BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.5305 of 2016

C.Thamaraiselvan ... Petitioner

-vs-

1. The District Collector,
   Collectorate, Karur-639 007.

2. The Chief Educational Officer,
   Karur District, Karur.

3. United India Insurance Company Ltd.,
   Chennai-600 006. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to reimburse the amount incurred by the petitioner for the cardio medical treatment covered under the Annexure II of the G.O.Ms.No.243, dated 29.06.2013 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.V.Sitharanjandas

For R1 & R2 : Mr.K.P.Krishna Doss
Govt. Advocate

For R3 : Mr.A.Shajahan

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O R D E R

The petitioner seeks to direct the respondents to reimburse the amount incurred by the petitioner for the cardio medical treatment covered under the Annexure II of the G.O.Ms.No.243 dated 29.06.2013

2. The petitioner, who is working as a Drawing Master in Government Higher Secondary School, Malaikovilur, Karur District, has incurred a sum of Rs.2,50,000/-for the treatment given to him and submitted a representation for reimbursement of the said amount.

3. Admittedly, the hospital, in which the petitioner has taken treatment, is a non network hospital. While dealing with the similar issue of medical reimbursement, I have considered all the aspects, referred to various judgments of this Court and passed an elaborate order in ***W.P.2059 of 2017 [T.Balamani vs The Principal Secretary to Government, Finance (Salaries) Department, Secretariat, Chennai-9 and others] decided on 27.02.2017*** and directed the Government to sanction the amount to the petitioner therein. The order passed by me is extracted below:

> "The petitioner seeks to quash the impugned order dated 04.10.2016, by which her request for medical reimbursement was rejected on the ground that the hospital, in which she underwent treatment is not an approved hospital. The petitioner also sought a direction to the 1st respondent to reimburse the medical expenses of Rs.4,44,965/- to the petitioner with adequate interest
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> 2. The petitioner, who was an employee during the period of treatment and now attained superannuation, has approached this Court against the rejection order in respect of her medical claim for the treatment. The request of the petitioner has been rejected by the Government followed by the rejection of the High Level Committee.
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> 3. Learned Government Advocate would submit that the Government, having entered into a contract with the Insurance Company and having paid huge amount to them, cannot be compelled to reimburse the amount for the second time. He would further submit that there are number of net work hospitals in the State and it is impermissible for the Government employees to choose their own hospitals for treatment and thereafter claiming reimbursement. If this practice is allowed, then the very purpose of entering into the the contract with the Insurance Company will be defeated.
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> 4. Learned counsel for the petitioner would contend that the Government issued an order in G.O.Ms.241 Finance (Salaries) Department dated 24.08.2016, which states that in order to redress the grievances of the Government employees/pensioners under New Health Insurance Scheme, District Level Empowered Committee / State Level Empowered Committee / High Level Committee have been constituted, which will go through the records and thereafter decide with regard to reimbursement of the amount and prior to that, the Government only extended the monetary benefits for the treatment.

5. Heard the learned counsel on either side.

6. It is seen that the Government has entered into a contract with the Insurance Company between the years 2014 and 2018 and as per the contract, the Insurance Company is liable to pay the entire amount directly to the network hospital and it cannot reimburse the amount in terms of money, as the facility extended itself is the cashless facility. But, at the same time, the State cannot take a stand that there is no provision to reimburse the amount to its employees in terms of money at all.

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.

9. Accordingly, this writ petition is allowed and the impugned order dated 04.10.2016 is hereby set aside. The concerned respondent, namely, the 1st respondent is directed to sanction the medical expenses incurred by the petitioner/employee/pensioner, as per the eligibility

criteria in terms of amount under the Scheme along with interest @ 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 this order.

10. Before parting with the matter, it is suggested that the Government shall ensure devising a proper scheme so that the employees / pensioners, who are the backbones for smooth running of Government machineries are not made to run from pillar to post for their claims, on the ground of technicalities being raised by the Insurance Company."

4. Finding that the present issue on hand is squarely covered by the judgment of this Court dated 27.02.2017, this writ petition is disposed of with a direction to the respondents, more particularly, 1st respondent to sanction the medical expenses incurred by the petitioner/employee, as per the eligibility criteria in terms of the amount under the Scheme along with interest @ 9% p.a. without standing on technicalities and release the eligible amount to the petitioner, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The District Collector,
   Collectorate, Karur-639 007.

2. The Chief Educational Officer,
   Karur District, Karur.

+1cc to M/s. V.SITHARANJANDAS Advocate in SR. No.11271
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JS/RR/SAR.3/7/04/2017/4P-4C