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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)No.5219 of 2015

K.Parameshwari ... Petitioner

Vs.

1.The District Collector,
Madurai District, Madurai.

2.The Joint Director,
Medical and Rural Health Services Department,
Madurai District Headquarters,
Usilampatti, Madurai District.

3.MDIndia Healthcare Services (IPA) Pvt Ltd.,
represented by the Branch Manager,
No.27, Lakxmi Towers, 3rd Floor,
Dr.Radhakrishnan Salai,
Mylapore, Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to consider the request dated 04.02.2015 for reimbursing the amount of Rs.2,76,866.00 (Rupees Two Lakhs Seventy Six Thousand Eight Hundred and Sixty Six only) to the petitioner which was paid by her towards medical expenses under the Health Insurance Scheme, 2012 for the petitioner's husband S.Selvam working as Assistant Section Officer, Madurai Bench of Madras High Court for the surgery conducted for him for "Right Frontal Craniotomy" (Brain Tumour) within a stipulated time fixed by this Court.

For Petitioner : Mr.AL.Kannan

For Respondents : Mr.K.Guru,
Additional Govt. Pleader for R1 & R2

ORDER

This writ petition has been filed for a Writ of Mandamus directing the respondents herein to consider the request dated 04.02.2015 made by the petitioner for reimbursing the amount of Rs.2,76,866.00 (Rupees Two Lakhs Seventy Six Thousand Eight Hundred and Sixty Six only) to the petitioner, which was paid by her towards medical expenses under the Health Insurance Scheme, 2012 for her husband S.Selvam working as Assistant Section Officer, Madurai Bench of Madras High Court for the surgery conducted for him for "Right Frontal Craniotomy" (Brain Tumour) within a stipulated time frame.

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2.The petitioner's husband is working as Assistant Section Officer in Madurai Bench of Madras High Court. The petitioner sought for medical reimbursement for her husband for the brain tumour surgery incurred by him. The request of the petitioner was rejected by the second respondent by way of an e-mail dated 14.04.2015, stating that the covered procedure was not performed in the Network Hospital. Hence this writ petition.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Govt. Pleader appearing for respondents 1 and 2.

4.As rightly submitted by the learned counsel appearing for the petitioner, the issue involved is no longer *res integra*. Considering the very same issue, this Court in the order in W.P.No.8449 of 2007 (A.Nagoor Pitchai v. State of Tamil Nadu rep. by the Director, Land and Survey Department, Ezhilagam, Chepauk, Chennai -5 and others) dated 15.09.2013, was pleased to hold as follows:

> "8.In regard to the reasons as to the non inclusion of the Hospital in Government Order for denial, this Court cannot brush aside the advancement in modern medical treatment. Speciality Hospitals are established for treatment for specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive the beneficial order of the Government, solely on the ground that the said Hospital is not included in the Government Order. It cannot be so, as the Government Order should be read keeping the purpose for which the same was issued. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once,it is established, the claim cannot be denied on technical grounds as found in the impugned order. Having regard to the above lacunae in the earlier Government Order and issuance of subsequent Government Order including not only the treatment but also the hospital, I am of the view that the petitioner is entitled to claim reimbursement.
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> 4. Another learned single Judge of this Court in a decision made in W.P.No.2714 of 2007 (T), (O.A.No.5757 of 2001) dated 4.11.2011 has observed at paragraphs 5 and 6 as follows:
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> "5.When a person is struggling for life and when his family members want to save his life, no body would search for a recognised hospital for future medical reimbursement. It is not the case of the respondents

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that no surgery was performed. Having admitted that heart surgery was performed, the respondents are not correct in refusing to reimburse the medical expenses.

6.The very purpose of the health scheme is to help the ailing employees particularly when they are faced with major problems such as Heart Surgery, etc. In a similar circumstances, this Court in K.Mani Vs. Secretary to Government, Health and Family Welfare Department, Chennai and Others [2007(3) MLJ 34] and Mr.K.Balaswami Vs. Director of Pension, Chennai and Another [2007(3) MLJ 385], held that medical reimbursement should not be denied on the ground that the petitioner failed to undergo heart surgery in the hospital recognised by Government of Tamilnadu".

5.I find that the above two decisions rendered by the learned single Judges of this Court squarely apply to the facts and circumstances of the present case and consequently the petitioner is entitled to succeed based on those two decisions rendered by this Court.

6.As rightly observed by the learned single Judge in W.P.No.2714 of 2007 (T), (O.A.No.5757 of 2001) dated 4.11.2011, a person struggling for life or his family members cannot be expected at the golden hours to search for a recognized hospital to save the life of such person for immediate medical facilities. The idea to get the medical reimbursement will not certainly strike in their mind at that point of time so as to search for hospitals, which are listed by the Government as recognized institutions. Therefore, if that requirement is expected to be complied with by the ailing person or his family members, then the object of giving the reimbursement itself would be totally defeated. Therefore, I am in full agreement with the observations made by the learned single Judges of this Court in their respective decisions cited supra. Accordingly, the writ petition is allowed and the impugned order is set aside and the respondents are directed to reimburse the petitioner the amount claimed by him within a period of eight weeks from the date of receipt of a copy of this order".

5.In view of the Judgment referred to supra, this writ petition is disposed of directing the respondents to reimburse the medical expenses pertaining to the petitioner's husband within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

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To

1.The District Collector,
Madurai District, Madurai.

2.The Joint Director,
Medical and Rural Health Services Department,
Madurai District Headquarters,
Usilampatti, Madurai District.

+1cc to Mr.A.L.Kannan, Advocate Sr.No.39886

akm/27.07.15 /4p-4c/

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