

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.5716 of 1997

Rukmani .. Petitioner

-Vs-

1.State of Tamilnadu,
rep. by its Secretary,
Health Department,
Fort St. George,
Chennai-9.

2.The Dean,
Government Hospital,
Thiruthani. .. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus as stated therein.

For petitioner : Ms.Sudha for
Mr.V.Prakash

For Respondents : Mr.P.Chandrasekaran,
Spl. Govt Pleader

:O R D E R

The petitioner seeks damages for her unwanted pregnancies, alleging medical negligence on the part of the Doctors working in the second respondent-Hospital, in performing sterilisation operation on her.

2. Even though the issue appears to be very simple to state, the point raised is novel and important.

3. The material facts as put forth by the learned counsel for the petitioner are as follows:

The petitioner having married in the year 1986 gave birth to a daughter and son by names Ammu and Dharman respectively. The petitioner and her husband are poor agricultural labourers and earn meager wages. Finding it difficult to meet the expenses for their livelihood, they decided to have family planning. Accordingly, they approached the second respondent hospital and sterilisation operation was performed on 10.10.1988. But, surprisingly,

the petitioner became pregnant in the year 1992 and gave birth to a third child, a girl by name Malini, and yet again conceived and gave birth to a fourth child, a son by name Vishnu, on 4.10.1995, and therefore, she once again underwent sterilisation on 4.10.1995, when she gave birth to the fourth child. The petitioner complains that she and her husband being poor agricultural labourers, they could not maintain the family and lead a decent and dignified life attracting Article 21 of the Constitution of India. Hence, the petitioner had preferred this writ petition for issue of a writ of Mandamus to direct the second respondent hospital to pay compensation of Rupees ten lakhs to her.

4. Supported with the counter affidavit filed by the second respondent Hospital, the learned Special Government Pleader contends that even though it is not disputed that the second respondent Hospital performed the sterilisation operation on 10.10.1988 on the petitioner by a trained and experienced Doctor, the chance of failure of 5 in 1000 cases could not be ruled out and the same was also informed to the petitioner at the time of operation itself. It was also argued that the second respondent Hospital could have terminated the pregnancy had the petitioner brought to their notice about the confirmation of the pregnancy at an early stage. As there is no proper explanation by the petitioner for her silence at the time of pregnancy of third child or fourth child, the petitioner had contributed to the alleged unwanted pregnancies and therefore, she is not entitled for damages as prayed for. In any event, it is contended by the learned Special Government Pleader that the petitioner cannot invoke Article 226 of the Constitution of India for claiming Rs.10,00,000/- as compensation, as such claim could be decided only in appropriate civil proceedings adducing relevant material evidence to substantiate her claim.

5. I have given careful consideration to the submissions of both sides.

6. The issues that arise for my consideration are

- (i) whether the petitioner is entitled for any damages for the alleged unwanted pregnancies, complaining medical negligence on the part of the Doctors working in the second respondent-Hospital; and
- (ii) whether the relief as prayed for, namely for damages, could be granted by exercising the powers conferred under Article 226 of the Constitution of India?

7.1. Issue: (i) - whether the petitioner is entitled for any damages for the alleged unwanted pregnancies, complaining medical negligence on the part of the Doctors working in the second respondentHospital?

7.2. Medical negligence, of course, plays a dual role, sometimes causing risk to the life and sometimes giving gift an unwanted child, as in the instant case.

7.3. The Apex Court in State of Haryana vs. Santra, reported in (2000) 5 SCC 182 = AIR 2000 SC 1888, held as follows:

"The medical ethics require certain duties to be performed by the

medical practitioners with reasonable degree of care and skill, failing which, such negligence of the medical practitioners working in the Government Hospitals vicariously gets shifted on the employer State.

Every Doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. This is what is known as "implied undertaking" by a member of the medical profession that he would use a fair, reasonable and competent degree of skill.

The Government at the Centre as also at the State level is aware that India is the second most populous country in the world and in order that it enters into an era of prosperity, progress and complete self-dependence, it is necessary that the growth of population is arrested. It is with this end in view that the family planning programme has been launched by the Government. The implementation of the programme is directly in the hands of the Government Officers, including Medical Officers involved in the family planning programmes. The Medical Officers entrusted with the implementation of the family planning programme cannot, by their negligent acts in not performing the complete sterilisation operation, sabotage a scheme of national importance. The people of the country who cooperate by offering themselves voluntarily for sterilisation reasonably expect that after undergoing the operation they would be able to avoid further pregnancy and consequent birth of an additional child.

Therefore, in India where the population is increasing each second and family planning is a national programme, the Doctor as also the State must be held responsible in damages if the sterilisation operation performed by him is a failure on account of his negligence, which is directly responsible for another birth in the family, creating additional economic burden on the person who had chosen to be operated upon for sterilisation. The vicarious

liability of the State for the negligence of its officers in performing the sterilisation operation should be seen keeping in view the law settled by the Supreme Court."

7.4. The above view is also supported by the decision in REES Vs. NHS TRUST reported in (2002) 2 All ER 177.

7.5. Issue (i) is answered in positive.

8.1. Issue: (ii) - whether the relief as prayed for, namely for damages, could be granted by exercising the powers conferred under Article 226 of the Constitution of India?

8.2. Even though the petitioner is entitled for damages for the alleged unwanted pregnancies, alleging medical negligence on the part of the Doctors working in the second respondent-Hospital, I do not see valid reason for the silence on the part of the petitioner when she conceived her third child in the year 1992, when the sterilisation operation was performed on her on 10.10.1988, which would have at least prevented the fourth pregnancy. That apart, as contended by the learned Special Government Pleader, the petitioner

could have brought to the notice of the Doctors about her pregnancy at an early stage. In any event, as rightly pointed out by Mr.P.Chandrasekaran, learned Special Government Pleader, the claim for damages could be granted only in appropriate civil proceedings or in a proceedings before the Consumer Forum by adducing relevant material evidence proving negligence on the part of the Doctors working in the second respondent-Hospital, for which the second respondent-Hospital is vicariously liable.

8.3. Hence, except to permit the petitioner to seek appropriate relief either before the competent civil Court or Consumer Forum, as the case may be, no relief could be granted. It is made clear that in the event the petitioner seeks appropriate relief before the competent civil Court or Consumer Forum, the same shall be dealt with independently based on the evidence to be adduced by both the parties without being prejudiced by any of the findings of this Court in the above writ petition.

8.4. Issue (ii) is answered accordingly.

In the result, this writ petition is disposed of accordingly. No costs. Consequently, W.M.P.No.9485 of 1997 is closed.

Index : Yes

Internet : Yes

ATR/sasi

To,

1.The Secretary,
State of Tamilnadu,
Health Department,
Fort St. George,
Chennai-9.

2.The Dean,
Government Hospital,
Thiruthani.

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