



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.A. (MD) No. 1453 of 2017
and
C.M.P. (MD) No. 11160 of 2017

1. The District Collector,
Ramanathapuram.
2. The Sub Treasury Officer,
Treasury Office,
Thiruvadanai,
Ramanathapuram.
3. The District Treasury Officer,
Ramanathapuram.
4. The Director of Pension,
II Floor, 3rd Block,
D.M.S. Office Complex,
Teynampet,
Chennai-600 006.

: Appellants/Respondents

Vs.

S. Anthony : Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 27.02.2017 made in W.P. (MD) No. 10712 of 2016.

Prayer in WP (MD) . 10712 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus to call for the entire records in Impugned order passed by the 1st respondent in Na.Ka.H2/17638/2015 dated 10.04.2015 and quash the same and directing the respondents to sanction of medical reimbursement to the petitioner by considering the representation of the petitioner dated 06.04.2015 within the time frame as stipulated by this Honourable Court.



For Appellants : Mr.VR.Shanmuganathan,
Special Government Pleader
For Respondent : Mrs.S.Srimathi,
For Mr.S.M.S.Johnny Basha

JUDGMENT

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[Judgment of the Court was delivered by **M.VENUGOPAL, J.**]
Heard both sides.

2. The Appellants have preferred the instant intra-Court Writ Appeal as against the order dated 27.02.2017 passed by the Learned Single Judge in W.P.(MD)No.10712 of 2016.

3. Earlier, the Learned Single Judge, while passing the impugned order dated 27.02.2017 in W.P.(MD)No.10712 of 2016, had allowed the Writ Petition and set aside the impugned order dated 10.04.2015 of the first Appellant/first Respondent and further, directed the Respondents therein (Appellants) to sanction the medical expenses incurred by the Respondent/Writ Petitioner/Pensioner to his wife, as per the eligibility criteria in terms of amount under the Scheme along with interest at 9% per annum without standing on technicalities and release the eligible amount to him, within a period of two months from the date of receipt of copy of the order.

4. At this juncture, the Learned Special Government Pleader for the Appellants fairly submits that the issue revolving around the Writ Petition in W.P.(MD)No.10712 of 2016 is squarely covered by the Judgment of this Court in W.A.(MD)No.1382 of 2017, dated 09.11.2017 between the Director of Pension, DMS Complex, Thenampet, Chennai - 6 and 3 others Vs. B.Sarada, whereby and whereunder, in Paragraph Nos.28 to 40, it is observed as under:

"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.

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%."

5. Following the Judgment dated 09.11.2017 in W.A.(MD)No.1382 of 2017, this Court directs the fourth Appellant/fourth Respondent/Director of Pension, Chennai-6, to sanction the medical expenses incurred by the Respondent/Writ Petitioner/Pensioner to his wife, as per the eligibility criteria, in terms of the amount under the Scheme along with interest at 6% per annum and release the eligible amount to him, within a period of four weeks from the date of receipt of copy of this Judgment.

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

Sd/-
Assistant Registrar (AS)

/True Copy/



To

1. The District Collector,
Ramanathapuram.
2. The Sub Treasury Officer,
Treasury Office,
Thiruvadanai,
Ramanathapuram.
3. The District Treasury Officer,
Ramanathapuram.
4. The Director of Pension,
II Floor, 3rd Block,
D.M.S. Office Complex,
Teynampet,
Chennai-600 006.

+1cc to M/S.S.M. JOHNNY BASHA, Advocate SR.No.90727.

Judgment made in
W.A. (MD) No.1453 of 2017
30.11.2017

SML

SDS/SV:MMS/SAR 3/20.12.2017/6P/6C