

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04-09-2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19975 and 40877 of 2016

M.Madan .. Petitioner in WP 19975/2016
Y.Lazar .. Petitioner in WP 40877/2016

Versus

1. Government of Tamilnadu,
Rep. by Secretary to Government
Health and Family Welfare Department
Secretariat,
Chennai - 600 009.
 2. The United India Insurance Company Ltd,
Divisional Office,
5th Floor, PLA, Rathna Towers,
212, Anna Salai,
Chennai - 600 006.
 3. M.D.India Health Care Services
(TPA), PVT Ltd,
No.27, Lakshmi Towers,
3rd Floor, Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
Represented by its Senior Manager - Operations
 4. The Commissioner of Treasuries and Accounts,
Chennai - 600 015.
 5. Ganga Medical Centre & Hospital Pvt Ltd,
313, Mettupalayam Road,
Coimbatore - 641 043
Represented by its Medical Director. .. Respondents in WP 19975/2016
1. Government of Tamil Nadu
Represented by Secretary to Government
Finance (Pension) Department,
Secretariat,
Chennai - 600 009.

2. The Director of Treasuries and Accounts,
Chennai - 600 015.
3. The Director of Pension,
D.M.S. Campus,
Chennai - 600 006.
4. The Director of Medical and Rural
Health Services,
Chennai - 600 006.
5. The District Collector Chairman,
District Level Committee,
Thiruvallur District,
Thiruvallur.
6. M/S.M.D.India Health Care
Services (TPA) Private Limited,
No.27, Lakshmi Towers, III Floor,
Dr.Radhakrishnan Salai
Mylapore,
Chennai - 600 004. ... Respondents in WP 40877/2016

WP 19975/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to reimburse to the petitioner a sum of Rs.61,800/- with interest being the balance of Medical Reimbursement due to the petitioner.

WP 40877/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to grant Medical Reimbursement to the petitioner the sum of Rs.2,00,000/- towards her medical claim with interest at 18% per annum for delayed payment and disburse the same.

For Petitioner in both Wps : Mr.J.Muthukumaran

For Respondents-1 & 4
in WP 19975/2016 : Mr.K.Dhananjayan,
Special Government Pleader.

For Respondent-2 in
WP 19975/2016 : Mr.P.Sankaranarayanan

For Respondent-5 in
WP 19975/2016 : Mr.A.Mohamed Ismail

For Respondents-1 to 5
in WP 40877/2016

: Mr.K.Dhananjayan,
Special Government Pleader.

For Respondent-3 in
WP 19975/2016

: No Appearance

For Respondent-6 in
WP 40877/2016

: No Appearance

C O M M O N O R D E R

The relief sought for in these writ petitions is for a direction to direct the respondents to honour the medical reimbursement claims.

2. The learned counsel appearing for the writ petitioners states that the writ petitioners are members of the Health Scheme and paying the monthly subscriptions. Thus, the writ petitioners are eligible to claim medical reimbursement under the Health Scheme.

3. However, the treatment had not taken in the listed hospital. On that ground, the claim of medical reimbursement is not considered. The learned counsel for the writ petitioners further states that the writ petitioners have taken treatment under emergent circumstances and therefore, their claim cannot be denied on account of these procedural violations and technicalities.

4. The learned Special Government Pleader appearing on behalf of the respondents, states that the hospitals which are not listed are not approved under the Health Scheme and if the treatment is taken in a hospital which is not listed, the respondents will not be in a position to honour the claim of the writ petitioners.

5. This Court is of the view that all these procedural aspects in respect of medical claim are available in the Scheme. However, the genuinity of the treatment alone is to be verified by the Competent Authorities.

6. Persons may be admitted in hospitals on account of certain emergent circumstances or otherwise. In all such cases, it may not be possible for the patients to get admitted after

finding the list of hospitals under the Health Scheme. Normally patients will be admitted in the nearby hospital or in a Speciality Hospital as per their convenience and choice. Under these circumstances, the genuinity of the treatment alone is to be verified by the Competent Authorities and not the hospital in which the treatment is taken. The principle regarding these aspects were time and again followed by the Apex Court and various other High Courts and directions were issued to disburse the medical reimbursement claim.

7. 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 includes a decent life in the Society and the same is to be ensured by the State. By 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 the right to life under Article 21. Thus, medical facilities have to be extended to all the citizens of this Great Nation and the same is the part of Constitutional Guarantee. The cases on hand are to be considered in this perspective.

8. 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 is 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.

9. 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.

10. No doubt, it is the duty of the respondents to find out the genuinity of the treatments undergone by the writ petitioners and undoubtedly, it is the duty of the writ petitioners to establish that they had undergone the medical treatments and suffered monetary 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.

11. This Court is able to see that the aged pensioners are driven to this Court through these writ petitions in order to get their medical reimbursement. Driving such aged pensioners to the Court by the respondents 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.

12. In both the cases, the writ petitioners are State pensioners. The bipartite agreement between the Government and the Insurance Company, cannot violate or cannot take away the right of the writ petitioners from receiving the medical reimbursement in time.

13. The officials concerned have got a public duty to see that such medical claims are settled in time and without any further delay. The Courts have, time and again, repeatedly held that settlement of medical claims, cannot be delayed. However, the Competent Authorities are not portraying insensitiveness in these issues and they are not guiding the retired/in-service employees, first of all to register their names in the rolls properly. In fact, it is the duty of the State to see that all in-service/retired employees properly registered their names under the Health Scheme, so as to avail the benefits. The

genuinity of the treatment is to be ascertained by the Competent Officials before disbursing the medical reimbursement claims.

14. In view of the fact that no decision has been taken by the respondents in respect of the medical reimbursement claim, this Court is inclined to direct the respondents to consider the case of the writ petitioners in respect of their application for medical reimbursement and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

15. Accordingly, the writ petitions stand disposed of. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

Svn/AT

To

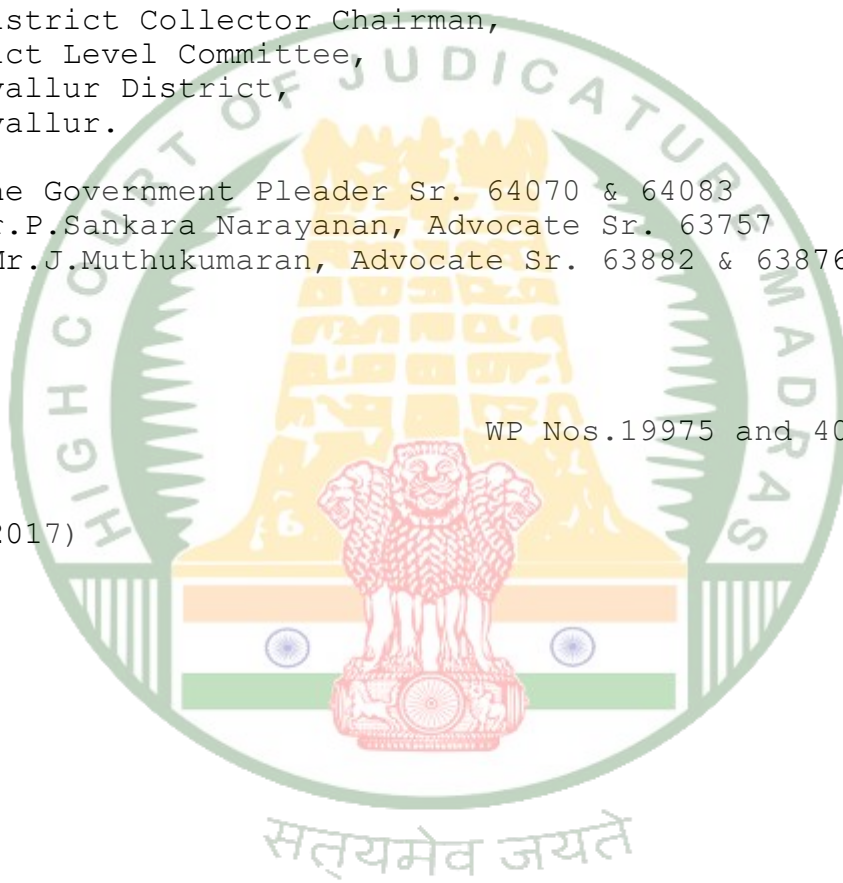
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6. The Director of Medical and Rural
Health Services,
Chennai - 600 006.
7. The District Collector Chairman,
District Level Committee,
Thiruvallur District,
Thiruvallur.

+1cc to the Government Pleader Sr. 64070 & 64083
+1cc to Mr.P.Sankara Narayanan, Advocate Sr. 63757
+2ccs to Mr.J.Muthukumaran, Advocate Sr. 63882 & 63876

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PA (CO)
VR(03/10/2017)



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