R5 is the President, Tamil Nadu Medical Council (in short 'TNMC') and the counter has been filed by the Registrar, TNMC. The deponent merely disavows any role to be played by the TNMC stating that no representation has been received from the petitioner. R5 denies that a copy of the representation addressed to the Hon'ble Chief Minister Cell was marked to the TNMC. Hence, in the absence of any complaint

whatsoever, they have no role to play in the matter. They assure the Court that if at all a complaint is filed necessary enquiry will be made.

23. R7 is the Chief doctor in Mettur GH. He relies upon the fact that detailed enquiry was conducted in regard to the allegation of medical negligence by the doctors in Mettur GH. The question of medical negligence, he states, involves assimilation of various questions of fact, particularly medical/technical questions. Hence this is not a matter appropriate for a Writ Court to adjudicate upon, as it involves disputed questions of fact. Hence, this Writ Petition is in itself, not maintainable.

24. Two counters have been filed by R7, one dated 31.05.2017 and another dated 01.03.2022. The only difference therein, is that the counter filed subsequently, contains an objection on maintainability at paragraph 2 thereof. No counter has been filed by R8 and R9.

25. R10, as against whom the allegation of medical negligence is targeted, has filed a detailed counter. He alleges that the Writ Petition is nothing but an abuse of process of Court and denies all allegations levelled as against him. His particulars of service have been provided and reveal that he joined as Assistant Surgeon in the Mettur GH on 27.05.2013. He was awarded the best Doctor in the State of Tamil Nadu in the year 2014 and best Doctor at the district level in the year 2015.

26. Paragraphs 4 and 5 of the counter set out details of various initiatives taken by him and technical papers presented, as well as the particulars of the surgeries conducted by him between 2013 and 2017. In all, the attempt is to state that he is a senior professional who displays full commitment and dedication to his profession, as endorsed by several other senior professionals.

27. After admission of the child on 27.12.2016, noticing that he was in need of emergent surgery, he had obtained consent from the grandfather and performed an appendectomy on the child on the same day. He claims that he left the theatre only after the child regained consciousness and after ensuring that the surgery had taken place uneventfully. The child was shifted to the post operative ward as is the normal procedure.

28. He states that the child did not adhere to the instructions of the ward staff to take complete bed rest. According to him, the child walked up and down the ward straining himself which is the reason for the complication of dysentery. When informed by the ward staff, he immediately shifted the child to the ICU. Thereafter, on 31.10.2016, he states that the child was shifted to the regular ward. Though he was instructed to return after 8 days for removal of stitches, the child did not return.

29. He also draws attention to the feedback given by the petitioner at the time of discharge endorsing the good treatment as well as the conclusions in the

enquiry conducted by a two member committee which were in his favour. He relies on a decision in the case of *Smt. Gunwant Kaur And Ors. vs Municipal Committee, Bhatinda* (AIR 1970 SC 802) for the proposition that professionals such as Doctors can be prosecuted only if their treatment is established to be rash or negligent.

30. An additional ground taken by R10 is to implicate the Salem GH. He points out in the counter that his role in the petitioner's son treatment ended with his discharge on 31.10.2016. Thereafter, on account of the discomfort, the child was admitted again in the Salem GH on 05.11.2016 and laprotomy, adhesiolysis and peritoneal lavage was performed on 10.11.2016. It is only after that surgery that the petitioner claims that her child's health had worsened.

31. Thus, according to him, if at the petitioner had any grievances, it would have to relate to the surgery and the treatment given at Salem GH and not at Mettur GH.

32. A compilation citing several cases have been filed by R10. Seven judgments have been rendered in the context of medical negligence being (i)*Indian Medical Association v. V.P.Shantha and others* [(1995) 6 SCC 651] (ii)*DR. J.J. Merchant and Others V.Shrinath Chaturvedi* [(2002) 6 SCC 635] (iii)*DR.Suresh Gupta v. Govt. of NCT of Delhi and another* [(2004) 6 SCC 422] (iv)*Jacob Mathew v. State of Punjab and another* [(2005) 6 SCC 1] (v)*V.Kishan*

Rao v. Nikhil Super Speciality Hospital and another [(2010 5 SCC 513] (vi)*Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust and Others* [(2014) 9 SCC 256] (vii)*Umakant Kisan Mane v. The Dean, Rajawadi Municipal Hospital, Ghatkopar (East), Mumbai and another* [WP.No.431 of 2003 dated 21.12.2015].

33. That apart, several judgments have also been cited in support of the defence of lack of maintainability. According to R10, while there are situations where writ remedy can be invoked as a public law remedy to award compensation and issue mandamus for corrective/remedial action, there would have to be certainty on the factual aspects of the matter. Since the present matter contains disputed facts, he argues that the writ petition is not maintainable.

34. For this proposition, he relies on the decision in (i)*K.Pushpavanam v. Union of India* [WP(MD)No.16274 of 2020 dated 17.08.2021], (ii)*Anilkumar A.B. v. State of Kerala Chief Secretary* (2022 SCC Online Ker 1830) and (iii)*Sanjay Gupta and others v. State of Uttar Pradesh* [(2022) 7 SCC 203].

35. Heard the petitioner in person, Mr.P.Kumaresan, learned Additional Advocate General, assisted by Mr.B.Vijay, learned Additional Government Pleader for R1 to R4, R6 to R9 and R12 and Mr.R.Singaravelan, learned Senior Counsel, appearing for Mr.R.Jayaprakash, learned counsel for R10.

36. Dr.Karthikeyan, who is presently holding the post of Assistant Civil Surgeon in the Government Hospital, Mettur and who is here on behalf of Joint

Director, Health Services, Salem District is asked to explain the sequence of events as flow from the records. His submissions are recorded below:-

(i)The patient was admitted on 27.10.2016 in Government Hospital, Mettur and was diagnosed with acute perforated appendicitis requiring emergent attention.

(ii)Requisite consent was obtained and the child was operated on the same day in the afternoon. In the post-operative room, he had passed blood in the stools and his blood pressure had dropped. He was thus taken to Intensive Care Unit (ICU) for observation and was treated appropriately with blood infusion and I.V.fluids.

(iii)He was in the ICU till his discharge on 31.10.2016. The records of the hospital dated 30.10.2016 do not reflect anything untoward in his medical condition and the notings are as follows:

'30.10.2016

	Child GC Fair afebrile	-	*Adv*
	CVS: S1 S2 (+)	-	*Oral Fluids*
	RS: BAE (+)	-	*IVF DNS 1.*
Surgeon	*P/A: Soft BS(+)*	-	*RL 1.*
Review	*No soakage*	-	*Continue Others*

Transfer to CMCHIS Ward'

(iv)He was discharged the next day from the ICU itself and was not transferred to the general ward/ward as is the normal practice. This is despite a noting that the child should have been transferred to the Chief Minister Comprehensive

Health Insurance Scheme (CMCHIS) Ward. The specific query put as to why the normal procedure had not been followed did not meet with any response.

(v)The child was taken on 04.11.2016 to a private hospital where ultrasound and scan of the abdomen were taken. On 05.11.2016, the child was brought to Salem Government Hospital and admitted. The notes on admission read as follows:

'5.11.2016
1.30PM
S/B: DAS
C/O Pain Abdomen/ 3 days duration
Fever & Vomiting – 2 days
Pt. underwent emergency Appendicectomy on 27.10.2016 at Mettur GH and referred here for further management
H/O Presenting illness:
He was apparently normal 10 days back and admitted for pain abdomen one day duration at Mettur GH.
He diagnosed have acute Appendicitis and underwent emergency appendicectomy and discharged on 31.10.2016
Now c/o abdominal pain – 3 days
Vomiting and fever – 2 days duration
No h/o constipation /oliguria/dysuria/urgency
No h/o hematuria
Past history:
No other past surgical treatment history
Personal history:
Mixed diet
Not a smoker/alcoholic
Family history:
Nil relevant
O/E PT conscious, oriented, febrile
Not dyspnoca, not pallor
Cvs: s1 s2 +
Rs: bac+
p/a: soft, distended +
traumatic sutured wound over mcburneys point. subcutaneous suture
b/s+

diffuse tenderness+
minimal guarding+
minimal rigidity+
imp: abdominal pain for evaluation/post emergency appendicectomy status-day 9
CBC *DIL*
RBS RFT *NPO*
s.electrolytes *IVF-ns 2 point, rl 1point, 5%d 1 point @ 80 ml/hr*
exr-paview *inj.cefotaxime 1mg iv bd atd*
xray abdomen AP view erect *inj.metrogyl 500 mg iv tds*
usg abdomen *inj.ranitidine 2cc iv bd*
ct abdomen and pelvis *inj.tramadol 1.50 cc im bd*
PDR/BP/I/Ochart
Evidence of intraloop collection (+)
Possibility of ? Pelvic absence with
Pyogenic enteritis
5/11/16 usg abdomen and pelvis
Liver
Gall
Pancreas normal
Spleen
Bladder – internal echoes
prostate
cystitis
inflamed and dilated bowel loops seen'

(vi)On the next day, he was evaluated by a surgical gastroenterologist whose notes dated 06.11.2016 read thus:

'6.11.2016
S/B SGE
A Case of Post appendicectomy status
POD 9
C/O Abdominal pain-3 days
Fever – 2 days
Loose stools – 2 days
No H/O Vomiting
R-94/min
BP-90/70mm hg O/E *Patient Conscious*
Febrile
Hydration fair

CVS-SIS2+
RS B/L AE+
P/A Soft appendicectomy Scar (+)
Tenderness (+) R Iliac foass and Hypogastrium
No Guarding
BS(+)
? :? Infected pelvic collection
Suggested
D-lap- wash/proceed'

(vii)In light of the medical opinion to proceed for laparoscopic surgery for draining the abscess, the child was kept under observation and treated conservatively till 10.11.2016, when he was operated.

(viii)After surgery, he was brought into the recovery ward. On 13.11.2016, the child was found to have oozing from the site which included feces. The diagnosis was post appendicectomy Enterocutaneous fistula. After obtaining necessary medical opinion, the child was under conservative management of the fistula on 14.11.2016 and 15.11.2016.

(ix) He was discharged against medical advice on 16.11.2016 from Salem GH, admitted again in GEM Hospital on 17.11.2016 and discharged on 30.11.2016.

37. A specific query was put to the Doctor to explain the five intervening days between 05.11.2016 and 10.11.2016, when no surgery was performed on the child despite the diagnosis and recommendation. The Doctor states that there was no justification for the intervening delay. In fact the tenor of the submission of

this Doctor is to implicate Salem GH for the entire sequence of events suffered by the child.

38. The following order was passed on 26.06.2023 after taking note of the narration of events as above.

> *Having assimilated the facts at issue, and having heard the detailed submissions of learned counsel for all parties, this Court is of the considered view that it would not be possible to arrive at even a prima facie finding of medical negligence without further technical input/assistance.*
>
> *2.The petitioner has not made any allegations specifically against the Government Mohan Kumaramangalam Medical College Hospital, Salem. However, I am inclined to implead the Government Mohan Kumaramangalam Medical College Hospital, Salem as well and solicit their response for the following reasons*
>
> *(i)the petitioner is the mother of the child and appears in person before me. Hence, strict and high standards of procedure that one expects from a trained counsel should not, in my view, be put against her.*
>
> *(ii)the treatment accorded to the child has to be seen in a continuous flow of events in order to determine whether there was any negligence/incompetence, and if so at what stage.*
>
> *(iii)according to the petitioner, the child continued to have pain and discomfort even after discharge from Salem Government Hospital and this is the reason why he was admitted in GEM Hospital.*
>
> *(iv) Government Mohan Kumaramangalam Medical College Hospital, Salem is impleaded as R12. Mr.B.Vijay, learned Additional Government Pleader accepts notice on their behalf. Registry to make suitable amendments to cause title.*
>
> *(v) I am also not entirely convinced with the veracity or otherwise of the enquiry report exonerating R10 in toto, as that enquiry committee has been constituted with two of his colleagues in the same hospital.*

3.For the above reasons, I believe that it is necessary for a committee for a detailed enquiry into the treatment given to the child from his admission on 27.10.2016 till his discharge from GEM Hospital. Since both the Mettur and Salem Hospitals are Government Hospitals and the patient was 12 years at the relevant point in time, a committee is constituted comprising (i) Director of the Institute of Child Health, Egmore, Chennai, (ii) a Senior Paediatric, Gastroenterologist and (iii) a Senior Paediatric Surgeon both at the nomination of the Director, ICH. The Committee may also include any other specialists whom the members may deem necessary.

4.The Registry of this Court will make one complete file of the papers and circulate the same along with a copy of this order to the Director, Institute of Child Health through the learned Special Government Pleader, who appears for R1. The Director, ICH is requested to constitute the Committee as aforesaid within a week thereof and intimate the Registry of this Court (vide memo) of the constituents of the Committee so constituted.

5.The Committee will call upon the petitioner as well as the child if necessary, on not more than on two occasions, to enquire into their version of the events. R10 as well as other medical personnel will also be enquired and a detailed enquiry report shall be filed by the Committee within a period of six (6) weeks from date of its constitution and placed before the Registry on or before 30.08.2023.

List on 31.08.2023 as part-heard.

39. After taking an adjournment or two, the State reported that an Adhoc Committee had been constituted with three members, viz., (i) Dr.Rema Chandramohan, Director and Professor of Institute of Child Health and Hospital for Children (ii) Dr.R.Velmurugan, Professor & Head of Pediatric Surgery department of Institute of Child Health and Hospital for Children (iii)

Dr.D.Nirmala, Professor & Head of Pediatric Gastroenterology department of Institute of Child Health and Hospital for Children.

40. The Committee had called upon the petitioner and the child on 22.08.2023, caused enquiry on R10 on the same day and had submitted a report that reads as follows:

> *REPORT ON ENQUIRY CONDUCTED BY THE COMMITTEE COMPRISING OF (i) DR.REMA CHANDRAMIHAN, DIRECTOR AND PROFESSOR, ICH (ii) DR.R.VELMURUGAN, PROFESSOR AND HEAD OF PEDIATRIC SURGERY DEPARTMENT (iii) DR.D.NIRMALA, PROFESSOR AND HEAD OF PEDIATRIC GASTROENTEROLOGY DEPARTMENT, ICH AS PER THE ORDERS ISSUED BY THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS IN NRESPECT OF W.P NO.6859 OF 2017 AND WMP NOS.7912 OF 2020 & 7436 OF 2017.*
>
> *As per the orders issued by the Hon'ble High Court of Judicature at Madras in respect of W.P No.6859 of 2017 and WMP Nos.7912 of 2020 & 7436 of 2017 enquiry committee was formed with the members as mentioned above and the petitioner and her family and Dr.Ramesh, 10th respondent were called to Institute of Child Health and Hospital for Children, the detailed enquiry was conducted and their responses were recorded and based on which the following conclusions were made.*
>
> *As per the statement from both parties this Child S.Vishnu presented with abdominal pain which was consistent with acute appendicitis by history and physical examination done by Dr.Ramesh and hence he proceeded*

with the surgery(Appendicectomy) as it is the standard of care. Since it is an emergency procedure and Ultrasonogram was not available at that time in the hospital, the procedure was done with the preliminary investigations required for surgery. The child became sick the following day and was shifted to ICU and managed accordingly. The Child was reviewed on the day of discharge by the operating surgeon and was discharged as he was found fit and was advised to review on the 8th post operative day for suture removal but the patient did not turn up as advised. In the meanwhile the patient had sought treatment at the private Nursing Home and Salem Government Medical College Hospital. The patient did not improve and was operated at Salem Government Medical College Hospital but as the petitioner was not happy with the treatment there, they had shifted the patient to a Private Corporate Hospital where he was managed conservatively for enterocutaneous fistula and discharged.

The treatment given by the 10th respondent has been appropriate and the patient did, not turn up for follow up to him. Enterocutaneous fistula is a known but rare complication of appendicectomy which was managed appropriately at two higher centres, one government and one corporate. The child is currently healthy with no morbidities and hence no gross negligence or misdiagnosis or inappropriate treatment has been made out in this case.

Sd/- Sd/- Sd/-

Dr.D.NirmalaDr.VelmuruganDr.RemaChandramohan

41. Thoroughly dissatisfied with that report, the following order was passed on 06.10.2023 calling for a supplementary report.

The Committee's brief report refers only to the treatment plan but has not taken note of the elapse of time, particularly when the child was last admitted prior to the surgery.

2. The Court requests the inputs of the Committee, specifically in regard to whether the treatment given was prompt, without delay. In this connection, the Committee will have regard to the fact that the child was admitted last on 05.11.2016, the surgeon, after examination has noted '? Infected pelvic collections' and has suggested 'D-lap', and the surgery was performed after four days.

3. The one para report submitted refers only to the enquiries conducted with the respective parties. It is unclear as to whether the reports of the hospitals have been placed before the Committee for them to appreciate the timeline within which the events have unfolded.

4. A supplementary report is thus called for bearing in mind the above observations.

5. List on 31.10.2023 to await supplementary report.

42. There was a request from the State that the constituents of the Committee be expanded to include the head of the Department of General Surgery of Madras Medical College as well and hence the Committee was re-constituted as follows:

(1)Dr.P.S.Shanthi, Head of Department of General Surgery, Madras Medical College.

(2)Dr.R.Velmurugan, Professor & Head of Pediatric Surgery Department of Institute of Child Health and Hospital for Children and

(3)Dr.D.Nirmala, Professor & Head of Pediatric Gastroenterology Department of Institute of Child Health and Hospital for Children.

43. Again adjournments were sought and on those dates, the Court noted the casual attitude of the respondents in complying with the directions of the Court. Finally a report was filed on 05.01.2024. The operative portion of the report is extracted below:

> ***REPORT ON ENQUIRY CONDUCTED BY THE COMMITTEE COMPRISING OF (i) DR.P.S. SHANTHI, HEAD OF DEPARTMENT OF GENERAL SURGERY, MADRAS MEDICAL COLLEGE (ii) DR.R.VELMURUGAN, PROFESSOR AND HEAD OF PEDIATRIC SURGERY DEPARTMENT (iii) DR.D.NIRMALA, PROFESSOR AND HEAD OF PEDIATRIC GASTROENTEROLOGY DEPARTMENT, ICH AS PER THE ORDERS ISSUED BY THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS IN NRESPECT OF W.P NO.6859 OF 2017 AND WMP NOS.7912 OF 2020 & 7436 OF 2017.***
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> *The following is the synopsis of the treatment details of the patient Vishnu as gleaned from the case sheets submitted for enquiry.*
>
> *15 year old male Vishnu s/o Sasikala Suresh went as outpatient to Mettur dam head quarters hospital Salem on 27/10/16 at 12.25 pm following complaints of vomiting and abdominal pain since that morning. He was admitted since he had abdominal pain which was severe with an IP No 12717. He was started on intravenous fluids and medications for gastritis and blood was taken for basic investigations. Blood tests revealed the presence of infection as evidenced by increased white blood cell count. Antibiotics were started and he was*

referred to the surgeon who examined him and found the patient to have tenderness in the right lower abdomen and suspected perforated appendix. Diagnosis was only made on clinical grounds since radiological facilities like ultrasound was not available there.

An emergency appendicectomy was done by the surgeon Dr Ramesh MS, DNB after getting the anesthetic fitness and the consent of the attendant and assent of the patient. Surgery revealed an inflamed appendix which was removed and sent to the lab for histopathological exam. Patient was sent to the post operative ward.

At 9pm the patient had a bout of rectal bleed. Duty medical officer consulted the operating surgeon who suggested rushing in 3 pints of intravenous fluids and a blood transfusion was also given following which the patient stabilized.

He was monitored for the next 4 days and no further untoward events were reported. On 31/10 / 16 a complete blood count was done which revealed normal results and the patient was discharged since the wound appeared healthy and there were no complaints from the patient. He was asked to come for review on the 8thpost operative day.

On the 9th post operative day (5/11/16) he sought treatment at Casualty of Salem Medical college hospital by 12.40 pm for abdominal pain, vomiting and fever of 3 days duration. On examination by the Casualty Medical Officer, he was noticed to have abdominal distension. He was admitted in the surgical ward as an emergency with

suspected peritonitis under Unit 6 of the Surgery Department. He was immediately examined by the Duty Surgeon who found that the patient had abdominal distension with tenderness. His vitals were stable on examination. Blood tests were sent for evaluation. Meanwhile the patient was put on antibiotics and his

vitals were monitored continuously. The patient had an emergency ultrasound on the same day ie, 5.11.2016 which showed inflamed and dilated bowel loops and bladder findings which possibly indicated a peritonitis with cystitis. In order to control septic complications, patient was advised third generation cephalosporins and drugs to cover anaerobic infection. The patient was administered the advised drugs and IV fluids.

On 6/11/16 he was again seen by the duty surgeon and found to have minimal improvement and was requested examination by a surgical gastroenterologist and urologist. A urine culture test was also requested. The urologist suggested a repeat ultrasound examination. On the same day the patient was seen by the surgical gastroenterologist who suggested a diagnostic laparoscopy since an infected pelvic collection was suspected by him.

The duty surgeon examined the patient on 7.11.2016 and in preparation for the diagnostic laparoscopic surgery suggested by the surgical gastroenterologist, he escalated the antibiotics to higher order on 7/11/2016.

On 8.11.2016, the duty surgeon has recorded that fever had decreased but there was a tender abdomen. He has then requested the Anaesthetist to see if the patient can safely undergo surgery. On 08.11.2016, ultrasound revealed dilated abdominal loops and collection of fluid in the pelvis suggestive of a pelvic abscess. He was continuously monitored and the patient's condition continued to be stable during this time.

On 9.11.2016, patient was afebrile, abdominal distension decreased and bowel sounds were present which indicated that the patient was improving. After obtaining anesthetic fitness and operative consent he was subjected to diagnostic laparoscopy on 10/11/16. Diagnostic laparoscopy revealed dense adhesions and peritoneal fluid collection. In order to relieve the adhesions and to

drain the infected pelvic contents the laparoscopy was converted to laparotomy and adhesiolysis and peritoneal lavage was done and the wound closed with drainage tubes in situ. The drainage tubes revealed turbid fluid which was treated conservatively with antibiotics which were changed post operatively. The patient was on intravenous fluids and antibiotics and his vitals were monitored continuously. The postoperative period seemed to have been uneventful and an ultrasound done on 14.11.2016 was normal after which he was allowed sips of fluids Liquid diet was initiated on 15.11.2016 and a surgical gastroenterologist opinion sought for wound discharge. The surgical gastroenterologist suggested conservative management. On 16/11/16, the patient was on liquid diet, IV fluids and antibiotics However patient's parents requested discharge against medical advice for reasons not stated in the case sheet at 10.30am on 16.11.2016. It has been recorded in the case sheet that the parents have absolved the hospital and the doctors of any consequences of this action. This statement by one Mrs. Sasikala(mother) indicates that the parent was aware that the treatment was ongoing and incomplete and that the responsibility for any complication arising out of this decision was theirs. On 16/11/16, the patient was taken to a private hospital (City hospital) where he was diagnosed to have an enterocutaneous fistula post appendicectomy and was suggested conservative management. The patient requested discharge at request and then went to another private hospital (Gem Hospital). On 17/11/16 he was admitted in Gem hospital where he was examined and found to have wound site infection with enterocutaneous fistula. An ultrasound examination and contrast enhanced CT test was done which confirmed the enterocutaneous fistula. He was treated with intravenous fluids, total parenteral nutrition and pig tail drainage of the left iliac fossa which was done under ultrasound guidance. Blood culture did not reveal any organism. Antibiotics were given for the wound site infection which grew the organism klebsiella. There was no drainage from the catheter in subsequent

days and the wound infection also healed completely. The patient was discharged on 1/12/16.

……..

The patient, his parents and the surgeon from Mettur were questioned as part of the enquiry on August 22nd 2023 and a report submitted stating that the medical treatment was adequate and no negligence on the part of the treating government doctors was observed since the patient was operated on the day of admission and the necrosed appendix was removed but the patient failed to come back for review which would have hastened the clearance of the infection from the abdomen and ensured early recovery. Perusal of the case sheet of Salem Medical College reveals that the treatment there was as per established protocols and adequate care was taken to ensure a safe outcome. The period of time of four days in Govt. Salem Medical College was spent in stabilizing the patient so as to ensure a safe outcome of the second surgery.

…….

(Please note: Enterocutaneous fistula is a communication between intestine and skin which is not an uncommon complication of gastrointestinal surgery). It heals spontaneously in the initial few weeks with conservative Treatment. Healing may be delayed in the presence of infection and poor nutritional status.

----------Signed----------

44. The sum and substance of the report is there has been no negligence by the professionals. The Report notes the presence of infection at the site and states that had the child returned for a review as required, the same could have been attended to appropriately. The Committee specifically states by way of a

note in conclusion, that Enterocutaneous fistula is a communication between intestine and skin which is not an uncommon complication of gastrointestinal surgery.

45. Mettur Government Hospital is an upgraded Primary Health Centre and does not have necessary medical equipment, such as equipment to take an ultrasound or scan. While normally, cases requiring surgery or advanced treatment are referred to the nearest Government Hospital, in the present case, the child had to be subjected to emergency surgery, which necessarily has to be performed in the Mettur Government Hospital itself.

46. Per the experts, it was the right decision to have retained the child in Mettur Government Hospital to perform the surgery and attend to the perforated appendix and there is thus nothing untoward in this. The bout of rectal bleed is not really explained by the Expert Committee except to state that the child was administered IV and blood transfusion after which the patient stabilized. The Court is thus unaware as to what could have caused the bleeding.

47. To be noted that R10 had stated that the child had been transferred to the regular ward which version had not tallied with the version of Dr.Karthikeyan (see paragraph 36(iv) supra). However, the records reveal a note by the attending doctor/nurse in the CMCHIS ward which establish that the child was transferred there on 30.10.2016.

48. The Enterocutaneous fistula, is explained by the Expert Committee to be a complication not uncommon to gastrointestinal surgery. The most common cause of Enterocutaneous Fistula (source: website of National Library of Medicine (National Center for Biotechnology information) – Authors Kevin B Cowan; Sebastiano Cassaro) is stated to be iatrogenic, occurring in the post-operative period. The term 'iatrogenic' is defined in (Merriam Webster Dictionary Thesaurus) as *induced unintentionally by a physician or surgeon or by medical treatment or diagnostic procedures.* Medical opinion thus points to Enterocutaneous Fistula to be a result of improper surgical intervention.

49. A Writ Court is not estopped from granting compensation as a palliative measure to victims of constitutional tort/medical negligence, if the claimant has established incompetence, negligence or rashness in arriving at decisions leading to prejudice/death caused to a patient. There is yet another class of cases where the Court may intervene and award appropriate compensation in recompense to the injury suffered. This is in cases where the version of events put forth by the respondents does not entirely convince the Court that the threshold for care, overall, have been met satisfactorily. This case falls within the latter category.

50. Undoubtedly, the facts must present themselves with utmost clarity to persuade that an infraction of a fundamental nature has been made out by the

complainant. In the present case, the report of the Expert committee appointed by the Court has stated that the traumatic events suffered by the child are not uncommon complications post an appendectomy.

51. However, the Court is not convinced that the child has received optimum care from the General Hospitals. Had there been sufficient attention devoted and timely intervention, there is a possibility that the complications may have been arrested/controlled or avoided altogether. The petitioner has taken a video of the child in the ICU post the D-lap in Salem General Hospital. The footage reveals faecal matter oozing from the site of the surgery. One thing is crystal clear. The infection in the surgical site had been left to fester far too long without proper attention. The bout of rectal bleed at the initial instance (cause not explained by the Committee) and the Enterocutaneous fistula which is defined as Iatrogenic indicate that the post-operative treatment and care was sub-par leading to the inference that the system, as a whole, failed the child.

52. The child continued to be sick after discharge. The Petitioner has stated that enquiries were made with R10 even at that juncture but the response was not comforting or such that it evoked confidence in the treatment received thus far. Hence the child had sought treatment at a private hospital and after some suffering was admitted at Salem GH.

53. The Diagnostic laparoscopic surgery (D-lap) was conducted on 10.11.2016 after conservative management of the infection. The child was then discharged against medical advice and was admitted in a private hospital. The records at the time of admission at GEM hospital on 17.11.20216 read thus:

> *The Chief complaints reads as follows:*
>
> *Pt. Underwent Lap appendicectomy*
>
> *The History of presenting illness and Treatment History as on 22.10.2016 reads as follows:*
>
> *Developed pain abdomen & distension 3 days later*
>
> *Found to have abdominal abcess*
>
> *Underwent laprotomy and adhesiolysis and abscess drainage – 2 weeks later*
>
> *Now has persistent fecal fistula e pelvic collection.*
>
> ***Course in Hospital:***
>
> *This 16 years old boy come to the hospital with the above mentioned complaints and was diagnosed to have entero cutaneous fistula (caeco-atmospheric), post appendicectomy. The patient was thin built and dehydrated with deranged electrolytes. The patient was optomised and TPN and IV fluids were given to the patient. The patient had an abcess in the left iliac fossa, for which USG guided insertion of pigtail catheter was done. Orals were started gradually, and was stepped up gradually. Pigtail catheter was removed on POD 7. Appropriate antibiotics according to culture and sensitivity was given to the patient and the SSI was managed by regular dressing care. At the time of discharge patient is taking normal oral diet passing motion. The output from the DT gradually came down. The patient is being discharged with Right DT in situ. He is better at the time of discharge.*

54. The child was discharged from GEM Hospital on 01.12.2016 and his health has been uneventful thereafter. The narration of events informs me

sufficiently to conclude that the tertiary care system in the State is undoubtedly responsible for the medical trauma that the child was put through. As a measure of compensation, the State is directed to pay the child a sum of Rs.2,00,000/- (Rupees two lakhs only) to be remitted to the bank account of the child (to be obtained by R1 from the petitioner) within a period of six (6) weeks from today.

55. That apart, the child is now aged 22 years. The Court is informed that he has registered with the District Employment Exchange. As a measure of securing his future, let him furnish the details of his qualifications and employment registration to the District Collector/R2 along with an application for appropriate employment.

56. Mandamus is issued to the District Collector/R2 to consider the application of the child and recruit him to a suitable post, subject to his being qualified for the same. Let this process be completed within a period of three (3) months from his making a requisition before R2.

57. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

26.04.2024

Index : Yes / No
Speaking Order/Non-speaking order
Neutral citation: Yes/No
Sl

To

1.The Secretary to Government,
Health Department, Tamil Nadu,
Fort St. George, Chennai.

2.The District Collector,
Salem District.

3.The Superintendent of Police,
Salem District.

4.The Sub-Collector,
Salem District.

5.The President,
The Tamil Nadu Medical Council,
No.914, P.H.Road, Arumbakkam, Chennai.

6.Joint Director,
Health Services, Salem District,
Salem District.

7.Chief Doctor,
Government Hospital, Mettur Taluk,
Salem District.

8.The Tasildhar,
Mettur Taluk, Salem District.

9.The Inspector of Police,
Mettur Dam-1, Salem District.

10. Government Mohan Kumaramangalam
Medical College Hospital Salem.

DR.ANITA SUMANTH, J.

sl

WP.No.6859 of 2017 and
WMP.Nos.7912 of 2020 & 7436 of 2017

26.04.2024