

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04-09-2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.839, 27679, 27926, 29495, 40705 and 40706 of 2016  
And

WMP Nos.21084, 21085, 34702 and 34703 of 2016 and 14034 of 2017

G.Latha ... Petitioner in WP 839/2016  
L.Ponnusamy ... Petitioner in WP 27679/2016  
S.Chellammal ... Petitioner in WP 27926/2016  
Tmt.T.R.Thendral ... Petitioner in WP 29495/2016  
C.Mahalingam ... Petitioner in WP 40705/2016  
J.K.Periyannan ... Petitioner in WP 40706/2016

Vs.

1. M.D.India Health Care Services  
(TPA) Pvt Ltd.,  
No.27, Lakshmi Towers,  
3<sup>rd</sup> Floor,  
Dr. Radhakrishnan Salai,  
Mylapore,  
Chennai-600 004 Represented  
by its Senior Manager-Operations.
2. The Chairman-cum-Managing Director,  
United India Insurance Co. Ltd.,  
Whites Road,  
Chennai-600 014.
3. The Commissioner of Treasuries and  
Account,  
Chennai-600 015.
4. The Managing Director,  
Tamil Nadu State Transport Corporation  
(TPA) Pvt Ltd.,  
Salem-636 007. ... Respondents in WP 839/2016
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 Additional Treasury Officer,  
District Treasury,  
Krishnagiri.
4. The Director of Medical and Rural Health  
Services,  
Chennai-600 006.
5. The District Level Empowered Committee,  
Office of the Joint Director of Medical and  
Rural Health Services,  
Chennai-600 006 Represented by its  
Chairman/The District Collector,  
Chennai-600 001.
6. United India Insurance Company,  
Represented by the Divisional Manager,  
Divisional Office VI,  
No.212, Anna Salai,  
Chennai-600 006.
7. The Director of Pension,  
Chennai-600 006.
8. Sagar Hospitals,  
No.44/54, 30<sup>th</sup> Cross Tilaknagar,  
Jayanagar Extension,  
Bangalore-560 041. ... Respondents in WP  
27679/2016
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 Medical and Rural Health  
Services,  
Chennai-600 006.
4. The District Level Empowered Committee,  
Office of the Joint Director of Medical and  
Rural Health Services,  
Chennai-600 006 Represented by its

Chairman/The District Collector,  
Chennai-600 001.

5. United India Insurance Company,  
Represented by the Divisional Manager,  
Divisional Office VI,  
No.212, Anna Salai,  
Chennai-600 006. .. Respondents in WP 27926/2016

1. Government of Tamil Nadu  
Represented by Secretary to Government,  
Finance (Pension) Department,  
Secretariat,  
Chennai-600 009.

2. State Level Empowered Committee,  
Under New Health Insurance Scheme 2014  
For Pensioners,  
Represented by Director of Medical and  
Rural Health Services,  
Chennai-600 006.

3. The District Level Empowered Committee  
Under NHIS 2014 for Pensioners,  
Represented by the District Collector,  
Krishnagiri.

4. The Treasury Officer,  
District Treasury,  
Krishnagiri.

5. The Additional Treasury Officer,  
District Treasury,  
Krishnagiri.

6. The Director of Pension,  
D.M.S. Campus,  
Chennai-600 006.

7. United India Insurance Company,  
Represented by the Divisional Manager,  
Divisional Office VI,  
No.212, Anna Salai,  
Chennai-600 006.

8. N.H. Nazumdar Shaw Medical Centre  
258/A, Bommasandara Industrial Area,  
Anekal Taluk, Bangalore 560 099.

.. Respondents in WP 29495/2016

1. Government of Tamil Nadu  
Represented by Secretary to Government,  
Finance (Pension) Department,  
Secretariat,  
Chennai-600 009.
2. State Level Empowered Committee,  
Under New Health Insurance Scheme 2014  
For Pensioners,  
Represented by Director of Medical and  
Rural Health Services,  
Chennai-600 006.
3. The District Level Empowered Committee  
Under NHIS 2014 for Pensioners,  
Represented by the District Collector,  
Krishnagiri.
4. The Director of Treasuries and Accounts,  
Panagal Building,  
Chennai-600 015.
5. The Additional Treasury Officer,  
District Treasury,  
Krishnagiri.
6. The Director of Pension,  
D.M.S. Campus,  
Chennai-600 006.
7. The Joint Director of Medical and Rural  
Health Services,  
Krishnagiri District.
8. United India Insurance Company,  
Represented by the Divisional Manager,  
Divisional Office VI,  
No.212, Anna Salai,  
Chennai-600 006.
9. D.N.V Ortho Care,  
72 A.B. Salem Main Road,  
Dharmapuri - 636 705. ... Respondents in WP 40705 /2016

1. Government of Tamil Nadu  
Represented by Secretary to Government,  
Finance (Pension) Department,  
Secretariat,

Chennai-600 009.

2. State Level Empowered Committee,  
Under New Health Insurance Scheme 2014  
For Pensioners,  
Represented by Director of Medical and  
Rural Health Services,  
Chennai-600 006.
3. The District Level Empowered Committee  
Under NHIS 2014 for Pensioners,  
Represented by the District Collector,  
Krishnagiri.
4. The Director of Treasuries and Accounts,  
Panagal Building,  
Chennai-600 015.
5. The Additional Treasury Officer,  
District Treasury, Krishnagiri.
6. The Director of Pension,  
D.M.S. Campus,  
Chennai-600 006.
7. The Joint Director of Medical and Rural  
Health Services,  
Krishnagiri District.
8. United India Insurance Company,  
Represented by the Divisional Manager,  
Divisional Office VI,  
No.212, Anna Salai,  
Chennai-600 006.
9. TCR Multispeciality Hospital,  
1/450, Avvai Nagar,  
Near L.I.C.,  
Chennai Bye-Pass Road,  
Krishnagiri-635 001.

(R-9 amended as per order dated 4.9.2017  
made in WMP No.3523 of 2017 in  
WP No.40706 of 2016)

.. Respondents in WP 40706 /2016

WP 839/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Ref.No.G.TM 00123/TNNHIS/04/2015 dated 7.4.2015 and ref. No.GTMO123/ TNNHIS/09/2015 dated 16.9.2015 to quash the same and to issue consequential directions to the respondents to

reimburse the medical expense incurred for the medical treatment of the petitioner's husband Thiru P.Nithyanandam with interest for the delayed disbursement.

WP 27679/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent in Na.Ka.No.224/2016/B2 dated 18.1.2016 to quash the same and to issue consequential directions to the respondents to grant medical reimbursement to the petitioner with interest at 18% per annum for delayed payment and disburse the same.

WP 27926/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent relating to the order dated 15.4.2016, quash the same and to issue consequential directions to the respondents to grant reimbursement of Rs.91,216/- towards medical reimbursement to the petitioner with interest at 18% per annum for delayed payment and disburse the same.

WP 29495/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent herein relating to RC.No.224/2016/B1 dated 8.7.2016, to quash the same in so far as it relates to the petitioner and to issue consequential directions to the respondents to grant medical reimbursement to the petitioner the sum of Rs.2 lakhs towards her medical claim dated 18.1.2016 with 18% per annum for delayed payment and disburse the same.

WP 40705/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent relating to the orders in (1) Letter Na.Ka.No.6134/2015/B1 dated 18.1.2016 and (2) Letter R.C.No.224/2016/B1 dated 28.9.2016, to quash the same in so far as it relates to the petitioner and to issue consequential directions to the respondents to grant medical reimbursement the medical claim for Rs.1 lakh with 18% interest for delayed payment and disburse the same.

WP 40706/2016: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent relating to the orders in (1) Letter Na.Ka.No.224/2016/B2 dated 18.1.2016 and (2) Letter R.C.No.224/2016/B1 dated 28.9.2016, to quash the same in so far as it relates to the petitioner and to issue consequential directions to the respondents to grant medical reimbursement the medical claim for Rs.1 lakh with 18% interest for delayed

payment and disburse the same.

For Petitioner in WPs 839, 27679,  
27926, 29495, 40705&40706/2016 : Mr.J.Muthukumaran

For Respondent-1 in  
WP 839/2016, R-8 in WP 27679/2016,  
R-8 in WP 29495/2016 : No Appearance

For Respondent-2 in  
WP 839/2016, R-6 in  
WP 27679/2016, R-5 in  
WP 27926/2016, R-7 in  
WP 29495/2016, R-8 in  
WPs 40705&40706/2016 : Mr.P.Sankaranarayanan

For Respondent-3 in  
WP 839/2016, R-1 to R-5 &  
R-7 in WP 27679/2016  
R-1 to R-4 in WP 27926/2016,  
R-1 to R-6 in WP 29495/2016,  
R-1 to R-7 in WPs 40705 &  
40706/2016 : Mr.S.Gunasekaran,  
Additional Government Pleader.

For Respondent-4 in  
WP 839/2016 : Mr.P.Paramasivadoss

For Respondent-9 in  
WPs 40705&40706/2016 : Mr.C.Munusamy

#### C O M M O N O R D E R

All these writ petitions were filed challenging the orders of rejection of the claim of medical reimbursement submitted by the respective writ petitioners on the ground that the treatment was taken in an unapproved hospitals as per the Health Scheme.

2. The learned counsel appearing on behalf of the writ petitioners made a submission that all the writ petitioners are members of the Health Scheme introduced by the State for the employees, both retired as well as in-service.

3. As per the Health Scheme, the monthly subscriptions are being recovered from the salary/pension. Accordingly, the writ petitioners are eligible for claiming medical reimbursement under the Health Scheme.

4. In all these writ petitions, the writ petitioners/spouses had taken treatment in the hospitals by undergoing surgery and other treatments. After discharge, the writ petitioners have submitted their respective applications, seeking medical reimbursement. However, the claims are rejected on the ground that the hospital in which the treatment was taken are not listed in the Scheme and therefore, they are not entitled to avail the benefit of medical reimbursement.

5. The learned Additional 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.

6. This apart, there was no pre-authorisation approval before making final settlement by the respective writ petitioners. The writ petitioners have filed these writ petitions before approaching the Higher Authorities by way of an appeal.

7. 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 to be verified by the Competent Authorities. The claim of medical reimbursement cannot be denied on account of certain technical or procedural violations. Once the treatment/surgery undergone by a member of the Health Scheme is ascertained and found genuine, then it is for the Competent Authorities to process the same. Contrarily, in all these cases, the order of rejection was passed on the ground that the hospital is not listed.

8. 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.

9. 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 urged that in such circumstances, the Government has to settle the medical reimbursement claims, because the writ petitioners are State Government pensioners/in-service employees and the liability of the Insurance Company is limited to the extent of honouring the terms and conditions of the contract.

10. The nature of the Medical Scheme is bipartite, in view of the fact that the writ petitioners had served several years as Government employees with the State Government and the State Government issued policies in order to provide certain medical facilities to the employees/retired employees. In turn, the task of settling the medical claims is entrusted to the Insurance Companies in recent times. 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 Health Scheme. Thus, 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, cannot 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.

11. 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.

12. 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.

13. 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.

14. No doubt, it is the duty of the respondent 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.

15. 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 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.

16. 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.

17. In the present case, 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. 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 writ petitioners are certainly a Constitutional violation and the attitude of the respondents, both the Government and the Insurance Company, are not to be appreciated.

18. 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. Thus the order of rejection cannot be sustained and the liability, both by the Insurance Company and by the Government, cannot be waived

in this regard. 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 be delayed or denied. The genuinity of the treatment is to be ascertained by the Competent Officials before disbursing the medical reimbursement claims.

19. Accordingly, the orders impugned in all these writ petitions are quashed and the respondent/United India Insurance Company is directed to settle the medical reimbursement claims to the respective writ petitioners, in accordance with the Scheme and as per the terms and conditions, within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the Insurance Company can recover the paid amount from the Government as per the contractual obligations.

20. The writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-  
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Svn/AT

To

1. The Chairman-cum-Managing Director,  
United India Insurance Co. Ltd.,  
Whites Road,  
Chennai-600 014.
2. The Commissioner of Treasuries and  
Account,  
Chennai-600 015.
3. The Secretary to Government,  
Government of Tamil Nadu  
Finance (Pension) Department,  
Secretariat,  
Chennai-600 009.

- 4.The Director of Treasuries and Accounts,  
Chennai-600 015.
- 5.The Additional Treasury Officer,  
District Treasury,  
Krishnagiri.
- 6.The Director of Medical and Rural Health  
Services,  
Chennai-600 006.
- 7.The Chairman/The District Collector,  
District Level Empowered Committee,  
Office of the Joint Director of Medical and  
Rural Health Services, Chennai-600 006.
8. The Managing Director  
Tamil Nadu State Transport Corporation Pvt. Ltd  
Salem 636 007.
9. The Additional Treasury officer  
District Treasury, Krishnagiri.
10. The Director of Medical and Rural Health Services  
State Level Empowered committee  
Under New Health Insurance Scheme 2014 for pensioners,  
Chennai 06.
- 11.The Divisional Manager,  
United India Insurance Company,  
Divisional Office VI,  
No.212, Anna Salai,  
Chennai-600 006.
- 12.The Director of Pension,  
Chennai-600 006.
13. The Director of Medical and  
Rural Health Services,  
State Level Empowered Committee,  
Under New Health Insurance Scheme 2014  
For Pensioners,  
Chennai-600 006.
- 14.The District Collector,  
The District Level Empowered Committee  
Under NHIS 2014 for Pensioners,  
Krishnagiri.

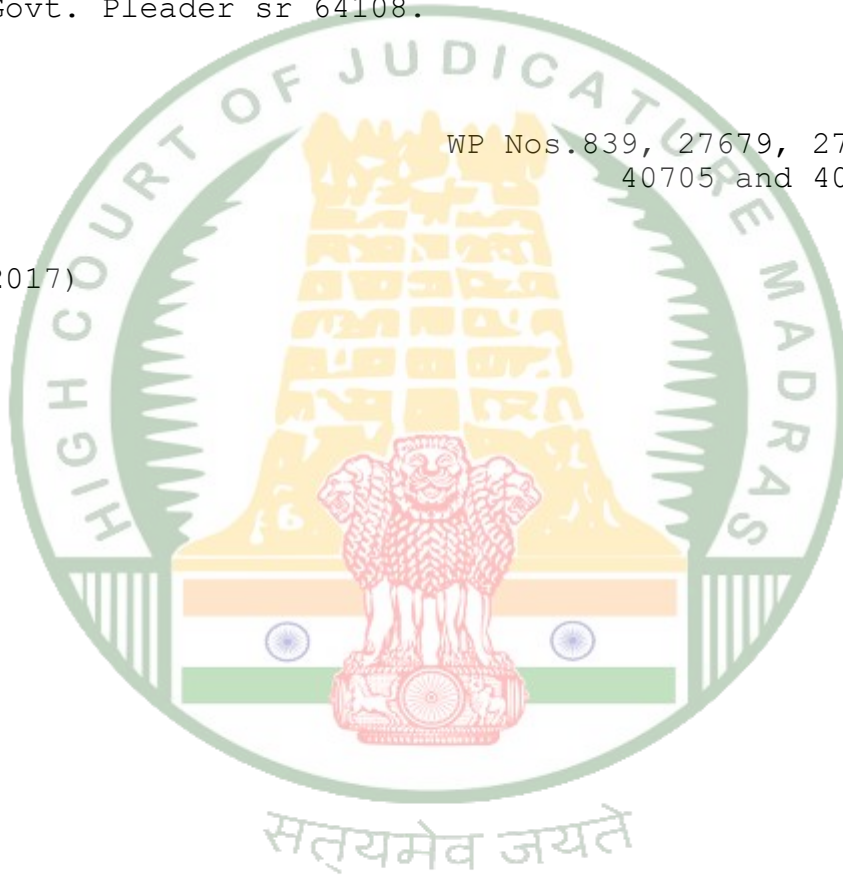
15.The Treasury Officer,  
District Treasury,  
Krishnagiri.

16.The Joint Director of Medical and Rural  
Health Services,  
Krishnagiri District.

+6 Ccs to Mr.P. Sankaranarayanan, Advocate sr 63756 to 63762.  
+6 Ccs to Mr.J. Muthukumaran, Advocate sr 63875,63877 to 63881  
+1 Cc to Mr.C. Munusamy, advocate sr 63883.  
+1 Cc to Govt. Pleader sr 64108.

WP Nos.839, 27679, 27926, 29495,  
40705 and 40706 of 2016

RV(CO)  
sp(21/09/2017)



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