IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 20.03.2017

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition No.2049 of 2017

M.Gopal ... Petitioner

vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Finance (Salaries) Department,
Chennai.

2. United India Insurance Co., Limited,
Rep. by its Divisional Manager,
010600, 5th Floor, PLA Rathna Tower,
212, Anna Salai, Chennai-6.

3.MD-India Health Care Services
(TPA) Pvt. Ltd.,
(New Health Insurance Scheme, 2016 for
Employee of Government Departments and
Organizations covered under this Scheme),
"Guna Complex",
No.443, Anna Salai,
Teynampet,
Chennai 600 018.

4. The Madras Medical Mission,
4-A, Dr.J.Jayalalitha Nagar,
Mogappair,
Chennai 600 037. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the 2nd and 3rd respondent to issue

an "Authorization Letter" to the 4th respondent as per its request dated 07.12.2016 enabling the petitioner to avail Cashless treatment under the New Health Insurance Scheme, 2016 in respect of the treatments/surgeries advised on the petitioner by the 4th respondent within a time frame as may be fixed by the Court.

For Petitioner : Mr.M.T.Arunan

For Respondents-1 and 3 : Mr.K.Rajendraprasad, Government Advocate

For Respondent-2 : Mr.R.Sankaranarayanan

For Respondent-4 : No Appearance

O R D E R

The petitioner herein, who is serving as Head Constable in the Highway-Patrol Wing of the Paramathi-Vellore Police Station, has filed this Writ Petition seeking issuance of a direction to Respondent Nos.2 and 3/Insurance Company and Agency to issue the Authorization Letter in favour of the 4th Respondent/Hospital, enabling the latter to proceed with the treatment to be given to the petitioner, who is a chronic heart patient already underwent Bypass Surgery and now suffering from coronary heart disease called Ischemic Cardiomyopathy.

2. The Government of Tamil Nadu, in an endeavor to provide health care assistance on a 'cashless model' to its employees in the Government Departments, Public Sector Undertakings, Statutory Board, Local Bodies and State Government Universities, etc. and also the eligible family members of those employees, implemented the New Health Insurance Scheme 2016 (in short, NHIS-2016) through G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016, providing medical assistance upto the limit of Rs.7.50 lakhs for diseases listed out in Annexure II-A thereof, in a block of four years under the Scheme.

3. Learned counsel for the petitioner, after referring to the features of the NHIS-2016, would submit that the petitioner, who had joined the Tamil Nadu Police Service in the year 1993 as Grade-II Constable and later promoted as Grade-I Constable and presently serving as Head Constable in the Highway-Patrol Wing attached to Paramathi-Vellore Police Station, has been suffering from heart ailments for

the past 15 years. He was performed Bypass Surgery at R-4/Madras Medical Mission in the year 2003, for which, a sum of Rs.2,00,000/- was spent and the same was paid by the Government of Tamil Nadu directly. The petitioner, who is presently 42 years old, even after undergoing the bypass surgery, is not completely cured of the heart disease since he is still suffering a lot of pain and undergoing mental agony due to prolonged illness. While so, during 2016, his heart ailment aggravated further, whereupon, he approached the 4th respondent/Specialized Hospital for Cardio-vascular Diseases. He was diagnosed to have a peculiar/uncommon heart ailment, because of which, he has heart beat at the rate of 30 per minute as against the normal rate of 80 per minute, thus, his life is in imminent danger. It is only to treat such uncommon and rare heart disease, the 4th respondent/Hospital advised the petitioner to immediately undergo a Coronary Angiography Test, Radio Frequency Ablation Using Ensite and Permanent Pacemaker Implantation (AICD) and the treatment

expense was estimated as Rs.6,60,550/-.

4. After so submitting, learned counsel for the petitioner would contend that the petitioner, from whose salary a sum of Rs.180/- per month is being deducted towards the premium payable under the NHIS-2016, approached the 4th respondent/Hospital to provide him cashless treatment under the NHIS-16. Since pre-authorization is required to be obtained by the Hospitals from the 3rd respondent before proceeding with the treatment/surgeries under the Cashless Model provided by the NHIS-2016, vide letter, dated 07.12.2016, R-4/Hospital addressed the 3rd respondent, which is the agent of the 2nd respondent /United India Insurance Company, entrusted by R-2 with the work of providing approvals for treatments/surgeries. But R-3, by reply dated 08.12.2016, denied authorization by stating that the illness is not covered under the Scheme and, as a consequence, R-4 is insisting upon the petitioner to meet the medical expenses personally. According to the learned counsel, when the very ailment for which

treatment is sought to be pursued by the petitioner is very well covered by the Scheme as per Annexure-IIA thereof and further, the 4th respondent also being one of the Network Hospitals coming under the realm of the Scheme, the denial of authorization by R-3/Agency of R-2/Insurance Company is a clear arbitrary action. By pointing out the aspect that the petitioner is battling for his life with feeble and fragile heart condition and that if he does not receive the treatment timely, anything untoward may happen to him, learned counsel pleaded that this is an exceptional case which deserves a positive direction, as prayed for.

5. Per contra, learned Government Advocate appearing for the first respondent would submit that, no doubt, the petitioner had approached the 4th respondent/Hospital, which is a Network Hospital under the Scheme for the Coronary Angiography Test and Cardiac ailment Surgery and AICD (**Automated Implantable Cardioverter Defibrillator**), at a cost of

Rs.7 lakhs approximately for the said surgery. Under the NHIS-2016, the Network Hospital, before proceeding with the treatment, should obtain the approval of the Insurance Company, enabling the patient/Government Employee to avail the Cashless Scheme. In the instant case, the line of treatment, on examination, was found by the Agency as not the one covered under the Scheme and hence, the claim could not be admitted by the Insurance Company. According to the first respondent, AICD is a device implantable in the body able to perform cardioversion, however, the same not being a Permanent Pacemaker and only a Defibrillator, the request came to be rejected. Further, the opinion offered by the Government Doctor/Associate Professor of Cardiology – Dr.M.A.Arumugam is also to the effect that usually, Permanent Pacemaker Implantation is not equated with AICD which is defibrillator. Accordingly, the case of the petitioner not being covered by the NHIS-2016, his claim was rightly rejected; hence, the writ petition deserves to be dismissed, he argued.

6. Learned Standing Counsel appearing for the Insurance Company, by stating that the Insurance Company is not liable for reimbursement to the employees who resort to unapproved procedures, would submit that both Coronary Angiogram as well as Radio Frequency are diagnostic procedures not covered under the Scheme and also, AICD is not considered as a pacemaker implantation. Therefore, the Insurance Agency and Company are absolutely right in denying the plea of the petitioner, he stated.

7. This Court, after examining the Scheme in question as well as the claim and counter-claim of both sides, hardly finds any substance in the justification given by the respondents to reject the claim of the petitioner, for the following reasons.

8. It is an admitted case that the petitioner is a subscriber to the NHIS-2016 and the monthly premium is being deducted from his salary, that the 4th respondent/Hospital is a Network Hospital

within the realm of the Scheme and that the amount sought to be claimed is also within the limit prescribed therein. In order to find out as to whether the ailment falls under the categories provided by the Scheme, Annexure-II/Category-A can be usefully referred to and the same is given below:

" **CARDIOLOGY AND CARDIO THORACIC SURGERY**

Heart Surgery including

(a) Coronary By-pass Surgery (CABG)

(b) Valve Replacement and Other Valvulo Plastics

(c) Correction of all congenital Heart Diseases

(d) Angioplasty and PTCA Stent

(e) Baloon Valvuloplasty

(f) **Permanent and Temporary Pacemaker Implantation**

(g) Embolectomies for Peripheral Artery Embolism

(h) Surgeries for Repair of Aneurysm

(i) Enhanced External Counter Pulsation Therapy (EECP)"

Further, **Annexure-IIA – List of Specified Illness for the Enhanced Limit of Rupees Seven Lakh and Fiffy**

Thousand, contains the following category under the Column 'Name of Diseases, Treatments and Surgeries' -

"Complex Open Heart Surgeries and **Implants**"

A combined reading of both the above Annexures under the Scheme would make it clear that the treatment and surgery involving implantation have been recognized in a broad manner under the Scheme. In other words, when therapeutic procedures like Angioplasty/PTCA Stent/Baloon Valvuloplasty are categorized in Annexure-II, it is not known why the Insurance Company/Agency are so keen to constrict the scope and range of the Scheme by smartly dissecting a combined procedure involving both diagnostic procedure and treatment, for depriving the petitioner of availing the life-saving treatment. In fact, it is not even denied by the Insurance Company, in their counter affidavit, that AICD is a device implantable inside the body to perform cardioversion (**a medical procedure by which an abnormally fast heart rate is converted to a normal rhythm using electricity or**

drugs) and defibrillation, (***stopping of muscle contraction in the heart by administering a controlled electric shock, to allow restoration of the normal rhythm)***. Hence, the requirement to implant a device inside the body of the patient/petitioner is never denied by any of the respondents.

9. Even though an attempt was made to thwart the claim of the petitioner through the opinion offered by Cardiologist-Dr.Arumugam, on a perusal of the copy of the opinion offered by him, it is seen that the Report is so shallow that except to state that AICD is equated with Permanent Pacemaker Implantation, there is no direct reason therein, either stating that the question of implanting a device does not involve in the treatment procedure or opining that what was claimed by the petitioner does not fall under the scope of the policy. Therefore, it is highly unsafe to rely on such superficial Report.

10. This Court has also perused the earlier observation made in this matter on 03.03.2017. While adjourning the matter to 10.03.2017, it was observed that in the interrugnum period, if anything happens to the petitioner, the 1st respondent/State may be held liable and responsible. But, in spite of such sharp observation, it is not known why, till date, the first respondent is not able to give clear-cut instructions in this case where the life of the petitioner, who is none else than the employee of the State, is at imminent risk and he is in acute need of immediate medical treatment. His previous medical history reveals that he has been suffering from heart ailment for the past 15 years and despite having undergone a by-pass surgery, the illness got aggravated and, only by taking up the treatment advised by the 4th respondent, he could save his precious life. This Court, on perusing the Rejection Report of the Insurance Agency, finds that it is an one-line rejection order to the effect "illness procedure not covered hence denied". Vital factors

like, medical history of the policy-holder, intensity of the ailment, urgency for pursuing the treatment, etc. have not at all been taken into account. One thing is apparently clear that the endeavor of the Insurance Agency was only to deprive the benefit of the policy which the petitioner seeks to save his life. Therefore, when the estimated claim for the procedure and treatment is Rs.6,60,550/-, which is below the limit of Rs.7 lakhs prescribed under the Scheme, this Court finds no impediment in the way of the Insurance Company to accede to the request of the petitioner.

11. Thus, on an overall assessment, this Court is of the view that the respondents are absolutely unjustified in denying the plea of the petitioner for pursuing treatment through Cashless Scheme under NHIS-2016. Accordingly, the 2nd respondent/Insurance Company is hereby directed to issue the authorization letter to the 4th respondent for the cashless treatment of the petitioner under NHIS-2016, within two days from the date of receipt

of a copy of this order. Writ Petition is ordered accordingly, however, there will be no order as to costs.

20.03.2017.

Index : Yes / No.
Internet : Yes / No.

To

1. Secretary to Govt.,
Finance (Salaries) Department,
Chennai.

2. Divisional Manager,
United India Insurance Co., Limited,
010600, 5th Floor, PLA Rathna Tower,
212 Anna Salai, Chennai-6.

3.MD-India Health Care Services
(TPA) Pvt. Ltd.,
"Guna Complex",
No.443, Anna Salai,
Teynampet,
Chennai 600 018.

T. Raja, J.

Pre-Delivery Order in
W.P. No.2049 of 2017.

20.03.2017.

Pre Delivery Order in W.P. No.2049 of 2017

To
The Hon'ble Mr. Justice T.Raja

Most respectfully submitted,