

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.40914 of 2016

and

W.M.P.No.34934 of 2016

Meenakshi Mission Hospital and Research Centre
rep. by its Chairman
Dr. S. Gurushankar
Lake Area, Melur Road
Madurai - 625 107

... Petitioner

Versus

1. The Project Director,
Tamil Nadu Health Systems Project
Government of Tamilnadu
Teynampet, Chennai 600 018

2. United India Insurance Co., Ltd.,
Represented by its Project Manager (CMCHIS)
Om Shakthi Towers
226, Kilpauk Garden Road
Kilpauk, Chennai 600 010

3. VIDAL Health (TPA) Pvt.Ltd.,
Om Shakthi Plaza, Second Floor,
226, Kilpauk Garden Road,
Kilpauk, Chennai 600 010.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in Letter No.4829/TNHSP/INS.I/2016 dated 15.10.2016 quash the same.

For Petitioner : Mr.K.Subramanian,
Senior Counsel
for M/s.M.A.Abdul Wahab

For Respondents : Mr.A.Kumar
Special Government Pleader
for R1

: Mr.S.Arunkumar for RR2 and 3

ORDER

The petitioner calls in question the order dated 15.10.2016 of the first respondent, wherein and by which, the first respondent, while ordering to de-list the petitioner hospital from a referral hospital under the Health Insurance Scheme of

the Government imposed a fine of Rs.12,50,000/- for having violated the terms and conditions of the scheme.

2. The case of the petitioner is that the petitioner's hospital is run by a Public Trust in the name and style of "S.R. Trust" having been established in the year 1989. During the year 2009, Star Health and Allied Insurance Company Limited, a company incorporated under the Companies Act and licenced under the Insurance Regulatory and Development Authority to transact health and overseas medical insurance. The said Star Health and Allied Insurance Company has got the mandate from the then Government of Tamil Nadu to cover eligible members and their families under the "Tamil Nadu Chief Minister Kalaingar's Insurance Scheme for Live Saving Treatment". In this context, to create a network of service providers for implementing the insurance scheme, a memorandum of understanding was entered into between the Government of Tamil Nadu and Star Health and Allied Insurance Company. In the process of implementing the scheme, a communication dated 18.07.2009 was sent to the petitioner hospital to submit the completed grading proforma. Thereafter, on 06.11.2009, a separate Memorandum of Understanding was executed between the petitioner hospital and Star Health and Allied Insurance Company. While so, after the change of Government during the year 2011, an order in GO Ms. No.109, Health and Family Welfare Department dated 11.07.2011 was passed incorporating new comprehensive health insurance scheme by terminating the earlier scheme introduced during the year 2009. As per GO Ms. No.169 dated 29.07.2011, tender applications were called for as contemplated under the Tamil Nadu Tender Transparency Act to select an IRDA approved insurance company for implementing the new insurance scheme. In the tender invited by the Government, the second respondent was declared as a successful bidder. Thereafter, the third respondent herein was appointed as a third party administrator licensed by the IRDA for implementing the new Health Insurance Scheme. In consonance with the new Health Insurance Scheme on 09.06.2012, a Memorandum of Understanding was executed between the petitioner, second and third respondent herein. According to the petitioner, as per the new scheme, the petitioner hospital has rendered yeoman service to the patients who were admitted in their hospital and got the benefit of the scheme.

3. According to the petitioner, on 07.01.2016, the petitioner received a complaint from the Chief Vigilance Officer of the third respondent complaining that the petitioner hospital has collected money from two patients contrary to the provisions of the scheme. On 20.05.2016, the petitioner submitted a detailed reply repudiating having received amount from the patients. However, not satisfied with the explanation offered by the petitioner and without conducting any enquiry, the first respondent has passed the impugned order dated 15.10.2016 which was communicated by the third respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The learned Senior counsel for the petitioner would contend that the impugned order has been passed by the first

respondent without any notice and without giving an opportunity to the petitioner hospital especially when the impugned order is attached with a stigma. While passing the impugned order, the first respondent has simply relied on the report submitted by the third respondent and such report has also not been served on the petitioner. When an adverse report has been sent to the first respondent by the third respondent, it is incumbent on the part of the first respondent to serve a copy of the same to the petitioner and to seek for further explanation. Such a course of action has not been done by the first respondent before passing the impugned order and it is in violation of principles of natural justice. The learned Senior counsel for the petitioner would further contend that as per Clause 26 of the guidelines incorporated in the new Health Insurance Scheme, 2011, the procedure for redressal of grievance is contemplated, as per which, any complaint made by any of the beneficiaries of the scheme relating to difficulty in availing treatment, non-availability of specified facilities, bogus availing of treatment etc., shall be sent to the District Collector, Deputy Director of Health Services and Joint Director of Medical and Public Health Service for necessary action or to the Grievance Cell established at Tamilnadu Health Systems Project. Such complaints, if any, received shall be placed for a decision before the District Monitoring and Grievance Committee consisting of District Collector, Dean/Medical Superintendent of the Medical College concerned, Joint Director of Medical and Rural Health Services Department, Deputy Director of Health Services and representative of the Public Sector Insurance Company as members at the District Level. If any decision is taken by the committee and if any one is aggrieved by such decision, an appeal can be preferred before the State Monitoring and Grievance Committee consisting of Project Director of Tamil Nadu Health Systems Society as Chairperson and other members. However, none of the procedures as contemplated in the new Insurance Scheme with respect to redressal of grievance has been complied with and consequently, the impugned order passed by the first respondent is liable to be set aside. Lastly, it is stated by the learned Senior counsel for the petitioner that even in the impugned order, reference has been made with respect to withdrawal of the complaint given by three complainants, however, in so far as the complaint given by three persons alone, the impugned order has been passed. Such complaints were never referred to the committee as contemplated under clause Clause 26 of the guidelines incorporated in the new Health Insurance Scheme, 2011 under the caption procedure for redressal of grievance, In such circumstances, the learned Senior counsel for the petitioner would contend that the impugned order has been passed by the first respondent without jurisdiction and therefore he prayed for setting aside the impugned order of the first respondent.

5. The first respondent has filed a vacate stay petition along with the counter affidavit. By placing reliance on the counter affidavit, the learned counsel for the first respondent would contend that based on the report given by the third

respondent complaining collection of a sum of Rs.2,50,000/- by the petitioner hospital, the second respondent recommended to take appropriate action against the petitioner hospital. Thereafter, the third respondent has obtained written complaint from the patients and asked for an explanation from the petitioner on 09.05.2016. On 20.05.2016, a reply was sent stating that out of the six complainants, three complainants have denied that they have not complained that the petitioner hospital has demanded any money. Therefore, on 15.07.2016, the third respondent has issued a notice calling upon to submit their explanation with respect to the other three complainants but there was no reply forthcoming. As the petitioner did not responded to the notice dated 15.07.2016, the order dated 15.10.2016 has been passed. According to the first respondent, the third respondent is empowered to issue notice to the petitioner hospital pursuant to the instructions given by the first respondent. After the order dated 15.10.2016 was passed, the officials of the petitioner hospital produced letter from all the six complainants in which it was stated that they have never complained about the demand made by the petitioner hospital. Therefore, the order of suspension passed by the first respondent will be placed before the Disciplinary Committee Meeting for ratification. However, it is stated that the complaint given by the complainants need not be referred to the committee and only the explanation sought for from the hospital and the further action taken thereof has to be sent for ratification to the committee. The petitioner was given due and adequate opportunity to putforth their defence. As per the order passed in GO Ms. No.169 dated 11.07.2011, the first respondent is competent to initiate necessary action against the hospital and also to impose penalty. It is not an isolated case where the petitioner hospital indulged in collecting money from the beneficiaries under the scheme and therefore, the learned counsel for the first respondent would pray for dismissal of the writ petition.

6. The learned counsel for the second respondent, relying on the counter affidavit of the second respondent, would contend that as per clause 7 of the Memorandum of Understanding, the petitioner has to render cashless treatment without any demand or collection of payment from eligible persons. Clause 18.1 of the Memorandum of Understanding also deals with penalty to be imposed as per the decision of the Project Director in the event of failure to provide service as required. In this case, six complaints have been received from the beneficiary and family members/relatives of such beneficiaries and they were thoroughly enquired. On the basis of such complaint, explanation was called for from the petitioner through notice dated 09.05.2016 for which a reply dated 20.05.2016 was sent by the petitioner repudiating the demand or collection of amount from the beneficiaries interalia stating that out of the six complainants, three complainants have withdrawn the complaint. As there is no explanation forthcoming from the petitioner relating to the complaint given by three other complainants, a further notice dated 15.07.2016 was sent by the second respondent for which there was no reply,

hence, the first respondent has passed the final order dated 15.10.2016 suspending and/or de-listing the petitioner hospital from the purview of Insurance Scheme, 2011. In fact, the third respondent forwarded the reply dated 20.05.2016 to the first respondent. The first respondent, in exercise of the powers conferred under the Memorandum of Understanding and Guidelines contained under the Scheme, with particular reference to Clause 25 thereof, has passed the order dated 15.10.2016. In such circumstances, the learned counsel for the second respondent would contend that the order dated 15.10.2016 has not been passed by the first respondent with an oblique motive but on the basis of proper procedure followed on receipt of the complaints against the petitioner. In support of his contention, the learned counsel for the second respondent relied upon the Order dated 09.11.2016 passed by this court in W.P.No.21315 of 2015 filed by one S. Mohammed Thoufique against the petitioner hospital and others in which this Court directed the complaint given by the petitioner to be placed before the Committee. It is further stated that the scheme is meant to enable the poor and needy to get medical assistance without incurring any expenses and not for the petitioner hospital to enrich out of such a scheme. In any event, according to the learned counsel for the second respondent, proper procedures have been followed by the first respondent before passing the order dated 15.10.2016 and it does not call for any interference by this Court.

7. The learned counsel for the third respondent, referring to the counter affidavit of the third respondent, would contend that only after issuing notices and after obtaining an explanation from the petitioner, the order dated 15.10.2016 has been passed by the first respondent. The first respondent is empowered under the scheme to suspend an institution which has indulged in violation of the procedures contemplated under the scheme and therefore, he would justify the order passed by the first respondent on 15.10.2016.

8. I heard the counsel on either side and perused the material documents placed. It is the case of the respondents that as many as six patients have given complaint against the petitioner alleging that the petitioner hospital has demanded amount for having extended treatment to them even though such treatment was given to them under the cashless insurance scheme introduced by the Government. On enquiry, a notice was given to the petitioner for which the petitioner sent a reply on 20.05.2016 stating that out of the six patients, three patients have given letter stating that the petitioner hospital has never made any demand for amount. Since the petitioner has not satisfactorily explained with respect to the three other complaints, the impugned order has been passed by the first respondent de-listing the petitioner hospital from the purview of the new Health Insurance Scheme.

9. It is the vehement contention of the learned Senior counsel for the petitioner that the procedure adopted by the respondents is contrary to Clause 26 of the guidelines

incorporated in the new Health Insurance Scheme, 2011 which provides for a grievance redressal mechanism. As per Clause 26, if any complaint is made by any of the beneficiaries of the scheme such complaint has to be forwarded only to the District Monitoring and Grievance Committee consisting of District Collector, Dean/Medical Superintendent of the Medical College concerned, Joint Director of Medical and Rural Health Services Department, Deputy Director of Health Services and representative of the Public Sector Insurance Company as members at the District Level. Further, if any decision is taken by the committee and if any one is aggrieved by such decision, an appeal can be preferred before the State Monitoring and Grievance Committee consisting of Project Director of Tamil Nadu Health Systems Society as Chairperson and other members. Admittedly, such a procedure has not been followed by the respondents before passing the impugned order.

10. It is also seen from the records that in identical circumstances, one Mr. Mohammed Thouffique has filed WP No. 21315 of 2015 before this Court in which the petitioner hospital was impleaded as fifth respondent. The said writ petition was filed with a prayer to take appropriate steps to refund the sum of Rs.1,45,000/- spent by the petitioner towards treatment at the hospital of the fifth respondent. In that writ petition, the contention of the petitioner was that even though he was eligible for treatment under the new Health Insurance Scheme, the respondents did not accord approval for treating him as one of the beneficiaries under the scheme and therefore, he was forced to make a payment of Rs.1,45,000/- for the treatment undergone by him. When the petitioner demanded for repayment, it was rejected by the respondents therein. Therefore, the petitioner has filed the above WP No. 21315 of 2015. This Court, considering the rival submission, passed an order dated 09.11.2016 in the said writ petition, which reads as follows:

'6. I have considered the rival submissions. There is no dispute with regard to the fact that the petitioner has enrolled himself as a member in the Chief Minister's Comprehensive Health Insurance Scheme and he is also taken treatment in one of the authorised network hospital under the said scheme and the surgery undergone by the petitioner is also included in the list of surgeries mentioned in the scheme. According to the petitioner, immediately after the admission in the hospital, he moved the authorities of the fifth respondent hospital and sought for assistance. At that time, the authorities assured him that the benefits under the said scheme will be provided to him at the time of treatment. On the contrary, the fifth respondent officials claimed a sum of Rs.1,45,000/- towards the bill for the surgery and the officials of the fifth respondent assured that the bill amount will be refunded after getting the same from the

insurance company. Hence, the petitioner being left with no other option except to pay the bill amount and get himself discharged. Subsequently, the petitioner made a representation to the second respondent and fourth respondent, seeking for medical reimbursement. When the application is still pending with the fourth respondent, head of the District Monitoring and Grievance Committee, the second respondent who is only a member of the State Monitoring and Grievance Committee, passed the impugned order without any enquiry whatsoever, for which he has no power. The second respondent only a member of the State Monitoring and Grievance Committee cannot independently pass any order regarding the claim of the petitioner.

7. In the above circumstances, the impugned order passed by the second respondent is without any jurisdiction. Hence the impugned order passed by the second respondent is set aside. However, the application filed by the petitioner before the District Monitoring and Grievance Committee, the fourth respondent herein, is pending. Therefore, the fourth respondent, is directed to consider the petitioner's application after giving an opportunity of hearing to the petitioner and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this order. While passing the orders, the fourth respondent is directed to consider the grievance of the petitioner that he is eligible to get the benefit under the Scheme and also social status of the petitioner and sympathetically consider the petitioner's request and pass suitable orders. If the petitioner wants to make any further representation before the fourth respondent, it is open to him to make fresh representation to the fourth respondent along with a copy of this order. "

11. It is evident from the above decision as well as the procedures laid down under the guidelines given under the New Health Insurance Scheme that if any complaint is received by any of the beneficiaries under the scheme, it has to be placed before the committee for consideration. While so, I hold that the first respondent has no jurisdiction to pass the impugned order. Merely sending notices to the petitioner and calling upon them to submit their explanation will not amount to complying with the procedural requirements made under the Scheme. The first respondent, simply relied on the report of the second and third respondents before passing the impugned order, which course of action resorted to by the first respondent, is per se in violation of the procedure contemplated under the scheme. Further, even the report said

to have been given by the second and third respondents to the first respondent has not been served on the petitioner. This, in my considered view, is in violation of the principles of natural justice and on this ground also, the impugned order is liable to be set aside. Further, in the counter filed by the first respondent in Para No.15, they have categorically stated that "This Complaint need not be referred to committee and hence explanation was sought directly with hospital and we have received reply partly. The action was taken based on the reports received from the 3rd and 2nd respondents. Hence, we deny the allegation in this para." When such is the averment made in the counter affidavit of the first respondent that they need not refer the complaint to the committee, it is contrary to Clause 26 of the guidelines incorporated in the new Health Insurance Scheme, 2011. In such a situation, this Court holds that the first respondent has no jurisdiction to pass the impugned order besides being illegal.

12. In the light of the above discussion, the impugned order of the first respondent dated 15.10.2016 is set aside and consequently the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkd/rsh

To

1. The Project Director,
Tamil Nadu Health Systems Project,
Government of Tamilnadu,
Teynampet, Chennai 600 018.

2. The Project Manager (CMCHIS)
United India Insurance Co., Ltd.,
Om Shakthi Towers,
226, Kilpauk Garden Road,
Kilpauk, Chennai 600 010.

3. VIDAL Health (TPA) Pvt.Ltd.,
Om Shakthi Plaza, Second Floor,
226, Kilpauk Garden Road,
Kilpauk, Chennai 600 010.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13773
+1cc to Mr.M.A.Abdul Wahab, Advocate, S.R.No.13761
+1cc to the Government Pleader, S.R.No.13591

W.P.No.40914 of 2016