
(2001) 07 DEL CK 0183
In the Delhi High Court
Case No : C.W. No. 1091/99

Shri Karma Veer APPELLANT
Vs
Union of India and others RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 07 DEL CK 0183

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Party in perso, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Petitioner, who appears in person has filed this writ petition under Article 226 of the Constitution of India pursuant to an Order of the Hon"ble Supreme Court dated 18th of December, 1998 which reads as under:

"The Writ petition is dismissed as withdrawn with liberty to move the High Court."

Pursuant to the above Order of the Supreme Court the petitioner choose to file a writ petition in this Court.

2. The petitioner has inter-alia alleged gross negligence against the Doctors working in Safdarjung Hospital, i.e., respondent No. 3. The petitioner's case is that his wife Smt. Prabha Gautam was pregnant and after 7 months of confinement was admitted to Safdarjung Hospital. During and after the delivery of his infant child, there were complications and maltreatment coupled with negligence which resulted in the death of the infant. On the basis of the said averments, the petitioner has claimed the following reliefs:

"(i) The Respondents may be directed by appropriate writ/order to pay appropriate compensation to the Petitioner for gross violation of his fundamental

rights as narrated in the facts.

(ii) The Respondents may also be directed by appropriate writ/order to take action against the guilty doctors including the registration of the F.I.R. etc.

(iii) Then, the Respondents may also be directed appropriately to weed out doctors with death records; create separate facilities for the C.G.H.S. patients at the S.J. Hospital under regular doctors, and to make the C.G.H.S. optional only, not compulsory for the Central Govt. servants.

(iv) Then, finally, the Respondents be directed to provide the needful security to the Petitioner and his family persons from such elements...."

3. The primary issue involved, Therefore, in the present writ petition which requires determination is the allegations of fact against the respondents for negligence in treatment of the petitioner's infant child. The petitioner has relied upon several international standards to contend that the treatment given to the petitioner's infant child was grossly negligent and insufficient. He has further averred that the consent given by his mother to the Hospital Authorities was obtained on a blank slip of paper so as to transfer his infant child to the incubator.

4. I am of the view that the petitioner's remedy in such a situation when essentially questions of fact are raised and evidence is required to be led, is to file a civil suit and not a writ petition. The Hon'ble Supreme Court Order dated 18.12.1998 in fact merely gave opportunity to the petitioner to move the High Court and that Order cannot be construed to mean that the petitioner was permitted to file a writ petition in this Court.

5. Accordingly, the writ petition is dismissed as not maintainable with liberty reserved to the petitioner to file a civil suit, claiming damages. There shall be no orders as to costs.