

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

W.P. No. 9591 of 2015

&

M.P. No. 1 of 2015

K. Elango

..Petitioner

Vs.

1. The Secretary,
Government of India,
Department of Health and
Family Welfare CGHS (P)
Division,
Nirman Bhawan,
Maulana Azad Road,
New Delhi.
2. The Director General,
Central Government Health
Scheme (CGHS)-III,
Nirman Bhavan,
New Delhi - 110 108.
3. The Additional Director General,
Central Government Health Scheme
(CGHS)-III,
Nirman Bhavan,
New Delhi - 110 108.
4. The Additional Director,
Central Government Health Scheme,
E-2C, Rajaji Bhawan,
CGO Complex, Besant Nagar,
Chennai - 600 090.
5. The Consultant Surgical Oncologist,
Apollo Speciality Hospital,
Chennai - 600 035.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to call for the records on the file of the respondents, particularly, the 3rd respondent made in Letter No. 12017/36/2013/Chen/-CGHS.III, Directorate

General Central Govt. Health Scheme (CGHS-III) Nirman Bhavan, New Delhi, dated 30.1.2014, quash the same and consequently direct respondents 1 to 4 to reimburse to the petitioner the balance amount, i.e, the differential amount of Rs.4,23,164/- towards medical expenses incurred by the petitioner and paid to the 5th respondent to the petitioner, with reasonable interest.

For Petitioner :: Mr.C. Johnson
For Respondents:: Mr.Su. Srinivasan
Assistant Solicitor General
for R1 to R4
No appearance for R5

O R D E R

The petitioner was serving as a Judicial Member of the Central Administrative Tribunal from the year 2006 onwards. Originally, he was serving at Allahabad and thereafter, he was transferred to Madras Bench. He retired on 31.05.2011. After his retirement, under emergency situation, he was admitted on 05.06.2011 at Apollo Speciality Hospital, Chennai and after doing necessary medical checkups and investigations, a surgery was performed on him on 06.06.2011 due to the onslaught of the dreaded disease of cancer. The petitioner made a claim for a sum of Rs.5,70,180/-. However, only a sum of Rs.1,46,416/- was sanctioned. Thereafter, the petitioner was once again re-appointed as a Member (Judicial) of Central Administration Tribunal, Chennai with effect from 01.10.2013 and ever since, the petitioner continued to work in the said capacity. However, it appears that at present, he has been hospitalised again. Now, the present writ petition has been filed challenging the order passed by the 3rd respondent, rejecting the request made by the petitioner for reimbursement of balance sum of Rs.4,23,164/-, being the expenses incurred by him towards his treatment.

2. In the order impugned, two reasons have been assigned for rejecting the request of the petitioner for reimbursement. The first reason is that surgery has been done as an elective procedure and the second one being that it is not a case of advanced malignancy and therefore, the treatment undergone at a private hospital, other than the hospitals recognised by the Central Government, cannot be accepted.

3. Learned counsel for the petitioner submitted that there is no dispute regarding the bills submitted by the petitioner. When the earlier Discharge Summary was accepted, the subsequent one, also ought to have been accepted by the 3rd respondent. According to the learned counsel, the letter dated 01.07.2011, issued by the Apollo Speciality Hospital, clearly indicates the emergent situation. At present, the petitioner is languishing in the hospital and he only seeks reimbursement for

the treatment undergone by him, right from the date of surgery conducted on 06.06.2011 till his date of discharge on 19.06.2011. Learned counsel further submitted that the mere fact that the petitioner was re-appointed subsequently or the stand taken that earlier, the petitioner, instead of undergoing surgery, preferred radical radiotherapy IMRT from 03.12.2007 to 12.02.2008, cannot be a basis to reject the relief sought. It is a case of re-occurrence and therefore, according to the learned counsel, the entire approach of the 3rd respondent cannot be accepted in the eye of law.

4. On the other hand, learned Assistant Solicitor General, placing reliance upon the counter affidavit filed on behalf of respondents 1 to 3, submitted that as the petitioner has taken treatment in a private hospital, the surgery being an elective procedure and malignancy not being an advanced one, the relief sought cannot be granted.

5. By way of reply, learned counsel for the petitioner submitted that de hors the submissions made, as per the Memo issued by the Ministry of Health and Family Welfare, Government of India, dated 20.02.2009, the procedure formulated can be relaxed, in a given case, for medical reimbursement.

6. Heard both sides.

7. The petitioner claims medical reimbursement for the treatment undergone by him from 05.06.2011 till 19.06.2011. Therefore, the circumstances, which prevailed earlier, cannot be put against the petitioner to deny the reimbursement sought by him. Suffice to state that the petitioner recovered pursuant to the treatment given and that is the reason why he was re-appointed as a Member of the Central Administrative Tribunal. The letter issued by the hospital clearly states that the petitioner was admitted on 05.06.2011 in an emergency situation. It has been further stated that the need of immediate attention to save the petitioner's life and the required surgery was also explained to him. It would be relevant to extract the letter dated 01.07.2011 for better appreciation of the case:

"To Whomsoever It May Concern

This is to certify that Mr.K. Elango, 57 years male came with severe pain in the left cheek, reduced food intake and severe dehydration because of the carcinoma of the left cheek. He was admitted to the hospital on 05.06.2011 on emergency basis. The need of immediate attention to save his life and the required surgery was explained to the patient and his attenders. Patient was attended immediately and taken up for surgery on 06.06.2011. He was in the postoperative ward for 15 days and he was discharged on 19.06.2011. He was

advised to attend the out patient for further management."

When the 3rd respondent has acted upon the earlier letter, the subsequent letter cannot be read differently. Certainly, the letter indicates the urgent need for surgery. It is a case of secondary attack of cancer and the letter, in explicit terms, states about the condition of the petitioner and the emergent situation prevailing. That is the reason why the petitioner underwent the surgery. Therefore, it cannot be said that there was no advanced malignancy and the surgery performed cannot be termed as an elective procedure for the reasons aforesaid. It also does not stand to reason, when it comes to taking treatment for cancer, by differentiating it as advanced malignancy or otherwise. It is a disease, which would spread continuously at a rapid pace. Therefore, the exemption, as mentioned in the Memo issued by the Ministry of Health and Family Welfare, Government of India, dated 20.02.2009, would certainly apply to the case of the petitioner. There is also no dispute on the bills produced by the petitioner. Hence, looking from any angle, the relief sought by the petitioner cannot be denied.

8. Accordingly, the impugned order is hereby set aside and respondents 1 to 4 are directed to reimburse the balance amount, i.e, the differential amount of Rs.4,23,164/- , towards the medical expenses incurred by the petitioner, within a period of six weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of India,
Department of Health and
Family Welfare CGHS (P)
Division,
Nirman Bhawan,
Maulana Azad Road,
New Delhi.

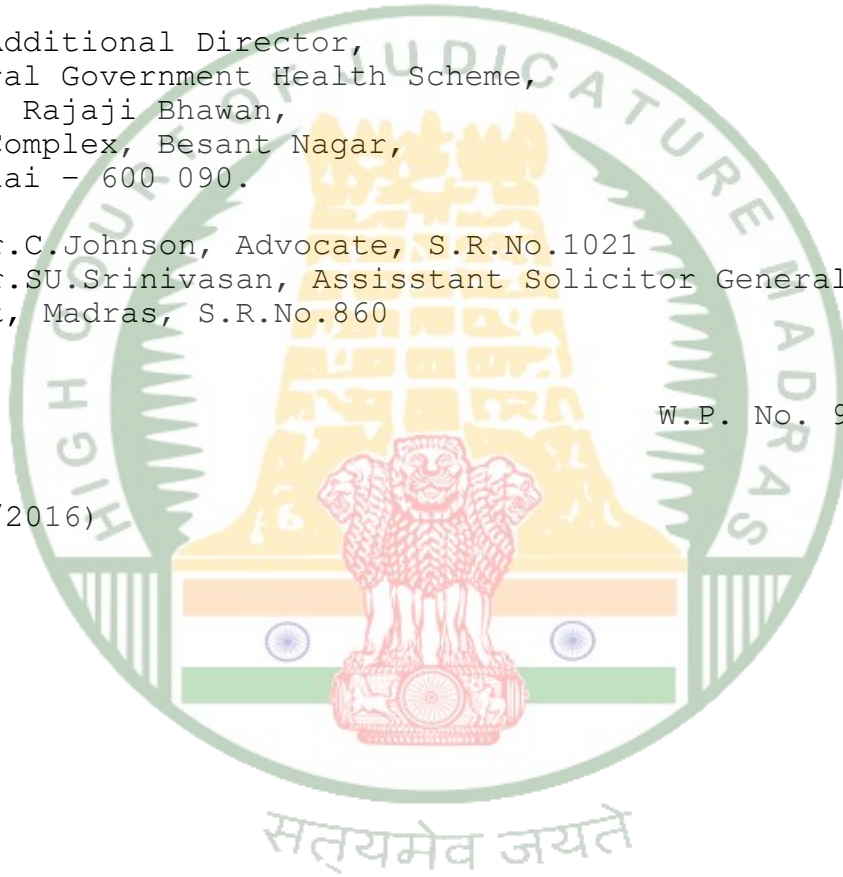
2. The Director General,
Central Government Health
Scheme (CGHS)-III,
Nirman Bhavan,
New Delhi - 110 108.
3. The Additional Director General,
Central Government Health Scheme
(CGHS)-III,
Nirman Bhavan,
New Delhi - 110 108.
4. The Additional Director,
Central Government Health Scheme,
E-2C, Rajaji Bhawan,
CGO Complex, Besant Nagar,
Chennai - 600 090.

+1cc to Mr.C.Johnson, Advocate, S.R.No.1021

+1cc to Mr.SU.Srinivasan, Assisstant Solicitor General of India,
High Court, Madras, S.R.No.860

W.P. No. 9591 of 2015

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