

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

W.P.(C).No.20138 of 2012 (N)

PETITIONER(S):-

KANNAN DEVAN HILLS PLANTATIONS COMPANY (P) LTD.,
KDHP HOUSE, MUNNAR 685612,
REPRESENTED BY MR. SOMANADAHAN (DGM-IR)

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI.

RESPONDENT(S):-

1. SRI. MOORTHY, C.R NO.5698,
EX- WORKER, OTTAPPARAI DIVISION,
LETCHMI ESTATE, MUNNAR PSOT - 685 612.
2. INSPECTOR OF PLANTATIONS,
OFFICE OF THE INSPECTOR OF PLANTATIONS,
MUNNAR - 685 612.
3. CHIEF INSPECTOR OF PLANTATIONS,
NEAR BHARATH HOSPITAL, KOTTAYAM - 686 601.
4. LABOUR COMMISSIONER,
THIRUVANANTHAPURAM, HOUSING BOARD BUILDINGS,
4TH FLOOR, SANTHI NAGAR, THIRUVANANTHAPURAM - 695 001.

R2 TO R4 BY GOVERNMENT PLEADER SRI.R.RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT. P1 TRUE COPY OF THE ORDER DATED 03-11-2009 PASSED BY
 THE 2ND RESPONDENT.
- EXT. P2 TRUE COPY OF THE PPEAL MEMORANDUM DATED 10-12-2009
 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT. P3 TRUE COPY OF THE ORDER DATED 07-04-2011 PASSED BY
 THE 3RD RESPONDENT.
- EXT. P4 TRUE COPY OF THE APPEAL MEMORANDUM DATED 13-06-2011
 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
- EXT. P5 TRUE COPY OF THE ORDER DATED 02-04-2012 PASSED BY
 THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/

(true copy)

“C.R.”

K. Vinod Chandran, J.

W.P(C) No.20138 of 2012-N

Dated this the 03rd day of February, 2015

JUDGMENT

The petitioner, a Company owning Plantations, challenge the order of reimbursement granted to the 1st respondent, by the Inspector of Plantations, Munnar. The said order was affirmed in Exhibits P3 and P5 by respondents 3 and 4, who are the respective appellate authorities.

2. The petitioner's contention is that though they are obliged to provide certain medical facilities to its employees under the Plantations Labour Act, 1951 [for brevity “the Act”] read with the Kerala Plantations Labour Rules, 1959 [for brevity “the Rules”]; there can be no reimbursement of expenses for medical facilities availed by a plantation worker in a hospital not established under the Act or Rules. In any event, the plantation worker, who is afflicted with such medical condition, cannot seek reimbursement of medical procedures which incur high expenses and seek reimbursement of high-end medicines. In the present case it is also urged that non-medical items were directed to be reimbursed. The petitioner is

said to have paid the entire wages during the period in which the worker was under treatment.

3. The 1st respondent, who was the worker, was a permanent worker of one Leshmi estate at Ottaparai Division of the petitioner. The worker was first admitted to the General Hospital, Munnar, which is the hospital of the petitioner established under the Act and Rules; being a Group Hospital. The doctor of the General Hospital referred the 1st respondent to the Medical College Hospital, Kottayam, since the General Hospital was not equipped with the facilities to treat the 1st respondent's medical condition.

4. After treatment, the 1st respondent produced medical bills and made a claim for reimbursement of Rs.1,52,184/25. The management having not honoured such claim, the 1st respondent-worker approached the Inspector of Plantations, Munnar, who passed Exhibit P1 order. Exhibit P1 was confirmed in Exhibits P3 and P5. The authorities under the Act went on the premise that a permanent worker of a plantation, when seeking medical treatment outside the premises of the estate, then necessarily the management would have the responsibility to reimburse the expenses incurred for such medical treatment.

5. The Act, as per Section 10, speaks of provision for medical facilities for the workers and their families, which facilities are, as may be prescribed by the State Government. By sub-section (2), it is also stipulated that if any of such facilities are not provided and maintained as required by sub-section (1), the Chief Inspector may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer. Section 43 confers power on the State Government to make rules *inter alia* for provision of medical facilities.

6. The Rules of 1959, by Chapter III, provides for medical facilities, in Rules 32 to 40. Rule 32 prescribes for two types of hospitals to be provided on the basis of number of workmen employed, being Garden Hospital and Group Hospital. The provision for appointment of qualified medical practitioners and other para-medical staff is elaborately dealt with in Rules 32 to 34. In fact the provision for Operation Theatre, Physiotherapy, Labour Rooms and so on and so forth, to be provided in a Group Hospital, by sub-rule (6) of Rule 34, would indicate that all types of medical facilities are to be provided to the plantation worker and his family.

The failure to provide and maintain medical facilities as required in the Rules attract penalty under Rule 39. Rule 37 mandates that the facilities mentioned in these rules shall be free of cost to the workers and their families and shall be paid for by the plantation. There is no distinction drawn as to the illness with which the worker or his family members are afflicted nor is there a restriction of such facilities catering to only the common ailments.

7. A conjoint reading of the Act and Rules would indicate that the management is obliged to provide medical facilities to take care of every medical situation; that befalls a plantation worker and his family. Definitely, it would not lead to a situation where the management is required to provide the state of art technology in the hospitals which are established under the Rules. However, when a worker or his family member is afflicted with an ailment which requires expert treatment, not available in the hospital maintained by the management, necessarily the plantation would have to provide the same free of cost, which takes in reimbursement.

8. The learned counsel for the petitioner would submit that, such provision as presently permitted by the petitioner, would

enable a plantation worker to approach the Medical College Hospital and the hospitals run by the Government. Definitely that is a reasonable prescription; but, however, the management cannot take up a contention that they would not reimburse the expenses of high-end medicines or the expenses incurred in procedures which are essential for the diagnosis of an ailment.

9. In the present case, it is to be noticed that, the 1st respondent was a worker who had been treated at the first instance by the hospital of the petitioner itself and was referred to the Medical College Hospital at Kottayam. That the 1st respondent underwent treatment in the Medical College Hospital and had presented the bills for reimbursement cannot be disputed. Though there is no specific provision for reimbursement in the Act and the Rules, the general purport of the Act would indicate that the management is obliged to provide medical facilities to the workers and their families and for facilities not available, is also obliged to reimburse the treatment expenses especially when a worker or his family member is referred by their own hospital, established under the Act and Rules, to a Medical College Hospital, as is the situation in the present case.

10. In such circumstance, the petitioner cannot challenge the invocation of powers by the Inspector of Plantations. The Inspector has the power under sub-section (2) of Section 10 to ensure facilities not available and defray such expenses from the management. A limited exercise of that power would be the order to reimburse, the treatment expenses availed by an employee or his family; on a reference made by the Hospital of the management itself.

11. However, it is to be noticed that none of the authorities below have dealt with the exact amounts claimed under various heads. All the authorities have gone on the premise that the entire expenses claimed by the worker has to be reimbursed. One specific anomaly noticed by this Court in Exhibit P5 is that a non-medical item, having a cost of Rs.7450/-, was also directed to be reimbursed. It is not clear as to what exactly is the item and the reference to that may not be taken as an order of disallowance. The original authority would have to look at whether the same is an essential ingredient in the treatment.

12. In such circumstance, this Court is of the opinion that there can be no direction to reimburse the entire amounts

claimed and when the quasi-judicial powers of authorities appointed under the Act and Rules are invoked, necessarily there should be an adjudication of the amounts which could be treated as normally incurred for a medical treatment. Since no such consideration is evident from the order, it is deemed fit that the same be considered afresh by the original authority.

13. Resultantly, Exhibits P1, P3 and P5 are set aside. However, the setting aside of the said orders shall be on condition that the petitioner pays an amount of Rs.50,000/- [Rupees fifty thousand only] to the 1st respondent-worker, immediately. The payment made as per the directions of this Court shall be deducted from any amounts awarded by the authorities on a re-consideration of the issue, and only from such amounts awarded.

The writ petition is disposed of as above. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)