IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6893 of 2017
and
W.M.P.No.7482 of 2017

S.Karunanithi .. Petitioner

Versus

1. State of Tamil Nadu Rep. by its
Secretary to Government,
Department of Finance,
Secretariat, Fort. St. George,
Chennai - 600 009.

2. The Director of Treasuries and Accounts,
Second Floor, Panagal Building,
Jeenish Road, Saidapet,
Chennai - 600 015.

3. The District Collector,
Office of Collector Thirunelveli,
Thirunelveli District.

4. The Treasury Officer (PO)
District Treasury,
Thirunelveli Town and District.

5. The United India Insurance Company Ltd.,
Divisional Office - 010600,
5th Floor, P.L.A.Rathina Towers,
No.212, Anna Salai, Chennai - 600 006. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of CERTIORARIFIED MANDAMUS, to call for records of third respondent pertaining to proceedings Na.Ka.No.8685/2014/N1 dated 08.08.2014 and Na.Ka.No.13146/ 2016/N1 dated 24.08.2016 and quash the same and direct the respondents 1 to 3 disburse with the medical expenses amount under the New Health Insurance Scheme 2014 for pensioners (including spouse)/Family Pensioners to the petitioner within the stipulated time.

For Petitioner : Mr.P.Thiagarajan

For Respondents : Mr.K.Dhanajeyam
Special Government Pleader for R1 to R4
Mr.P.Sankaranarayanan for R5

O R D E R

The denial of medical reimbursement is the grievance set out in this writ petition and the order of rejection of the claim of the writ petitioner was issued in proceedings dated 24.08.2016. The reason for rejection of medical claim of the writ petitioner is that the hospital in which he took treatment is not a listed and approved hospital as per the Government order. Since the writ petitioner has undergone the treatment in an unapproved hospital with unapproved procedures, the claim for medical reimbursement was rejected.

2. The learned counsel appearing for the writ petitioner contended that the writ petitioner is a member of the New Health Insurance Scheme and the monthly premiums are deducted / recovered from the monthly pension of the writ petitioner. Accordingly, he is eligible for medical reimbursement for the treatment undergone. Though a copy of the discharge summary issued by the hospital has not been enclosed in this writ petition, the learned counsel appearing for the writ petitioner has taken this Court to Para No.4 in the affidavit, wherein it is stated that the petitioner's wife developed with odontogenic tumour and diagnosed Desmoplastic Ameloblastoma. In view of the diagnosis, the petitioner's wife was recommended to undergo immediate surgery. The Doctor had opined that the "tumor is aggressive, which cannot be treated with medication and will continue to grow and destroy the entire bone and can extend into the skull base and can also become life threatening". In view of this urgency, the wife of the writ petitioner was admitted in the hospital and undergone surgery as per the medical opinion offered.

3. After discharged from the hospital, the writ petitioner submitted an application, seeking medical reimbursement under this scheme. The same was rejected on the ground that the hospital was not an approved one in which the petitioner took medical treatment and the procedure followed was also not adopted as per the Government order.

4. The learned counsel appearing for the United India Insurance Company submitted that the Insurance Company will settle the medical reimbursement claims only based on the terms and conditions of the contract and not otherwise. Further, it

was argued that in such circumstances, the Government has to settle the medical claims, because the writ petitioner is a State Government pensioner and the liability of the Insurance Company is limited to the extent of honouring the terms and conditions of the contract.

5. The nature of medical scheme is bipartite, in view of the fact that the writ petitioner had served several years as a government employee with the state government and the state government issued orders in order to provide certain medical facilities to its servants and retired employees. In turn, the task of settling the medical claims is entrusted with the insurance companies. Thus, the nature of transaction is to be viewed in this perspective. It is not disputed that the insurance company is receiving the monthly subscription / premium from the members of the medical scheme. Therefore, the liability attached to the scheme cannot be disagreed nor the contention of the insurance company by merely saying that they will go only by the terms, can be accepted, in view of the fact that ultimately, the medical benefits ought to be settled in favour of the employees and in view of certain procedural difficulties between the government and the insurance company, the right of medical reimbursement cannot be delayed or denied to the victims.

6. Right to life is a fundamental right enshrined in Article 21 of the Constitution of India. The Hon'ble Supreme Court of India, time and again, reiterated and emphasised that the right to life cannot be interpreted as a mere animal life and it is decent life which is to be ensured. Enlarging the scope of Article 21 of the Constitution of India, the Hon'ble Supreme Court went one step ahead and held that, providing medical facilities by the State is also to be included in right to life, thus, the medical facility to be extended to all the citizens of this great nation is also a right to life enshrined under the Constitution. The case on hand is to be considered in this perspective.

7. When the Courts have repeatedly held that the medical reimbursement is also included under Article 21 of the Constitution of India, denial of the same to be construed as violation of fundamental rights. Therefore, the Constitutional Courts cannot deal with the violation of the fundamental right of a citizen in a routine manner. Infringement of the statutory right is to be distinguished from the violation of the fundamental rights of the citizens. For instance, preventive detention would be treated as violation of right to life under Article 21 of the Constitution of India. The Courts have to rescue the citizens, who are put in violation of fundamental rights ensured.

8. The State in this regard should be a model employer and the insurance companies, as a State, also have a duty to deliver the schemes promptly. They cannot escape from the clutches of law on mere technicalities. This Court is aware that many countries in this world are settling the accident claims and medical insurance in advance soon after the persons are treated or met with an accident. Such a practice is not prevailing in our country for various reasons. But the constitutional goal is to achieve such a result and we should thrive towards achieving the same. This Court is of the opinion that any accident victim / medical victim has to be provided with immediate assistance by the State as well as by the insurance company. Contrarily, it is painful to observe that the insurance company and the Government think that they are not liable, despite the fact that the huge amounts of premium are collected and millions of rupees are lying in the accounts of such insurance companies. When the insurance companies are not ready to settle the claim in favour of such victims, this Court is wondering in what manner, they are going to utilise this amount for the betterment of this great nation. This court is anxious to express its concern in this regard and it is for the authorities to think over and act promptly in such cases of medical reimbursement / accident victims.

9. No doubt, it is the duty of the respondent to find out the genuinity of the treatments undergone by the petitioner and undoubtedly, it is the duty of the writ petitioner to establish that he had undergone the medical treatments and suffered monitory loss. Once the genuinity of the medical treatments undergone is established, then it is the duty mandated on the part of both the insurance company as well as the Government to see that the claims are settled in time without any further delay.

10. In this writ petition, this Court is able to see that the aged pensioners are driven to this court through this writ petition in order to get their medical reimbursement. Driving such aged pensioners to the Court by the respondent ought to be deprecated. Even after such aged pensioners have filed writ petitions, at the minimum the respondents ought to have considered the same soon after they receive notice from the High Court. Instead of doing so, they are postponing the case or seeking adjournments in order to prolong the issue, which is also to be deprecated. The respondents seeking frequent adjournment in such cases is to be viewed seriously and, the adjournments in this regard could only be an exception and can never be a rule. But this Court is frequently witnessing that such routine adjournments are obtained on one pretext or other, in order to delay such claims more specifically, medical reimbursement / accident claims.

11. The learned counsel appearing for the insurance company submitted a judgment of this Court passed on 27.02.2017, in which this Court directed to settle the medical reimbursement by the government, since the insurance company is not liable to settle as per the terms and conditions of the contract. This will have far reaching implications, in view of the fact that this is a bipartite agreement between the Government and the Insurance Company and such bipartite agreement was entered only for the welfare of the employee of the government, both in service and retired.

12. In the present case, the writ petitioner is a state pensioner. The bipartite agreement between the Government and the Insurance Company cannot violate or cannot take away the right of the petitioner from receiving the medical reimbursement in time. In other words, it is between the Government and the Insurance Company to settle the disputes in this regard, and under this pretext, neither the Insurance Company nor the government shall take furthermore time, so as to deny the medical claim to the pensioners. Thus, this Court is of the firm opinion that the denial of medical reimbursement to the petitioner is certainly a constitutional violation and the attitude of the respondents both the Government and the Insurance Company are not to be appreciated.

13. The officials concerned have got a public duty to see that such claims are settled in time and without further delay. The Court, time and again, repeatedly rendered judgments to settle all such claims in time irrespective of Court's orders. The authorities concerned are portraying insensitiveness in settling the medical reimbursement / accident claims. Therefore, the order of rejection cannot be sustained and the Insurance Company cannot plead that they are not liable and it is the joint liability of the Government as well as the Insurance Company and the internal differences or controversy are to be sorted out between the Government and the Insurance Companies and because of that, the right of medical reimbursement can never and ever be delayed to the victims, who had undergone the treatments. In this view of the matter, the impugned order is quashed and the Insurance Company / the 5th respondent, The United India Insurance Company Ltd., Divisional Office - 010600, 5th Floor, P.L.A.Rathina Towers, No.212, Anna Salai, Chennai - 600 006, is directed to settle the medical reimbursement claim of the writ petitioner within a period of two weeks from the date of receipt of a copy of this order and if there is any controversy in this regard with regard to the settlement of this money, the Insurance Company is at liberty to take the matter to the Government for appropriate remedy.

14. Accordingly, the Writ Petition stands allowed. However, no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cgi/kas

To

1.The Secretary to Government,
Department of Finance,
Secretariat, Fort. St. George,
Chennai - 600 009.

2. The Director of Treasuries and Accounts,
Second Floor, Panagal Building,
Jeenish Road, Saidapet,
Chennai - 600 015.

3. The District Collector,
Office of Collector Thirunelveli,
Thirunelveli District.

4. The Treasury Officer (PO)
District Treasury,
Thirunelveli Town and District.

5. The United India Insurance Company Ltd.,
Divisional Office - 010600,
5th Floor, P.L.A.Rathina Towers,
No.212, Anna Salai, Chennai - 600 006.

+1cc to MR.P.Sankaranarayanan, Advocate SR.No.419026
+1cc to Mr.P.Thiagarajan, Advocate SR.No.48928
+1cc to the Government Pleader SR.No.49715

W.P.No.6893 of 2017

CP(CO)
GN(01/08/2017)