



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11111 OF 2022

Mohammad Ziyauddin Shaikh

...Petitioner

Versus

State of Maharashtra and Ors.

...Respondents

Ms. Seema Chopda a/w T.R. Yadav, for the Petitioner.

Ms. P.J. Gavhane, AGP, for the Respondent No.1- State.

Mr. Ajit Ram Pitale a/w Mr. Siddharth Pitale, for Respondent Nos.2 and 3.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 14 JANUARY 2025

Oral Order: (Per G. S. Kulkarni, J.)

1. This is an unfortunate case which is brought before the Court. The petitioner's son Master Mohd. Shehjan Shaikh was a victim of medical negligence which he suffered at the age of 2½ years in the treatment he received at the Chhatrapati Shivaji Maharaj Hospital at Kalwa, District Thane, being run by the respondent No.2 – Thane Municipal Corporation's ("TMC" for short). We need not delve into the suffering of the child, suffice it to observe that his left leg below the knee was required to be amputated. The incident had taken place in the year 2010.

2. On such backdrop the petitioner being a person of limited means and who worked as a plumber had approached the Thane Municipal

Corporation seeking compensation not only in regard to the medical negligence as suffered by his son but also the expenditure he was required to incur on his medical treatment. In these circumstances, the petitioner also approached the Maharashtra State Human Rights Commission alleging the violation of human rights and the medical negligence proved to have affected the petitioner's son with a permanent disability resulting into amputation of his leg. It appears that after knocking the doors of the TMC on several occasions, the TMC on 2 June 2014, paid an exgratia amount of Rs.10 lakhs to the petitioner. Such amount of compensation was certainly inadequate.

3. The learned Member of the Maharashtra State Human Rights Commission ("**MHRC**" for short) adjudicated the petitioner's case and by order dated 2 December 2016, considering the settled position in law in regard to violation of human rights and considering that the case was of proved negligence, as also accepted by the TMC disposed of the petitioner's complaint with a direction to the TMC to pay an amount of Rs.15 lakhs as compensation alongwith interest at 12% p.a. from the date of the order till realisation. The operative order passed by the MHRC reads thus :-

"8. In view of the foregoing discussion this Commission deems fit to make following recommendation:

- a) **Commissioner, Thane Municipal Corporation, Thane as well as Dean, Rajiv Gandhi Medical College, Kalwa, Dist. Thane to pay**

jointly and severally an amount of Rs.15,00,000/- (Rupees Fifteen Lacs Only) to the complainant as compensation, within six weeks from receipt of this order and in default to pay an interest of 12.50% p.a. on the awarded amount till its actual realization.

- b) Commissioner, Thane Municipal Corporation as well as Dean, Rajiv Gandhi Medical College, Kalwa, Dist. Thane to conduct sensitization and awareness programme amongst the senior doctors and interns attached with their hospitals in particular with recommendation made by the Committee.
- c) Medical officers right from the top to low rank should be advice to treat a patient with humanity, respect and attend emergencies on top priority.
- d) Compliance of these directions be made within six weeks and report be made to this Commission for further necessary action.

The Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the concerned departments for Information and action in accordance with the provisions of section 18(e) reproduced supra above. With these directions the case stands closed and disposed off.”

4. It is significant to be noted that in passing the aforesaid order, the MHRC had taken into consideration that the petitioner was paid Rs.10 lakhs by the TMC. The following observations in that regard are made which reads thus:-

“Thus charging the erring doctors of having defamed and malign the name of the institute because of the wide media publicity and projection explains the magnanimity on the part of TMC in initiating in opening of its charity box to complainant by paying him amount of Rs.10 lacs. But with the doctors having been found guilty and of having been imposed with the penalty does indicate that there was negligence on their part which resulted the child losing his limb, which resulted in virtually destroying his future life; his career; his aims by virtually making him a handicapped for no fault on his part. Infact, the Municipal Commissioner despite the strong recommendations of imposing major penalty on both the doctors decided to go soft by imposing minor penalty of censural only.”

5. The MHRC having passed the aforesaid order and the same being communicated to the TMC, the TMC took a position that as earlier (prior to the decision of the MHRC) as an amount of Rs.10 lakhs was paid to the petitioner, the obligation of the TMC under the orders of the MHRC would be only to pay balance of Rs.5 lakhs. This was however, oblivious to the fact that the amount of Rs.10 lakhs paid was the ex-gratia payment and voluntarily paid by the TMC to the petitioner and not under the orders passed by the MHRC. On such erroneous assumption, a communication dated 22 November 2021 was addressed by the Dean of the Respondent No.3 – Chhatrapati Shivaji Maharaj Hospital and Rajiv Gandhi Medical College to the Deputy Commissioner of the Thane Municipal Corporation inter alia recording of an alleged compliance of the MHRC order by paying a further sum of Rs.5 lakhs to the petitioner by which the orders of the MHRC were assumed to be complied. A copy of the said letter was also forwarded to the MHRC. The MHRC in pursuance thereto addressed a letter dated 22 February 2022 forwarded a copy of the said letter to the petitioner, recording that the petitioner has received the full amount as directed by the MHRC in its order dated 2 December 2016.

6. The petitioner however contends that the TMC having paid only Rs.5 lakhs after the order dated 2 December 2016 was passed by the MHRC, is not an acceptable compliance of the orders passed by the

MHRC. It is contended that in fact, it was an obligation of TMC to make the entire payment of Rs.15 lakhs in terms of the directions of MHRC as noted by us hereinabove. It is being aggrieved by such communication on the part of the TMC, the petitioner has filed the present petition praying for the following substantive reliefs:-

- “a) Issue Writ of Mandamus or any other Writ/Direction/Order in the nature of this Writ or any other Writ/Direction/Order and direct the Respondents to implement and execute the directions in its true spirit as passed by the Hon'ble Maharashtra State Human Rights Commission vide its dated 16.12.2016 in MAS no. 3461 of 2011-12 which is at Exhibit A.
- (b) to direct the Respondents to pay the balance amount of Rs.10 Lacs along with interest @ 12.50% from the date of passing of the said order.
- (c) to provide for exemplary cost to be paid by the Respondents.
- (d) This Hon'ble court may be pleased to pass any other order as would be deemed fit in the interest of justice which do include enhancement in the compensation amount assessing the circumstances in the matter.”

7. We have heard the learned counsel for the parties. On behalf of respondent nos.2 and 3, reply affidavit is placed on record of Dr. Swapnali Kadam which reiterates the stand of the TMC that the amount of Rs.10 lakhs which was paid to the petitioner prior to the decision of the MHRC needs to be accounted for in considering the compliance of the order passed by the MHRC. The relevant averment to that effect can be noted in the following paragraphs of the reply affidavit :-

- 2. I say that so far as Petitioner is concerned the Corporation has taken fair, bonafide and sympathetic stand in favour of Petitioner right from beginning. I say that it is matter of record that during the

pendency of complaint No.MAS/Case No.3461/2011-12 filed by Petitioner before Hon'ble Maharashtra State Human Right Commission, the Thane Municipal Corporation paid Rs.10,00,000/- to the Petitioner on humanitarian ground, without there being any order or directions in that regard.

3. I say that the Hon'ble Maharashtra State Human Right Commission by its order dated 02.12.2016 directed Respondents to pay jointly and severally an amount of Rs.15,00,000/- to the Complainant/Petitioner as compensation within six weeks from receipt of the order. I say that pursuant to the said order dated 02.12.2016, the Respondent Corporation paid remaining Rs. 5,00,000/- on 14.02.2017 by Cheque No.465759 which was duly accepted by Petitioner on 20.02.2017.
4. I say that the Corporation had paid Rs.10,00,000/- during pendency of MAS/Case No.3461/2011-12 before Maharashtra State Human Right Commission vide Voucher No.248 dated 02.06.2014 by Cheque No.016188. I say that pursuant to the order passed by Hon'ble Maharashtra State Human Right Commission dated 02.12.2016 directing Respondents therein i.e. present Respondents to pay an amount of Rs.15,00,000/-, jointly and severally, to the Petitioner/Complainant as compensation, and since the Respondents had already paid Rs.10,00,000/- on 02.06.2014 to the Complainant/Petitioner, the Corporation further paid remaining Rs.5,00,000/- to Petitioner on 14.02.2017 vide Cheque No.465759, in compliance of order dated 02.12.2016. It is further matter of record that by letter dated 23.02.2022 issued by the Registrar, Maharashtra State Human Right Commission informed the Petitioner inter alia reiterating that the Respondents have paid Rs.15,00,000/- to the Petitioner and have complied the order dated 02.12.2016 passed by Hon'ble Maharashtra State Human Rights Commission.”

8. Ms. Chopda, learned counsel for the petitioner has contended that this is a gross case wherein the right of the petitioner's child to live a normal and healthy life has been taken away at the young age of 2½ years and which is proved to be the negligence on the part of the Doctors working with respondent no.3. It is her contention that considering the settled principle of law, the MHRC was conscious that the amount of Rs.10 lakhs was an *ex gratia* payment being paid to the petitioner. It is

submitted that the payment of Rs.10 lakhs to the petitioner which was prior to the decision of the MHRC dated 2 December 2016, could not have been ever been accounted by the TMC in compliance of the orders of the MHRC. It is hence, her submission that the petitioner was certainly entitled to the said total amount of Rs.15 lakhs in terms of the orders passed by the MHRC without considering the earlier payment of Rs.10 lakhs by the TMC to the petitioner. It is also her contention that it is surprising for the TMC to take a stand that it will not comply with the orders of the MHRC, considering the facts and circumstances of the case, by taking a plea that full amount has been received by the petitioner considering the said *ex gratia* payment made to the petitioner. It is her submission that the position being taken by the TMC has added to the agony of the petitioner who belongs to the economically weaker section of the society and it is on such consideration that the petitioner's son has permanently lost his faculty to lead a normal life, the MHRC has passed its order in question. Being a proved case of medical negligence amounting to a serious violation of human rights, her submission is that the order of the MHRC having attained finality, and as accepted by the TMC, cannot be refused to be complied by the TMC.

9. On the other hand, Mr. Pitale would reiterate the contentions as urged in the reply affidavit. He would submit that Court needs to take into consideration the amount of Rs.10 lakhs which was paid to the

petitioner prior to the decision of the MHRC. Hence, the petitioner should be held, not entitled for any additional amount over and above, Rs.5 lakhs which was paid by TMC after the order of MHRC. Mr. Pitale has reiterated the contention as urged in the reply affidavit.

10. Having heard learned counsel for the parties and having perused the record, we find substance in the submission as urged by the petitioner. We are not persuaded to accept the contention as urged by the learned counsel for the TMC and as contended in the reply affidavit filed on behalf of the TMC, when Mr. Pitale submits that the amount of *ex gratia* amount of Rs.10 lakhs which was paid prior to the decision of the MHRC rendered on 2 December 2016 needs to be considered and/or accounted for as a payment being made, so as to comply the orders passed by the MHRC ordering Rs.15 lakhs to be paid to the petitioner. We may observe that the TMC has paid such amount of Rs.10 lakhs voluntarily, and prior to the MHRC passing the order dated 2 December 2016. Admittedly it was a *ex gratia* payment. Moreover, MHRC has also made observations in such amount being received by the petitioner and nonetheless proceeded to award payment of compensation of Rs.15 lakhs. Thus, the MHRC being conscious of the gross facts and circumstances of the case, issued directions to the Commissioner of TMC as well as to Dean, Rajiv Gandhi Medical College to jointly and severally pay an amount of Rs.15,00,000/- to the petitioner as compensation within six weeks from the receipt of the

order and, in default, to pay an interest of 12.50% p.a. on the awarded amount till its actual realization.

11. It is not in dispute that the orders passed by the MHRC have attained finality. The orders passed by the MHRC are accepted in totality by the TMC and most pertinently categorically recording the fact that the petitioner has received an amount of Rs.10 lakhs during the pendency of the proceedings before the MHRC. Further it is significant that after the decision was rendered by the MHRC on 2 December 2016 no application whatsoever was moved on behalf of the TMC before the MHRC for any clarification on such contentions as being raised in the present proceedings, if at all the TMC intended to take a position that the amount of Rs.10 lakhs as paid prior to the decision of the MHRC was required to be accounted for in compliance of the decision of the MHRC. Moreover, the TMC for a period of 8 years has not resorted to seek any clarification from MHRC. The TMC cannot be permitted to move any clarification at such belated stage, and doing so would make a mockery of process of law. Thus, the orders passed by the MHRC having being accepted by the TMC in totality, there was no question of TMC, in any manner whatsoever, not complying with such order or to wriggle out from the said order.

12. We also find serious fault in the position taken by the Dean when he addressed a letter dated 22 November 2021 to the Deputy Commissioner to include the amount of Rs.10 lakhs as paid prior to the

decision of the MHRC as an amount to be reckoned for the purpose of directions. Such stand was totally inappropriate and completely contrary to the facts. Further although the Registrar of the MHRC has addressed a letter dated 23 February 2022, however, in fact, reading of the said letter shows that it merely forwarded the alleged compliance as recorded by the Dean by letter dated 22 November 2021. In any event, such communication can never be accepted to be an order passed by the MHRC much less to vary the decision dated 2 December 2016. Thus, Mr. Pitale's reference to the communication dated 22 November 2021 and 23 February 2022 in support of TMC's stand requires to be rejected.

13. In pursuance of the order dated 8 January 2025 we are informed that the amount of Rs.14,80,000 has been deposited in this Court by the TMC. The order dated 8 January 2025 reads thus:-

- “1. We had heard the learned Counsel on earlier occasion, when Mr. Mandar Limaye, the learned counsel represented Respondent No.2-Thane Municipal Corporation (TMC). In the Order passed on 6 January 2025, we had observed that Mr. Limaye, learned counsel for Respondent No.2 would take instructions and would take a fair stand in the matter while adjourning the proceedings for today.
2. Today, TMC is represented by Mr. Ajit R. Pitale. Also reply-affidavit of Dr. Swapnali Kadam, Dean (Addl. Charge), CSM Hospital & R.G. Medical College, Kalwa, Thane Municipal Corporation, is placed on record, opposing the petition. The TMC has reiterated its stand that it had paid the amount of Rs.10,00,000/- before order in question was passed by the Maharashtra State Human Rights Commission. A copy of the reply-affidavit is also served on the learned counsel for the petitioner in Court today. She would take instructions.
3. Considering the nature of the matter, we would hear the parties. However, before we proceed to do so, we direct TMC

to deposit in this Court an amount of Rs.10,00,000/- along with interest @ 6 *per cent* per annum from the date of the order dated 2 December 2016, passed by the Maharashtra State Human Right Commission, which be deposited on or before the 13 January 2025.

4. All the contentions of the parties are expressly kept open. The deposit of the said amount would be subject to further orders to be passed by this Court.
6. Stand over to **14 January 2025 (HOB).**”

14. We have thus directed by the aforesaid order that an amount of Rs.10 lakhs along with interest at the rate of 6% p.a. from the date of the order of the MHRC be deposited and accordingly, such amount is deposited in this Court. The communication depositing the said amount addressed to the Registry of this Court is taken on record along with a copy of the Pay Order/ Demand Draft of Rs.14,80,000/-. In light of the aforesaid discussion, we are of the clear opinion that the petitioner has become entitled to the compensation as awarded under the orders passed by the MHRC dated 2 December 2016. The stand of the TMC that under such orders only Rs.5 lakhs was required to be paid by the TMC for the reasons aforesaid, was illegal and is thus rejected. The petitioner would therefore, be entitled to the balance amount of Rs.10 lakhs along with interest at the rate of 12.5% p.a. as ordered by the MHRC in its order dated 2 December 2016.

15. Before parting, we may observe that when issues as in the present case are brought before the Constitutional Court and after intervention by

an expert forum no less than the Human Rights Commission, the Court is required to be more circumspect and conscious not only to the plight of the person who had alleged violation of human rights, but who has actually suffered such violation. In the present case, the petitioner's son who was hale and hearty and who has lost one of his legs on account of clear medical negligence, as he was not attended by the concerned hospital / doctors in the medical establishment under the TMC. The consequence as suffered by the petitioner's son being very serious that of a permanent disability. It cannot be countenanced that human life is so worthless that such meager compensation ought not to be entitled to the petitioner and for the benefit of his son. The petitioner's son in the absence of such unfortunate incident would have led a normal life and God knows successful in life by enjoying normal faculties. Thus, money can never be a substitute to the sufferings which were underwent by the petitioner's son. It would thus be travesty of justice if compensation is denied in such deserving cases. Unless there is appropriate accountability fixed, things can never change. It is high time that the authorities become conscious of such basic human rights and more particularly when such rights are being dealt on day to day basis by the persons who man such medical institutions. There has to be a genuine consciousness of the basic fundamental rights which include human rights being affected in the circumstances the petitioner's son had fallen when at the mercy of the

TMC and its hospital. We appreciate the approach as adopted by the MHRC in passing the orders allowing the petitioner's application.

16. In light of the above discussion, we dispose of this petition by passing the following order:-

ORDER

- (i) The petitioner is entitled to an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) under the orders dated 2 December 2016 passed by the Maharashtra State Human Rights Commission in paragraph 8(a) at the rate of 12.5% from the date of the said orders till realization.
- (ii) The petitioner has already received an amount of Rs.5 lakhs and would now become entitled to the balance amount of Rs.10 lakhs along with interest @ 12.50% per annum from the date of the order of the Human Rights Commission.
- (iii) An amount of Rs.14,80,000/-, which is at the rate of 6% per annum as per the order dated 8 January 2025 passed by this court has been deposited, the petitioner is entitled to forthwith withdraw the said amount.
- (iv) The petitioner also becomes entitled to further interest of 6.5% per annum on this amount of Rs.10,00,000/- from the date of the orders passed by the Human Rights Commission which be paid to the petitioner by Thane Municipal Corporation within two weeks from today.

(v) The petition accordingly stands disposed of in the aforesaid terms. No costs.

(vi) The parties to act upon an operative portion of the order, which be issued to the parties.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]