IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15-09-2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.22529 of 2016

Dr.A.N.Natharsha .. 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 Commissioner of Treasuries and Accounts,
Second Floor,
Panagal Building,
Jeenish Road,
Saidapet,
Chennai - 600 015.

3.The Treasury Officer (PO),
District Treasury,
Thiruvarur Town and District.

4.The United India Insurance Company Ltd.,
Divisional Office - 010600,
5 th 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 a Writ of CERTIORARIFIED MANDAMUS, to call for records of the third respondent pertaining to proceedings Na.Ka.No.1491/2016/E2 dated 23.3.2016 and Na.Ka.No.8927/2014/E2 dated 25.5.2016 and quash the same and direct the respondents to disburse with the approved medical expenses amount under New Health Scheme, 2014 for pensioners (including spouse)/family pensioners as recommended by the District Executive Committee headed by the District Collector on 24.4.2015 to the petitioner.

For Petitioner : Mr.P.Thiagarajan

For Respondents-1 to 3 : Mr.M.Perumal, Government Advocate.

For Respondent-4 : No Appearance

ORDER

The order of rejection passed by the third respondent in proceedings dated 23.3.2016 in relation to the reimbursement of medical claim, is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner submitted that the writ petitioner is a retired Senior Civil Surgeon and State pensioner. The writ petitioner is a member of the New Health Insurance Scheme introduced by the State of Tamil Nadu and he is paying the monthly subscription under the Scheme. Accordingly, the writ petitioner is eligible for medical reimbursement.

3. The wife of the writ petitioner suddenly developed with heavy stomach pain and got admitted in the hospital. On account of emergency, an immediate surgery was undertaken on the advice of the Doctors and the surgery had undergone by the wife of the writ petitioner on 9.10.2014.

4. After taking treatment, the writ petitioner submitted an application, seeking medical reimbursement claim and the same was rejected by the third respondent on the ground that the treatment was taken in the hospital which is not listed in the Scheme. In other words, the hospital under which the treatment was taken by the wife of the writ petitioner, is not approved under the Scheme and therefore, the claim of medical reimbursement, cannot be honoured.

5. The fourth respondent/United India Insurance Company Limited has to settle the medical reimbursement claim only based on the terms and conditions of the agreement and not otherwise. Further, it is contended that beyond the terms and conditions of the agreement, the Government has to settle the medical claims, since 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 agreement.

6. 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.

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 is a 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.

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 to be construed as violation of Fundamental Rights. Therefore, the Constitutional Courts cannot deal with the violation of 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. 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.

11. No doubt, it is the duty of the respondents 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 his wife 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.

12. In this writ petition, this Court is able to see that the aged pensioner is driven to this Court through this writ petition in order to get his medical reimbursement. Driving such aged pensioner to the Court by the respondents ought to be deprecated. Even after such aged pensioner has filed writ petition, 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.

13. 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 agreementt. 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.

14. 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.

15. The Courts have, time and again, repeatedly rendered judgments to settle all such medical claims in time irrespective of Court's orders. However, the authorities in this regard are not portraying any sensitiveness in settling the medical reimbursement/ accident claims. Thus, the order of rejection passed by the third respondent in proceedings Na.Ka.No.1491/2016/E2 dated 23.3.2016 and in proceedings Na.Ka.No.8927/2014/E2 dated 25.5.2016, are quashed and the respondents are directed to settle the medical reimbursement claim to the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order and thereafter, the fourth respondent is granted liberty to recover the same from the respondents 1 to 3 in terms of the conditions of the agreement with the Government.

16. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

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ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

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

2.The Commissioner of Treasuries and Accounts,
Second Floor,
Panagal Building,
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3.The Treasury Officer (PO),
District Treasury,
Thiruvarur Town and District.

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

+1 CC to Mr.P.THANGARAJAN, Advocate Sr.No.67402
+1 CC to Government Pleader Advocate Sr.No.67951

WP No.22529 of 2016

MG (CO)
NR 22/11/2017