

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.11219 of 2015  
and  
M.P.Nos .1 and 2 of 2015

S.Jebamani Immanuel

.. Petitioner

Versus

- 1 The Government of Pondicherry  
Rep. by the Secretary to Govt.  
Health Department  
Secretariat, Chennai-9.
  - 2 The Special Commissioner of Treasuries and Accounts  
Panagal Building  
Saidapet, Chennai-15.
  - 3 The District Adi Dravidar and Tribal Welfare Officer  
Villupuram District  
Villupuram.
- ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent in connection with the order passed by him in his Proc. 32179/12/03 dated 28.10.2010 and quash the same and direct the respondent to give medical reimbursement to the petitioner for the amount claimed by him for the operation undergone by him with 18% per annum for the delay.

For Petitioner : Mr.R.Singaravelan  
for M/s.M.Srividhya

For Respondents : Mr.V.Jaya Prakash Narayanan  
Special Government Pleader

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## ORDER

This writ petition has been filed by Mr. S. Jebamani Immanuel seeking to quash the proceedings of the 2nd respondent in Proc. 32179/12/03 dated 28.10.2010 with a consequential direction to the respondent to give medical reimbursement to the petitioner for the amount claimed by him for the operation undergone by him with 18% per annum for the delay.

2. Learned counsel appearing for the petitioner would submit that the medical reimbursement claimed by the petitioner was denied on 10.08.2010 on the ground that the hospital in which the petitioner had undergone the Arthritis surgery is Christian Medical College and Hospital, Vellore, when the same has not been approved for treatment as per G.O. Ms. No. 377 Finance (Salaries) Department dated 13.10.2005, hence, the claim of the petitioner has been wrongly refused. Assailing the approach adopted by the respondents, Mr. R. Singaravelan, learned counsel appearing for the petitioner would submit that when the Christian Medical College and Hospital, Vellore has been one of the listed hospitals in G.O. Ms. No. 400 Finance (Salaries) Department dated 29.08.2000, for Orthopaedics, it shows that the petitioner is entitled to take treatment from the said hospital. Again bringing to the notice of this Court, Annexure I, Schedule I enclosed with the said G.O., learned counsel pointed out that the said hospital is also offering Orthopaedic Surgery for Total Hip Replacement and total Knee Replacement. Therefore, the petitioner in terms of the Government order has rightly approached the Christian Medical College and Hospital, Vellore for total knee replacement and also spent a sum of Rs.1,40,162.48 from his own pocket, to meet out the immediate exigencies for disbursement of the medical bill in the hospital. On discharge from the hospital, the petitioner, along with the medical bills issued by the Christian Medical College and Hospital, Vellore for total knee replacement, submitted a detail representation for reimbursement, sadly, the respondents erroneously refused to honour the bill on the ground that the hospital where the petitioner underwent the surgery, was not in the enlisted hospital. The said approach indicates total non-application of mind of the respondents and hence sought to allow the prayer of the petitioner.

3. Heard both sides. With the consent of both parties, the petition is taken up for disposal at the stage of admission itself.

4. This Court fully agrees with the submission of learned counsel for the petitioner. The reason is, mere perusal of the G.O. Ms. No. 400 Finance (Salaries) Department dated 29.08.2000, shows that Christian Medical College and Hospital, Vellore has been shown

in Sl. No.73 as one of the hospitals for getting treatment like Cardiology, Nephrology, Neurology, Oncology and Orthopaedics. That apart, in identical cases in W.P. Nos. 8259 of 2010 and 25287 of 2013 the Hon'ble First Bench of this Court was of the view that the State cannot oppose the cases of this nature, as the medical reimbursements will have to be made by the State Government without there being any dispute, when the government servant had undertaken any treatment from reputed hospital, whether it is listed or not.

5. It is at this point of time, Mr. V. Jayaprakash Narayan, learned Special Government Pleader submitted that when there is a specific G.O. Ms. No. 400 Finance (Salaries) Department dated 29.08.2000, issued for the convenience of all the government servants and public servants making clear that 74 hospitals in the State of Tamil Nadu are listed hospitals from where treatment can be availed of, by the government staff, without choosing any one of these hospitals the petitioner ought not to have gone to Christian Medical College and Hospital, Vellore for total knee replacement surgery.

6. Again this Court finds no justification whatsoever. The reason is, as mentioned above, when the aforementioned Government order permits the government servant like the petitioner to approach the Christian Medical College and Hospital, Vellore to take treatment for Cardiology, Nephrology, Neurology, Oncology and Orthopaedics, the petitioner in my view has rightly approached the Christian Medical College and Hospital, Vellore, as it is one of the empaneled hospitals for Orthopaedics. Therefore, the request for medical reimbursement made by the petitioner ought not to have been refused. Hence, the rejection order of the respondent is liable to be set aside. In a similar circumstances, while considering almost an identical situation, in the case of K. Pankajakshan vs. The Secretary to Government Finance (Pension) Department, State of Tamilnadu reported in 2010 (4) CTC 637 and in the case of K. Mani vs. Secretary to Government, Health and Family Welfare Department, Chennai reported in (2007) 3 MLJ 34, this Court has held that it is not for any person to decide as to where they have to get treatment so long as the Government Order provides for reimbursement. If the Government order including a category of illness for treatment also in a private hospital, is read as a clarification of the earlier order as it does not introduce any new amendment but only introducing a different regime of treatment, it could have a retroactive effect so as to serve the true object and scope of the said order.

7. Almost in a similar and identical circumstances, way back in the year 1989, the Apex Court while discussing about the obligation of the State in providing health care to all its citizens, more particularly, to the Servants of the State, in the

case of Pt. Parmanand Katara Vs. Union of India and others AIR (1989) SC 2030 : (1989) 4 S.C.C. 286, has held as follows:-

"7. There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those, who are in charge of the health of the community to preserve life, so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.

8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasized and reiterated with gradually increasing emphasis on that position. A doctor at the Government Hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise, which would interfere with the discharge of this obligation cannot be sustained and must therefore, give way...."

Again in yet another decision, the Hon'ble Apex Court in the case of Chameli Singh and Ors. vs. State of UP and anr., reported in AIR 1996 SC 1051: (1996) 2 SCC 549, while emphasizing the right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter, has further held that there are basic human rights known to any civilised society and all civil, political, social and cultural rights enshrined in the universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. This Court also, while considering a bad order rejecting a similar request for availing

assistance for his treatment in a private hospital, interfered with such a bad order, following the judgment of the Hon'ble Apex Court in the case of State of Punjab and others Vs. Mohinder Singh Chawla and others AIR (1997) SC 1225: (1997) 2 SCC 83, holding that though facilities are available in the Government Hospitals timely treatment received by the persons from a private hospital cannot be ignored to accept the bills for specialized surgery for any ailment. The relevant portion reads as follows:-

" 4. ... It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government Servant has suffered an ailment which requires treatment at a specialized approved Hospital and on reference whereat the Government Servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government Servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the Hospital as an in-patient."

8. In the light of the above settled legal position, since the G.O. Ms. No. 400 (Salaries) Department dated 29.08.2000 shows that the Government have approved certain specialised advance surgeries/ treatment approving certain private hospitals from where Government employees can undergo the specialised advanced surgeries/ treatment and avail the medical assistance under the scheme and as such, when the Christian Mission Hospital at Madurai for Orthopaedics disease and the Christian Medical College and Hospital, Vellore for Cardiology, Nephrology, Neurology, Oncology and Orthopaedics diseases have been shown as accredited hospitals, there is no impediment for the petitioner to choose one of the accredited hospitals to undergo the Arthritis surgery. Hence, the refusal of the respondents for reimbursement of the medical claim by applying G.O. Ms. No. 377 dated 13.10.2005 that the said treatment was not approved is wholly untenable. Accordingly, the impugned order is set aside and the respondents are directed to sanction the permissible amount, in accordance with the rule, as claimed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. However, there will be no orders as to costs.

Sd/-  
Asst.Registrar (CS III)

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Sub Asst. Registrar

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To

1. The Secretary to Government  
Health Department  
Secretariat, Chennai-9.
- 2 The Special Commissioner of Treasuries and Accounts  
Panagal Building  
Saidapet, Chennai-15.
- 3 The District Adi Dravidar and Tribal Welfare Officer  
Villupuram District, Villupuram.

1 cc to Mr.M. Srividhya, Advocate, Sr. 21156  
1 cc to Government Pleader, Sr. 21239

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