IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.1408 of 2016
and
W.M.P.Nos.1185 & 1186 of 2016

N.Raja ... Petitioner

Vs.

1. The Government of Tamilnadu
   Rep. by its Secretary,
   Adi Dravidar Welfare Department,
   Fort St.George, Chennai-600 009.

2. The District Collector,
   District Collectorate,
   Perambalur District,
   Perambalur.

3. MD Indian Health Care Services (TPA) Private Ltd.,
   (Unit of United India Insurance Company Ltd.,)
   No.27, Lakshmi Towers, 3rd Floor,
   Dr.Radhakirshnan Salai,
   Mylapore, Chennai-600 004. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to its proceedings in Ref.No.GTM 00018/TNNHIS/09/2014, dated 17.09.2014 and quash the same and consequently, to direct the respondents to reimburse the medical expenses of Rs.4,18,921/- incurred by the petitioner for taking medical treatment at Apollo Hospital in Tiruchirappali.

For Petitioner : Mr.P.Valliappan
For respondents : Mr.M.Digvijay Pandian, AGP

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent pertaining to its proceedings in Ref.No.GTM 00018/TNNHIS/09/2014, dated 17.09.2014 and to quash the same and consequently, to direct the respondents to

reimburse the medical expenses of Rs.4,18,921/- incurred by the petitioner for taking medical treatment at Apollo Hospital in Tiruchirappali.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner is an Adi Dravidar and a native of Thondamadurai Village, Veppanthattai Taluk, Perambalur District. The petitioner has completed B.Sc., B.Ed., in the year 1991. In the year 1997, he joined as Secondary Grade Teacher in a Government Primary School at Ariyalur District. In the year 2009, he was promoted as a B.T. Warden and posted at S.Aduthurai, Kunnam Taluk, Perambalur District. Subsequently, in the year 2012, the petitioner was transferred to Government Boys Hostel, Pasumpalur, Veppathattai Taluk, Perambalur District and till date, he continues to work there as Warden.

2-2.While so, on 16.05.2014 the petitioner suffered a heart attack and immediately, he was rushed to the local government hospital at V.Kalathur. In the said hospital, only first aid was given and the Doctor in the local hospital informed the petitioner's wife that the petitioner should be rushed to a hospital within one hour as otherwise, he would not survive. Hence, the petitioner's wife took the petitioner to the Apollo Hospital at Tiruchirapalli, since it had all the facilities. The petitioner was admitted in Apollo Hospital at Tiruchirapalli and an Angio Blast was performed and two stents were placed on him. Ultimately, he was discharged on 30.05.2014. In the said process, the petitioner incurred a total medical expenses of Rs.4,18,921/-.

2-3.It is further case of the petitioner that earlier, the Finance (Salaries) Department issued G.O.Ms.No.243, dated 29th June 2012, introducing a New Health Insurance Scheme, 2012 for providing health care assistance to the employees of Government Departments, Public Sector Undertakings, Statutory Boards, Local Bodies, State Government Universities, Willing State Government with provision to avail assistance upto Rupees Four Lakh and consequently, appointed the United India Insurance Company Limited, Chennai, which in turn formed the 3rd respondent. The petitioner is eligible to get medical assistance under the above scheme.

2-4.After getting discharged from the hospital, the petitioner approached the 3rd respondent with a letter dated 25.08.2015 seeking reimbursement of the amount of medical expenses incurred by him for his treatment. The 3rd respondent, which is a unit of United India Insurance Company, is liable to reimburse the medical expenses as the Insurance premium is being regularly deducted from his salary. However, the 3rd respondent

issued a reply dated 17.09.2014, rejecting the request of the petitioner for reimbursement of medical expenses on the ground that he had taken treatment at a non-listed hospital and simply, directed the petitioner to approach the District Level Expert Committee for redeesal of grievance.

2-5.It is the case of the petitioner that only due to an emergency, the petitioner was rushed to the nearby Apollo Hospital, which had the facilities to treat him. When he was struggling for his life, his wife cannot be searching for an approved hospital. Hence, the rejection of the petitioner's request for reimbursement of medical expenses cannot be justified. The petitioner is not in a position to bear the huge expenses, which was paid by borrowing money from the friends and relatives. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3.The respondents 1 & 2 have filed a counter stating that on 29.06.2012, the Government of Tamil Nadu (Finance) by Government Order No.243, introduced the "New Health Insurance Scheme, 2012". The main motto of the said scheme was to provide Health Care Assistance to the Employees of Government Departments, Organisations, covered under the Scheme and their eligible Family Members through the United India Insurance Company Ltd, Chennai. The diseases and respective types of treatments, that are included under the said scheme, have been listed and the hospitals that are linked and networked by the said Scheme have also been listed out separately. It has been very clearly mentioned that in order to avail the benefits of the said Scheme, the patients should choose only those hospitals that are listed in the said Government Order. Treatment under no other hospital will be considered for reimbursement of medical expenses. Many government employees since the scheme's introduction have been benefited by this scheme immensely. In the instant case, the petitioner herein has chosen 'Apollo Hospital, Trichy' for taking treatment. Unfortunately, the said Hospital has not been listed in the Annexure III of the G.O.No.243. When that being so, the respondents could not help the petitioner in getting the reimbursement, as it has clearly been mentioned in the said GO that only the hospitals mentioned in the list should be chosen for treatment, in order to avail the benefit of reimbursement under the said scheme. Hence, the respondents 1 & 2 herein are not liable to reimbursement the amount to the petitioner. The rejection of the request for reimbursement was done solely on the basis of the above said GO, since the petitioner has not taken treatment in the listed hospital. Thus, the respondents 1 & 2 sought for dismissal of the writ petition.

4.Heard the submissions made on either side and perused the materials available on record.

5.The petitioner is working as B.T. Warden in Government Boys Hostel, Pasumpalur, Veppathattai Taluk, Perambalur District. He is holding an Insurance Policy with the 3rd respondent-Insurance company and insurance premium is being regularly deducted from his salary. While so, on 16.05.2014, the petitioner herein suffered a heart attack and immediately, he was rushed to a Government Hospital at V.Kalathur, wherein first aid was given to him. As per the advise of the Doctor at the Government Hospital, the petitioner's wife took him to the Apollo Hospital at Tiruchirapalli, where Angio Blast was performed and two stents were placed on him. The petitioner took treatment from 16.05.2014 to 30.05.2014 as inpatient. He had incurred a sum of Rs.4,18,921/- towards medical expenses.

6.The treatment taken by the petitioner is not under dispute. In my considered opinion, in the emergency the petitioner cannot be asked to search a network hospital listed out in the Government Order. The petitioner's claim for medical reimbursement was negatived by the Insurance company only on the ground that the petitioner has taken treatment in a non-network hospital. It is apt to mention that in various decisions of this Court, it has been held that the trauma undergone by an applicant for performing surgery either for himself or for his family members cannot be described at all. However, I find that the relationship between the petitioner and the Insurance Company is purely contractual. In a similar case, in W.P.No.13594 & 29192 of 2013 (K.Srinivasan Vs State Government of Tamil Nadu and another), this Court by order dated 04.09.2014 has given direction to the Government to reimburse the claimed amount. The relevant portion in the said order reads as follows:-

> "14.The Tamil Nadu Medical Attendance Rules clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. As per the said rules, the petitioners are entitled to claim medical reimbursement against the Government. Similar issue was considered by the Divisional Bench of this Court in the case reported in 2010(2) LW 90 (Star Health and Allied Insurance Co. Ltd., Vs. A.Chokkar & Another), wherein in paragraphs 25 and 26 the Division Bench held thus,
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> > "25.The Tamil Nadu Medical Attendance Rules ('the Rules' in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in

which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a non-network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself makes the network hospitals as intrinsic. However, the petitioners/claimants were also not no remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee.

26.Before taking up the individual cases, we must record that there are certain situations which may arise and in fact which have arisen, for which the Government must issue clear guidelines. This the Government has to do, since it has made the Scheme obligatory for everyone and there is automatic deduction of premium to an extent of Rs.25/- per month.

The directions are as follows:-

(i)The State shall make it clear that if for some reason, which is satisfactory, the claimant is unable to take treatment in a network hospital but has been advised or had to go to a non-network hospital, then his claim would be considered under the Rules.

(ii)If the claimant has been advised some procedure which is not covered by the Scheme, there again, it must be made clear that he can apply under the Rules.

(iii)To safeguard duplication of payment, the Government can make sure and when they apply under the Rules, that the claimant himself certifies that he has not made claim under the Scheme or vice-versa.

(iv)The State shall inform every network hospital that if it receives complaints from claimants that money was demanded for admission or for treatment, then that

hospital will be removed from the network. This warning is necessary, since, at times of crisis, the claimants will not be in a position to argue with the hospital that this is a 'cashless' Scheme. We are aware that there is an officer of the Star Health Insurance Company at every network hospital to ensure that hospitals adhere to the terms of the Scheme but, yet, it is better to make this position clear to the hospitals, since one of the questions that has arisen before us is that whether the claimants will be entitled to reimbursement if, by mistake, they pay cash.'

In the said judgment the Division Bench directed the State Government to inform every network hospital that if any complaint from claimants regarding demand of money for admission or for treatment is received, the concerned hospital will be removed from the network. In spite of such direction given by the Division Bench of this Court as early as in the year 2010, the hospitals in which petitioner's son (in W.P.No.13594/2013) took treatment and petitioner's husband (in W.P.No.29192/2013) was hospitalised, insisted for payment of amount for extending treatment, for which petitioners cannot be blamed. It is not disputed that the Government have not removed the hospitals from the approved list, which insisted to pay the amounts, as on date. Thus, the fault is entirely with the Government.

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17.In the light of the judgments cited supra, which covers the matter in issue, petitioners are entitled to succeed in their claim against the first respondent/Government. Consequently both the writ petitions are disposed of as against the first respondent/Government which direction to the first respondent/Government to sanction and reimburse the eligible medical expenses, by receiving claim from the petitioners and after ascertaining the genuineness of the claim with reference to the bills/vouchers submitted, pay the same with 9% interest from the date of remittance of amount to the listed hospitals by the respective petitioner till date of payment, within a period of four weeks from the date of receipt of copy of this order. No costs."

In the above said decision, the learned Single Judge of this Court, by following the decision of the Division Bench, has given direction to the State Government to reimburse the amount. Keeping the said decision, I have carefully gone through the factual aspects of this case. In the instant case also, in the emergent situation, it is not possible for the petitioner's wife to search for the list of network hospital. Under such circumstances, the above said decision is squarely applicable to the present facts of the case also.

7.Hence, applying the above said decision, this Court directs the 1st respondent to sanction and reimburse the medical expenses incurred by the petitioner for his treatment, with 9% interest from the date of remittance of amount to the hospital by the petitioner till the date of payment, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

ssv

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
   Government of Tamilnadu
   Adi Dravidar Welfare Department,
   Fort St.George, Chennai-600 009.

2. The District Collector,
   District Collectorate,
   Perambalur District,
   Perambalur.

3. MD Indian Health Care Services (TPA) Private Ltd.,
   (Unit of United India Insurance Company Ltd.,)
   No.27, Lakshmi Towers, 3rd Floor,
   Dr.Radhakirshnan Salai,
   Mylapore, Chennai-600 004.

+ 1 cc to Mr.P.Valliapan, Advocate SR 21689

+ 1 cc to Govt.Pleader, High Court, Madras SR 21712

scd(co)
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