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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On : 03.11.2017

Judgment Pronounced On: 09.11.2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.A. (MD) No.1382 of 2017

and

C.M.P. (MD) No.9879 of 2017

against

WP (MD) No.125 of 2017

1.The Director of Pension,
DMS Complex, Thenampet,
Chennai - 6.

2.The District Collector,
Madurai District, Madurai.

3.The Joint Director,
Medical and Rural Health Services Department,
Madurai District Head Quarters, Usilampatty,
Madurai District.

4.The Treasury Officer,
District Treasury,
Madurai - 625 020.

.. Appellants / Respondents

vs.

B.Sarada

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the letters patent against the order dated 27.02.2017 made in W.P.(MD)No.125 of 2017.

Prayer in WP (MD) No.125 of 2017:-

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Impugned Order of Rejection of Medical Re-imbursement passed by the 4th Respondent in his letter Na.Ka.No.163/1/2016/M1 dated 07.11.2016 and quash the same and consequently direct the 1st Respondent to reimburse Rs.1,07,690/- (Rupees one lakhs seven thousands six hundred and ninety only) being the actual Medical Expenditure incurred by the Petitioner's husband for the injury at Left Hip Region at the Raksha Hospital, Anna Nagar, Madurai - 20 in the light of the Judgment of this Hon'ble Court in W.P.No.12294/2016 dated 14.11.2016 along with interest at the rate of 10% per annum and with costs.



For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondent : Mr.S.Govindan

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J U D G M E N T

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

The Appellants/Respondents have preferred the present Writ Appeal, as 'Aggrieved Persons', against the order, dated 27.02.2017 in W.P.(MD)No.125 of 2017, passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order in W.P.(MD)No.125 of 2017 filed by the Respondent (as Writ Petitioner) at paragraph Nos.7 and 8, had observed the following:-

"7. Admittedly, the Petitioner has taken treatment in a non-network Hospital on account of emergent situation, which ultimately resulted in rejection of her claim. Subsequently, the High Level Committee has also rejected the claim of the Petitioner. It is not in dispute that if the claim is approved, the Petitioner would be paid the medical benefits based on Tamil Nadu Medical Attendance Rules (in short "the Rules"). The benefit of scheme, namely, the contract cannot be rewritten and it is only the Government to pay the amount incurred by the Petitioner/Employee/ patient/pensioner irrespective of constitution of the Committee. It is pertinent to mention here that the patient cannot search for network Hospital for getting admitted or for taking treatment during emergency.

8. This Court in the case of N.Raja vs. The Government of Tamil Nadu, rep. by its Secretary, Chennai and others, reported in 2016 (3) CTC 394, has clearly held that when the Insurance Company is not liable on account of the violation of the terms and conditions of the contract, it is the duty of the Government to reimburse the medical expenses incurred. The Hon'ble Division Bench of this Court also, by order dated 16.12.2016 in W.A.(MD) No.1579 of 2016 [MD India Healthcare Services (TPA) Ltd., rep. by the Branch Manager, Chennai, Chennai vs. K.Parameshwari and others], directed the Government to reimburse the medical expenditure. In view of the above, this Court is of the view that pursuant to the existence of the contract, the Insurance Company cannot be directed to pay the amount and therefore, it is the Government, which is liable to reimburse the amount."

and consequently, allowed the Writ Petition.

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3.Continuing further, the Learned Single Judge while allowing the Writ Petition at paragraph Nos.9 and 10 of the order, had directed the First Respondent (First Appellant in Writ Appeal) to sanction the medical expenses incurred by the Respondent/Petitioner



(Pensioner), as per the eligibility criteria in terms of the amount under the scheme together with interest at 9% p.a. without standing on technicalities and release the eligible amount within a period of two months from the date of receipt of a copy of the order.

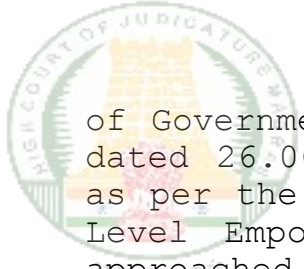
4. Challenging the order dated 27.02.2017 in allowing the Writ Petition, by the Learned Single Judge, the Appellants/Respondents have filed the present intra-Court Writ Appeal by taking a plea that the order of the Learned Single Judge in directing the First Appellant/First Respondent to sanction the medical expenses incurred by the Respondent/Petitioner/Employee's wife, as per eligible criteria in terms of the amount under the scheme along with interest at 9% p.a. etc., is not justifiable either in law or on facts and circumstances of the case.

5. The Learned Special Government Pleader for the Appellants proceeds to point out that the Respondent/Petitioner's husband was a retired Teacher, who underwent a surgery in his hip on 22.07.2015 in an 'Unapproved Hospital' and was not 'Cashless' treatment. Subsequently, he expired on 08.04.2016 and that the Respondent/Petitioner (as wife) made a claim of medical reimbursement of Rs.1,07,690/- and that she filed W.P.(MD)No.21349 of 2015 seeking Mandamus and on 01.02.2015, directions were issued to consider her request. On behalf of the Appellants, it is brought to the notice of this Court that by an order, dated 07.11.2016, the District Treasury Officer, Madurai rejected the claim on the score that the treatment was in an 'Unapproved Hospital' and was not 'Cashless' treatment. The said proceedings of the District Treasury Officer, Madurai, dated 07.11.2016, was assailed in W.P.(MD)No.125 of 2017 whereby and where under, the Writ Petition was allowed by this Court at the admission stage itself.

6. Advancing his arguments, the Learned Special Government Pleader for the Appellants projects an argument that the United India Insurance Company with whom, the State Government had already entered into a contract for making a payment in the event of eligible medical expenditure incurred by the Employee/subscriber of the scheme, but the Insurance Company was not arrayed as necessary Respondent in the Writ Petition and this aspect was not taken note of by the Learned Single Judge at the time of passing the impugned order.

7. It is represented on behalf of the Appellants that the Government had paid the subscription amount to the United India Insurance Company from and out of the subscription received from all the Employees and if the amount is again directed to be paid by the Government then it would incur huge expenditure to the Government exchequer.

8. The Learned Special Government Pleader for the Appellants <https://hcservices.ecourts.gov.in/hcservices/> vehemently takes a stand that the Representation of the Respondent (Petitioner/wife of the deceased Employee) was rejected by the District Level Empowered Committee, but this was not taken into consideration by the Learned Single Judge at the time of passing the impugned order. Moreover, the Appellants take a plea that in terms



of Government Order in G.O.Ms.No.171, Finance (Pension) Department, dated 26.06.2014, the next appellate authorities in the hierarchy, as per the scheme, are the State Level Empowered Committee and High Level Empowered Committee and that the Writ Petitioner had not approached these Committees to exhaust the available appeal remedy, instead, she had approached the writ Court for redressal of her grievances.

9.The Learned Special Government Pleader for the Appellants contends that the State Government with a view to provide a better health care to the Employee/Petitioner, had entered into an agreement with United India Insurance Company Limited/Third Party administrator and to get 'Cashless' treatment, 726 easily accessible approved Hospitals and 113 Surgery procedure were covered. However, the Employees/pensioners are taking unapproved treatment and after treatment/surgery in a non-network Hospital, they pressing for reimbursement for the expenses incurred by them. In short, it is the submission of the Appellants that if this kind of approach by the Employees/pensioners are permitted/encouraged, then, it would certainly defeat the very object of creation of the scheme itself.

10.The Learned Special Government Pleader for the Appellants points out that G.O.Ms.No.562, Finance (Pension) Department, dated 11.07.1995, speaks of 'The Constitution of Tamil Nadu Government Pensioners Health Fund', to provide financial assistance to the pensioners for undergoing specialised treatment/surgery. Moreover, the guidelines were framed for administering the scheme and it is latently made quite clear that the sanction of the assistance to the pensioners shall be made as per guidelines. Apart from that, it is made mention of in the aforesaid G.O.Ms.No.562, dated 11.07.1995, that the scheme is started as a contributory pilot scheme of assistance and its continuance is subject to the Fund being financially self sustaining and the Government take a decision on its continuance after due review.

11.Besides these, the Director of Pension was the competent authority to implement the afore stated scheme and the said scheme according to the Appellants was in force till 2012.

12.The Learned Special Government Pleader for the Appellants relies on G.O.Ms.No.458, Finance (Pension) Department, dated 21.09.2007, which deals with 'Relaxation of certain Stipulations'. In fact, paragraph No.4 of the afore mentioned G.O.Ms.No.458, Finance (Pension) Department, dated 21.09.2007, reads as under:-

4.The Government after careful considration of the above issues relating to treatment/surgeries approved under the Tamil Nadu Government Pensioners Health Fund Scheme but availed in unaccredited Hospitals pass the following orders:-

(i) In partial modification of the orders issued in para 3 of the Government order ninth read above. It is hereby ordered that Pensioners who undergo specialised



advanced surgeries/treatments in respect of diseases which are included in the list approved under the Tamil Nadu Government Pensioners Health Fund Scheme, in unaccredited Hospitals shall also be eligible for the maximum grant of Rs.50,000/- (Rupees Fifty Thousand only) or 75% (Seventy Five per cent) of the actual cost of such surgery/treatment whichever is less from the date of issue of these orders subject to the following procedure.

13.The Learned Special Government Pleader for the Appellants falls back upon the G.O.Ms.No.475, Finance (Pension) Department, dated 30.09.2009, whereby and where under, the Tamil Nadu Government Pensioners Health Fund Scheme, 1995 was extended to the Family Pensioners.

14.The Learned Special Government Pleader for the Appellants adverts to G.O.Ms.No.477, Finance (Pension) Department, dated 30.09.2009, whereby and where under, in respect of sanction of assistance for Specialised surgery/treatment not included in the accredited list, the delegation of powers was given to the Director of Pension.

15.The Learned Special Government Pleader for the Appellants refers to G.O.Ms.No.477, Finance (Pension) Department, dated 30.09.2009, whereby and where under, at paragraph No.6, it is mentioned as under:-

"6.The Government, after careful consideration of the request of the Director of Pension in paragraph 5 above, pass the following orders;-

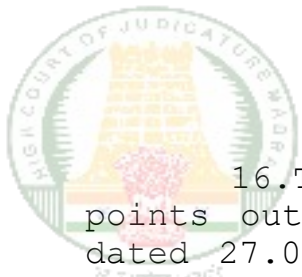
The Director of Pension is delegated with powers to sanction pending claims as well as future claims for medical assistance from the pensioners in respect of ineligible treatments as well as eligible treatments taken in unaccredited institutions, both within the State as well as outside the State, subject to the following procedure:-

In respect of treatments taken in unaccredited Hospitals within the State

Procedure prescribed in para 4 (i) (a) of the G.O.sixth read above shall be continued.

In respect of treatments taken in unaccredited Hospitals outside the State

The Pension Pay Officer /District Treasury Officer/ Sub-Treasury Officer/ Branch Manager of Public Sector Banks after satisfying about the details furnished in the application received in his office shall send the claim direct to the Director of Pension within a week. However, certification from the District Medical Officer/ Director of Medical Education need not be insisted in respect of Hospitals outside the State.



16. The Learned Special Government Pleader for the Appellants points out that the G.O.Ms.No.139, Finance (Salaries) Department, dated 27.04.2012 introduced New Health Insurance Scheme, 2012 for Employees of Government Local Bodies, Public Sector Undertakings, Statutory Boards and State Government Universities etc. Also that the G.O.Ms.No.243, Finance (Salaries) Department, dated 29.06.2012, speaks of 'New Health Insurance Scheme, 2012'.

17. On behalf of the Appellants a reference is made to G.O.Ms.No.462, Finance (Pension) Department, dated 27.12.2013, whereby and where under at paragraph Nos.3 and 4, it is observed as under:-

"3. The Government after careful examination has decided to launch the New Health Insurance Scheme for the Pensioners (including spouse)/ Family Pensioners. Accordingly, the Government direct that New Health Insurance Scheme for the Pensioners (including spouse)/ Family Pensioners shall be formulated on the following basis:-

i) the New Health Insurance Scheme shall operate on a CASHLESS basis and it shall be made compulsory to all the Pensioners (including spouse) / Family Pensioners.

ii) the quantum of assistance shall be fixed as Rs.2.00 lakh for both Pensioners (including spouse) and Family Pensioners for a block period of four years from the date of the launch of the scheme.

iii) if the spouse of the pensioners is also a pensioner, the recovery of subscription shall be effected from one person only, based on the option exercised by them.

iv) the New Health Insurance Scheme shall be implemented by the Insurance provider finalised from among the Public Sector Insurance provider by following due tender procedure.

v) the New Health Insurance Scheme shall be implemented through the Commissioner of Treasuries and Accounts as is being done in the case of New Health Insurance Scheme for the Government Employees.

vi) the amount of the Pensioners contribution to the scheme will be decided after the selection of the Insurance Company and finalisation of the costs.

4. Further modalities/ terms and conditions for the New Health Insurance Scheme for the Pensioners (including spouse) /Family pensioners will be issued separately.

18. Apart from that, the Appellants placed reliance on G.O.Ms.No.171, Finance (Pension) Department, dated 26.06.2014, relating to New Health Insurance Scheme, 2014 for Pensioners (including spouse)/family pensioners, viz., the Provision of Health Care Assistance to the Pensioners (including spouse) / Family



Pensioners through the United India Insurance Company Limited, Chennai.

19.The Learned Special Government Pleader for the Appellants advert to G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016 whereby and where under necessary orders were issued by the State Government in respect of New Health Insurance Scheme 2016, viz., Provision of Health Care Assistance to the Employees of Government Departments, Organizations covered under the Scheme and their eligible Family members through the United India Insurance Company Limited, Chennai.

20.The Learned Special Government Pleader for the Appellants draws the attention of this Court to G.O.Ms.No.241, Finance (Salaries) Department, dated 24.08.2016 in respect of the New Health Insurance Scheme 2016 for Employees (New Health Insurance Scheme 2014 for Pensioners / Family Pensioners), whereby and where under, orders were issued in respect of Grievances, Redressal and Mechanism.

21.As a matter of fact, in Serial No.4 of the aforesaid G.O.Ms.No.241, Finance (Salaries) Department, dated 24.08.2016, it is mentioned as under:-

"4.The Government after careful consideration direct that the District Level Empowered Committee and State Level Empowered Committee shall examine the grievances of the Government Employees/ pensioners within the ambit of the Government orders and desist from recommending reimbursement of medical expenses against the Government Orders read above so as to avoid unnecessary litigation against the Government."

22.By way of reply, the Learned Special Government Pleader for the Appellants submits that all the Government Orders governing the present subject matter in issue to speak all the treatments should be on 'Cashless Treatment Basis', but in all cases (including the present one) cash payments are made and thereafter only reimbursement are sought for. Also that the United India Insurance Company was neither approached by the Respondent/Petitioner nor made as a necessary party to the W.P.(MD)No.125 of 2017.

23.Conversely, it is the submission of the Learned Counsel for the Respondent/Petitioner that the Respondent/Petitioner incurred an expense of Rs.1,07,690/- for the treatment given to her husband (V.Kothandaraman-retired Teacher) and now expired and she projected a Representation for reimbursement of the amount. Since her Representation/claim was rejected on the basis that the actual medical expenditure incurred for her husband's injury at Left Hip Region at Raksha Hospital, Anna Nagar, Madurai was not an approved one and therefore, she had filed the present W.P.(MD)No.125 of 2017



to quash the impugned order dated 07.11.2016 passed by the Learned Single Judge of this Court.

24. The Learned Counsel for the Respondent relies on the decision of the Hon'ble Supreme Court in *State of Punjab AND OTHERS v. Mohnder Singh Chawla AND OTHERS* reported in 1997 (2) Supreme Court Cases 83, at special page 86, whereby and where under, it is observed and laid down as follows:-

"11. We are unable to agree with the stand taken by the Government. It is seen that the Government had decided in the proceedings dated October 8, 1991 to reimburse the medical expenditure incurred by the Punjab Government Employees/pensioners and dependents on treatment taken abroad in a private Hospital. It is stated in paragraphs 2 and 3 that the Government has prepared a list of those diseases for which the specialised treatment is not available in Punjab Government Hospitals but it is available in certain identified private Hospitals, both within the outside the States. It was, therefore, decided to recognise these Hospitals for treatment of the diseases mentioned against their names in the enclosed list for the Punjab Government Employees/pensioners and their dependents, The terms and conditions contained in the letter under reference would remain applicable. The Government can, however, revise the list in future. The name of the disease for which the treatment is not available in Punjab Government Hospitals is shown as Open Heart Surgery and the name of the private Hospital is shown as Escorts Heart Institute, New Delhi as one of the approved Hospital/institution. Thus, for open heart surgery or heart disease the Escort Heart Institute is authorised and recognised institution by the Government of Punjab. Consequently, when the patient was admitted and had taken the treatment in the Hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay in integral part of his expenditure incurred for the treatment. Consequently the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved Hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment. Under these circumstances, the contention of the State Government is obviously untenable and incongruous. We hold that the High Court was right in giving the direction for reimbursement of a sum of Rs. 20,000/- incurred by the Respondent towards the room rent for his stay while undergoing treatment in Escorts Heart Institute, New Delhi.



25. The Learned Counsel for the Respondent cites the decision *DR.B.RAMAMURTHY v. THE GOVERNMENT OF TAMIL NADU REP. BY ITS SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIATE, CHENNAI-9 AND ANOTHER* reported in 2000 (2) L.W. 273, at special page 281, at paragraph No.37, it is held as under:-

"37. Merely because the Petitioner did not apply in advance, the denial of actual expenditure, and the reimbursement of Rs. One lakh alone, is arbitrary, and it offends Article 14 as well as 21 as has been held by the Apex Court in *Surjit Singh v. State of Punjab*, cited supra. This Court is of the considered view that the Respondents should have sanctioned the actual expenditure incurred by the Petitioner instead of assuming that the maximum amount the Petitioner is entitled to is Rs. 1 lakh. When the Petitioner had applied for revision of the claim, the Respondents should have considered the Petitioner's claim not only under the Medical reimbursement scheme, but also under other schemes or under the Chief Minister's Relief Fund and should have sanctioned the amount as it is a bona fide claim which the Petitioner had to incur to save his wife."

26. The Learned Counsel for the Respondent seeks in aid of the decision *E.V.KUMAR v. THE UNION OF INDIA, REP. BY THE MINISTRY OF HEALTH AND FAMILY WELFARE (DEPARTMENT OF HEALTH), NIRMAL BHAVAN, NEW DELHI AND OTHERS* reported in 2003 (4) CTC 29, at special pages 31 and 32, wherein at paragraph No.10, it is observed as under:-

"10. The above mentioned conclusion of mine also receives approval by the Supreme Court in *S.Jagannath Vs. Union of India and Others* reported in ((1997) 2 SCC 87), wherein the Supreme Court has held that " if the Government Servant has suffered an ailment which requires treatment at a specialised approved Hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant."

27. Besides the above, the Learned Counsel for the Respondent/Writ Petitioner refers to the following Decisions/Order:-

(i) In the decision *K.MANI v. SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, CHENNAI AND OTHERS* reported in 2007 (3) MLJ 34 at special page 35, wherein it is laid down as under:-

"It is not for any person to decide as to where they should get treatment so long as the Government Order provides for reimbursement.

11. The Government Order including a category of illness for treatment also in a private Hospital, is read as a clarification of the earlier order as it does not introduce any new amendment but only introducing a different regime of treatment, it could have a retroactive



effect so as to serve the true object and scope of the said order."

(ii) In the decision in *D.SUNDARAM v. GOVERNMENT OF TAMIL NADU REP. BY SECRETARY TO THE GOVERNMENT, PAY FINANCE (PENSION) DEPARTMENT, CHENNAI - 9 AND OTHERS* reported in 2009 (8) MLJ 1402, at special page 1403, it is observed and held as under:-

"In respect of claims for medical reimbursement, it is not bounty but it is an obligation of the Government to pay, particularly when the pensioner is subscribing to the Health Fund. If the Government servant has suffered an ailment which requires treatment. It is the duty of the State to provide and bear the expenditure. Refusal of medical claims merely because the name of the Hospital is not found in the accredited list is not proper.

(iii) In the decision *S.M.V. KALIYARASU v. STATE OF TAMIL NADU REP. BY SECRETARY TO GOVERNMENT, CHENNAI - 9 AND OTHERS* reported in 2013 (8) MLJ 287 at special page 288, wherein it is held as under:-

"The object of the government order, in G.O.Ms.No.556, Finance (salaries) Department, dated 08.11.2004, is to extend the benefits given under G.O.Ms.No.400, Finance (Salaries) Department, dated 29.08.2000, to those who had undergone the treatment of Angioplasty, as well. While so, it cannot be said that the benefit contemplated under G.O.Ms.No.556, Finance (Salaries) Department, dated 08.11.2004, should only be prospective in nature. As such, the Petitioner would be entitled to the reimbursement of the medical expenses incurred by him for undergoing the treatment of Angioplasty in the Madras Medical Mission Hospital, Chennai. In such view of the matter, this Court finds it appropriate to direct the Respondents to reimburse the amount ie., 75% of the total medical expenses incurred by the Petitioner for undergoing the said treatment, along with the interest at 9% per annum, from the date of the application of the Petitioner for the reimbursement of the medical expenses, till the date of the actual payment of the said amount. The Respondents are directed to disburse the amount due to the Petitioner, within a period of three months from the date of receipt of a copy of this order.

(iv) In the order dated 17.04.2013, in *W.P(MD).No.6299 of 2013* between *V.DAISY MARY v. THE DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER*, wherein at paragraph No.12, it is observed as follows:-

"12. In fact, the Vadamalayan Hospital, Madurai is an approved Hospital under G.O.Ms.No.243, Finance (Salaries) Department, dated 29.06.2012. Even assuming that Vadamalayan Hospital, Madurai is not an approved Hospital, I am in full agreement with the submissions made by the Learned Counsel for the Petitioner that the family members of the Government Employees cannot search for a approved Hospital, when the person was struggling for his life. This



Court has issued various orders before the NHIS came into existence and reimbursement was made directly by the Government and the Government shall not take such a technical view.

28. It comes to be known that in the order dated 05.04.2016, in W.P. (MD) No. 1408 of 2016, between N. RAJA v. THE GOVERNMENT OF TAMIL NADU REP. BY ITS SECRETARY, ADI DRAVIDAR WELFARE DEPARTMENT, FORT ST. GEORGE, CHENNAI - 9 AND TWO OTHERS at paragraph No. 7, a direction was issued to the First Respondent therein to sanction and reimburse the medical expenses incurred by the Petitioner therein for his treatment, with 9% interest from the date of remittance of amount to the Hospital by the Petitioner till date of payment, within a period of four weeks from the date of receipt of a copy of the order and consequently, allowed the Writ Petition.

29. In the order dated 14.11.2016, in W.P. (MD) No. 12294 of 2016 between J. S. V. LEELA v. DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND THREE OTHERS the fourth Respondent/Director of Pension, Chennai - 6, therein was directed to sanction the medical expenses incurred by the Petitioner, to an extent of Rs. 2 lakhs, which was the eligibility limit under the scheme.

30. In the Division Bench Judgment of this Court, dated 16.12.2016, in W.A. (MD) No. 1579 of 2016, between MD INDIA HEALTHCARE SERVICES (TPA) LTD., REP. BY THE BRANCH MANAGER, CHENNAI - 18 v. K. PARAMESHWARI AND TWO OTHERS and two others, at paragraph Nos. 5 and 6, it is observed as follows:-

"5. Admittedly, the First Respondent's husband took treatment in a non-network Hospital. The relationship of the Appellant with the First Respondent's husband is purely a contract. The Appellant is not bound to satisfy any claim that is not covered by the scheme or contract. The Appellant is strictly bound to satisfy the claims arising out of the procedures/treatments that are listed. According to the Appellant, the First Respondent's husband took treatment in a non network Hospital, that is the Hospital which is not covered under the contract and hence, the Appellant/Insurance Company is not liable to pay the compensation. We find force in the submission of the Appellant.

6. At this juncture, the Learned Additional Government Pleader appearing for the Respondents 2 and 3 submitted that as per G.O. Ms. No. 241, Finance (Salaries) Department, dated 24.08.2016, the matter may be referred to the District Level Empowered Committee. The said G.O. came into effect only on 24.08.2016, whereas the First Respondent made claim prior to the issuance of the said G.O. Therefore, we are of the view that the said G.O. is not applicable to the present case."

31. Apart from that, the Division Bench of this Court, while allowing the aforesaid Writ Appeal by setting aside the issuance of direction by the Learned Single Judge in directing the Appellant to reimburse the amount claimed by the First Respondent, the Bench observed that in other respects, the order of the Learned Single



Judge holds good and further, directed the Respondents 2 and 3 therein to comply with the order of the Learned Single Judge within a period of four weeks from the date of receipt of a copy of the order.

32. In the order dated 27.02.2017 in W.P.(MD)No.2059 OF 2017 between T.BALAMANI v. THE PRINCIPAL SECRETARY TO GOVERNMENT, FINANCE (SALARIES) DEPARTMENT, SECRETARIATE, CHENNAI - 9 AND SIX OTHERS, the First Respondent therein was directed to sanction the medical expenses incurred by the Petitioner/Employee/pensioner as per the eligible criteria in terms of amount under the scheme along with interest at 9% p.a. without standing on technicalities and also ordered the release of the eligible amount within a period of two months from the date of receipt of a copy of the order.

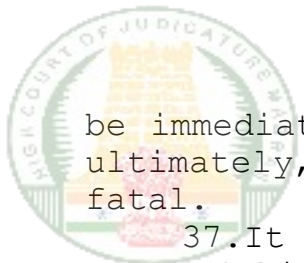
33. In W.A.(MD)No.843 of 2017 and CMP(MD)No.5757 of 2017, dated 30.06.2017, between THE DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND TWO OTHERS v. J.KANAGAM, this Court had observed the following and granted an order of interim stay. While ordering notice to the Respondent through Court and privately returnable by 25.07.2017.

34. It is to be noted that Article 47 of the Constitution of India speaks of 'Duty of the State to raise the level of nutrition and the standard of living and to improve public health'. In this connection, this Court points out that in the decision of the Hon'ble Supreme Court PASCHIM BANGA KHET MAZDOOR SAMITY AND OTHERS v. STATE OF WEST BENGAL AND ANOTHER, reported in (1996) 4 SCC 37, it is observed that 'in a welfare State, the primary duty of the Government is to secure the welfare of the people. It cannot be gainsaid that a failure to provide timely medical treatment to an individual, who is in need of such treatment is a violation of his right to life enshrined under Article 21 of the Constitution of India'.

35. It is to be pertinently pointed out that 'Right to Health' is an integral part of the Right to Life and the Government is under a Constitutional obligation to provide health welfare facilities. If a Government servant underwent a requisite treatment for his ailment and if necessary proof is produced, then it is the primordial duty of the State Government to bear the expenses incurred thereto and reimburse the same. Just because the Government servant had underwent the treatment at an unapproved Hospital, the expenses incurred thereto cannot be denied by the State Government notwithstanding the fact that the Government servant is a member of the scheme introduced by the Government. Also that the individual Government servant/patient or his family members is/are the proper persons to take a final decision as to where the treatment in question is to be provided, as opined by this Court.

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36. It cannot be brushed aside that the State Government is to satisfy the Constitutional obligation to bear/refund the expenses incurred by a Government servant while in service or after retirement from service, of course, based on the policy of the Government. In emergency cases, the treatment that is required will



be immediate/forthwith and if one has to comply with the procedure, ultimately, 'waiting' in this regard may prove disastrous and fatal.

37. It is to be aptly pointed out that a human being is to take care of himself and in this regard, the individual concerned is the best Judge suited to take a final call/decision. In reality, the self preservation of one's life is enjoined under Article 21 of the Constitution of India, as an inviolable right, in the considered opinion of this Court.

38. No doubt, a patient as a lay human being cannot pick and choose the method/mode of surgery. It is for the Doctors/Medical experts to determine and suggest a right course of action as to what/which kind of surgery/treatment is suitable, ofcourse, taking into consideration the nature of the ailment and the status/condition of the concerned patient.

39. Although financial resources are required for providing medical facilities to the needy, ultimately, the State Government has the constitutional obligation to provide enough medical services to the public. On account of financial constraints, the Constitutional obligation to provide medical services/facilities to the people cannot be avoided.

40. Be that as it may, in the present case, there is no dispute as to the factum of actual expenses incurred by the Respondent/Petitioner, which she claims in the Writ Petition. Undoubtedly, the human being is to take necessary precautionary and protective measure for his body. The payment/reimbursement of medical expenses spent by the Government servant concerned or his family is not 'Bounty', but it is an obligation of the State Government to pay/disburse the said amount in question without harping on either technicalities or hyper technicalities. As such, this Court is of the considered opinion that the Learned Single Judge was correct in directing the First Appellant/First Respondent to sanction the medical expenses incurred by the Respondent/Petitioner for her husband's ailment, as per the eligibility criteria in terms of the amount under the scheme and the same is free from any flaw. However, this Court is of the considered view that the interest of 9% p.a. fixed by the Learned Single Judge is slightly on the higher side and to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court reduces the rate of interest from 9% p.a. to that of 6%.

41. In view of the forgoing discussions and reasons, this Court, directs the Appellant/First Respondent viz., the Director of Pension, Chennai - 6, to sanction the medical expenses incurred by the Respondent/Petitioner/Employee's wife, as per eligibility criteria as regards the amount under the scheme together with interest at 6% p.a. and release the eligible sum to the Respondent/Petitioner (wife of the Employee) after subjectively satisfying about her legal heirship within a period of four weeks from the date of receipt of a copy of this order.



42. With the aforesaid Observation(s)/Direction(s), the Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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/True Copy/

Sd/-

Assistant Registrar(CSI)

Sub-Assistant Registrar

To:

1. The Director of Pension, DMS Complex,
Teyampet, Chennai - 6.
2. The District Collector, Madurai District, Madurai.
3. The Joint Director,
Medical and Rural Health Services Department,
Madurai District Head Quarters,
Usilampatty, Madurai District.
4. The Treasury Officer, District Treasury, Madurai - 625 020.

+One cc to The Special Government Pleader, SR.No.86917

+One cc to Mr.S.Govindan, Advocate, SR.No.86010

rj2

RL/7C/14P/KK/SAR1/27/11/2017

Judgment made in

W.A. (MD) No.1382 of 2017

and

C.M.P. (MD) No.9879 of 2017

09.11.2017