

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 19350 of 2015 (P)

PETITIONER(S):

**EMPLOYEES STATE INSURANCE KIDNEY
PATIENTS WELFARE ASSOCIATION,
KASHIMADOM, KANNUR ROAD, WEST HILL,
REPRESENTED BY ITS PRESIDENT MURALIDHARA ACHARYA,
S/O.P. KRISHNA ACHARYA, AGED 59 YEARS,
RESIDING AT KRISHNA MADOM, WEST HILL, CALICUT.**

BY ADV. SRI.SUNNY MATHEW.

RESPONDENT(S):

- 1. MALABAR INSTITUTE OF MEDICAL SCIENCES,
GOVINDAPURAM, KOZHIKODE, REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR, PIN-673 001.**
- 2. THE FINANCE DIRECTOR,
MALABAR INSTITUTE OF MEDICAL SCIENCES,
GOVINDAPURAM, KOZHIKODE-673 001.**
- 3. STATE OF MEDICAL COMMISSIONER,
EMPLOYEES STATE INSURANCE CORPORATION,
PANCHADEEP BHAVAN, NORTH SWARAJ ROUND,
THRISSUR-680 001.**
- 4. THE DIRECTOR,
INSURANCE MEDICAL SERVICES,
TRIVANDRUM-695 001.**
- 5. THE SUPERINTENDENT,
E.S.I. HOSPITAL, FEROKE, KOZHIKODE-673 001.**
- 6. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH,
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.**

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**7. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF LABOUR,
GOVERNMENT SECRETARIAT,
TRIVANDRUM-695 001.**

**8. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.**

**9. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
FINANCE DEPARTMENT, CENTRAL SECRETARIAT,
NEW DELHI-110 001.**

**R3 & R5 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC.
R4, R6 TO R8 BY GOVT. PLEADER SMT.K.T. LILLY.
R9 BY ADV. SRI.N.NAGARESH, ASSIST. S.G. OF INDIA.
ADV. SRI.JAGADEESH LAKSHMAN, CGC.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

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APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - TRUE COPY OF THE LIST OF THE MEMBERS OF THE PETITIONER ASSOCIATION.**
- P2 - TRUE COPY OF THE ESI CARD ISSUED TO SRI. MURALIDHARA ACHARYA.**
- P3 - TRUE COPY OF THE ONE OF THE REFERRAL CARDS DATED 27.05.2015 ISSUED TO SRI MURALIDHARA ACHARYA.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19350 of 2015

Dated this the 29th day of June, 2015

J U D G M E N T

The petitioner, who is a registered association under the Employees State Insurance Scheme, has come up before this Court seeking a direction commanding the 1st respondent to continue the dialysis facility extended to the petitioner's members as long as the 1st respondent remains as an empanelled hospital under the Employees State Insurance Act.

2. The petitioner association alleges that its members are persons having acute damage to their kidneys and they require dialysis thrice a week, which is being done in the 1st respondent hospital. According to the petitioner, without dialysis, its members cannot survive as the malfunctioning of the kidney would affect other internal organs. The amounts are due from the 8th respondent for the dialysis already done to its members; and on account of the same, respondents 1 & 2 informed

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them that from 26.06.2015 onwards, dialysis would not be done; it is alleged. According to the petitioner, its members cannot go to other empanelled hospitals as those hospitals are already overcrowded with existing kidney patients, who require dialysis. Hence, this writ petition.

2. Respondents 1 and 2 entered appearance.

3. Arguments have been heard.

4. The learned Government Pleader, on instructions, submitted that the responsibility for payment of treatment expenses was with the 3rd respondent till 31.03.2015; and hence, if there is any arrear, it would be the responsibility of the 3rd respondent, the State Medical Commissioner to pay off the same. However, owing to the recent decision taken by the ESI, the payment for treatment with effect from 01.04.2015 would be effected to the 4th respondent, i.e., the Director, Insurance Medical Services. It was further submitted that the Director of Insurance Medical Services

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has communicated this fact to the empanelled hospitals and assured that payment from 01.04.2015 would be effected at the earliest. It was also stated that the procedure delay is only on account of the time taken for streamlining the new system.

5. The learned senior counsel for respondents 1 and 2 would submit that they have never stopped treatment to the members of the petitioner association and they have only made a request to the members of the petitioner association to prevail upon the concerned authorities to expedite payment.

In the light of the above, respondents 1 & 2 are directed to continue the dialysis facility extended to the members of the petitioner association on production of proof regarding their entitlement to be covered by the scheme and reimbursement could be claimed by respondents 1 & 2 from the 4th respondent for such treatment with effect from 01.04.2015. It shall be the responsibility of the 3rd respondent to make payment for

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such treatment till 31.03.2015. It is hereby made clear that the treatment to any of these workers covered by the scheme, who are ailing from renal failure, shall not be delayed on account of the timely availability of funds from the 4th respondent.

The writ petition is disposed of as above.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-