



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P(MD)No.9774 of 2013

and

M.P(MD)No.1 of 2013

L.Joseph

.. Petitioner

Vs.

1.The Secretary,
Medical and Rural Welfare Scheme Department,
Government of Tamil Nadu,
Secretariat,
Chennai.

2.The Planning Director,
Tamil Nadu Health Scheme,
Medical and Rural Welfare Scheme Department,
Directorate Complex,
Teynampet,
Chennai.

3.The District Collector,
Madurai District,
Madurai.

.. Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent order in Na.Ka.No.1094/TNHS/Insurance/ 2012, dated 05.07.2012 and to quash the same and directing the respondents to grant medical assistance to the petitioner's grand children Rebeeca J. Sushmitha aged about 12 years and Merlin J.Dayana aged about 8 years for their Retinitis Pigmentosa with Atropic Maculopathy of eye retina decease under the scheme of Chief Minister Extended Medical Insurance Scheme.

For Petitioner : M/s.P.Krishnaveni
for Mr.A.Haja Mohideen

For RR 1 to3 : Mr.T.R.Janarthanan
Additional Government Pleader

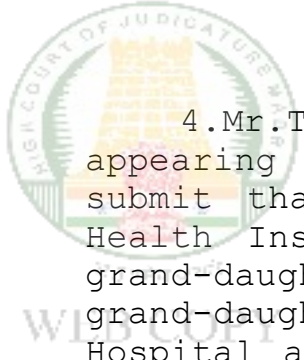
**ORDER**

By an order, dated 05.07.2012, the petitioner's request for reimbursement of medical treatment for his grand-daughters was rejected, which is impugned in the present Writ Petition.

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2.The case of the petitioner is that two of his grand-daughters, namely Rebeeca J.Sushmitha and Merlin J.Dayana, aged 12 years and 8 years respectively, have eye retina disease namely Retinitis Pigmentosa with Atropic Maculopathy, owing to which the nerves in the eyes were very weak with a narrow vision of 10 degree only. Both the grand-daughters of the petitioner are under his custody and he had earlier availed medical help from reputed eye hospitals, namely, Government Rajaji Hospital, Madurai; Aravind Eye Hospital and Rajan Eye Care Hospital which proved futile. Subsequently, he had his grand-children treated in Sreedhareeyam Ayurvedhic Eye Hospital and Research Centre Private Limited at Ernakulam, Kerala, an Ayurvedhic medical hospital, wherein the petitioner claims that there was an improvement in the eye sight of the petitioner's grand-daughters. During the course of treatment, the petitioner had incurred medical expenses and hence, he had made an application under the Chief Minister's Comprehensive Health Insurance Scheme seeking for financial assistance for the expenses incurred. The petitioner also submits that the grand-daughters are undergoing treatment on a day-to-day basis, involving recurring expenses and therefore, they are entitled for financial assistance for the recurring expenses also. The second respondent by an order, dated 05.07.2012, had rejected the petitioner's request stating that the treatment offered to the petitioner's grand-daughters are not among the listed treatments. Aggrieved against the same, the present Writ Petition has been filed.

3.M/s.P.Krishnaveni, learned counsel appearing for the petitioner would submit that the reasoning of the respondents that the treatments is not listed among the listed treatments in the scheme is illogical and perverse, since the petitioner had earlier approached various listed Hospitals for the purpose of treatment and since the same did not give fruitful results, he was constrained to offer treatment for his grand-daughters in Sreedhareeyam Ayurvedhic Eye Hospital and Research Centre Private Limited at Ernakulam, Kerala, wherein he had faced little improvement to his grand-daughters eye sight. The learned counsel would further submit that his son-in-law, who is a vegetable vendor, has registered his name under the Tamil Nadu Manual Workers Welfare Board and as such, as a father of the children, the scheme has to be extended to the petitioner's grand-daughters. According to the learned counsel for the petitioner, the grand-daughters are under the petitioner's custody, since the family income of the children's parents is under the poverty line.



4.Mr.T.R.Janarthanan, learned Additional Government Pleader appearing for the respondents 1 and 3, on the other hand, would submit that the benefits of the Chief Minister's Comprehensive Health Insurance Scheme cannot be extended to the petitioner's grand-daughters, since the treatment undergone by the petitioner's grand-daughters are not among the listed treatments and that the Hospital at Ernakulam, which is an Ayurvedhic Hospital also does not form a part of the scheduled hospitals under the scheme. Further, the learned Additional Government Pleader would submit that neither the petitioner nor the grand-daughters are members under the Chief Minister's Comprehensive Health Insurance Scheme.

5.Mr.G.Prabhu Rajadurai, learned counsel appearing for the second respondent would also reiterate the arguments advanced by the learned Additional Government Pleader and submit that the petitioner is not entitled for the benefits of the scheme, since the Hospital as well as the Ayurvedic treatment given to the grand-daughters do not form one among the schedule list and that the petitioner is not a member or a beneficiary under the scheme.

6.I have given careful consideration to the submissions of the learned respective counsels.

7.The Chief Minister's Comprehensive Health Insurance Scheme was launched to improve access to the poor families of Tamil Nadu, whose family annual income is less than Rs.72,000/- for the purpose of providing quality medical care for identified specialty services requiring hospitalization for surgeries and medical procedures with the provision to pay upto Rs.1.5 lakhs per year per family. The scheme had also listed out empaneled Hospitals and medical procedures. The main object of the scheme was to provide free medical and surgical treatment in Government Hospital as well as in Private Hospital to the members of any family, whose annual income was less than Rs.72,000/-. As per the scope of the scheme, the facility was to provide coverage to the beneficiary or any member of his or her family for the treatment of procedures listed out in the scheme. The scheme had identified 120 procedure list therein and with the proviso that procedures under the scheme may be modified with mutual consent with approval of the State Empowered Committee.

8.On an overall reading of this scope, object and obligation of the scheme, it is seen that the intention was only to provide free medical and surgical treatment to poor families, who were below the poverty line. It is only for the sake of convenience and as a yardstick, list of procedures, ailment, treatment etc., have been scheduled out in the scheme. The scheme has made it very clear that the procedures laid down were subject to modification and as such, the guidelines under the scheme is only taken to be as directory in nature.



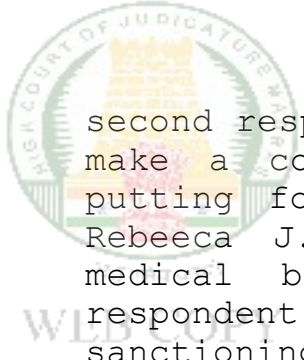
9. On this background, it is seen that the petitioner, who was the grandfather of the two minor children, had been consistently availing treatment from among the Hospitals listed in the scheme. It is only when he realized that the treatment extended by those listed hospitals did not yield good results, he had approached the Ayurvedic Hospital at Kerala, where the results were better when compared to the earlier treatments. I am unable to find any clause which excludes Ayurvedic treatment under the scheme. The Chief Minister's Comprehensive Health Insurance Scheme speaks about the medical treatments alone and does not differentiate allopathy or Ayurvedic treatments. While that being so, the reasoning that the petitioner's grand-daughters are not entitled to the benefit of the scheme, since they had availed of Ayurvedic treatment is illogical as well as illegal.

10. As observed earlier, the second reasoning that the ailment is not among the list of ailments is again not appealing, since the guidelines given in the said scheme is only to be used as a yardstick for the purpose of extending the welfare measures to the poor families. It is reiterated that the list of scheduled Hospitals as well as the scheduled ailments/treatments is not exhaustive, but subject to modification by the State Empowered Committee.

11. The further argument of the learned counsels appearing for the respondents are that the petitioner is not a beneficiary under the scheme is again incorrect. The father of the minor children is a member of the Tamil Nadu Manual Workers Welfare Board. While contemplating to extend these kind of welfare scheme to the poor community, what should be borne in mind is as to whether the patients seeking for such a relief are really affected by ailments and that they were constrained to incur medical expenses in view of their ailments. In cases of this nature, the respondents are bound to take a liberal and pragmatic approach rather than devising norms which are not spelt out in the scheme. As such, quoting reasons that the treatment or the ailment is not in the list of scheduled diseases/hospitals may not be correct, particularly when Ayurvedic treatment is not excluded in the scheme. Likewise, the reasoning that the petitioner is not a beneficiary under the scheme is also not appealing, since the children's father is already a member of the Tamil Nadu Manual Workers Welfare Board.

12. I have taken cognizance of the fact that the ailment of the minor children is recurring in nature and therefore, the petitioner has to incur continuing medical expenses.

<https://hcservices.courts.gov.in/hcservices/> 13. In view of the same, I am of the considered view that the petitioner is liable to succeed the present Writ Petition. Consequently, the impugned order, dated 05.07.2012 passed by the



second respondent is quashed. The petitioner is granted liberty to make a comprehensive application before the second respondent putting forth his medical claim for his grand-daughters namely Rebeeca J.Sushmitha and Merlin J.Dayana along with supporting medical bills. On receipt of such application, the second respondent shall consider the same and pass appropriate orders of sanctioning financial assistance under the Chief Minister's Comprehensive Health Insurance Scheme, within a period of eight weeks from the date of receipt of a copy of this order.

14.With the above observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
Medical and Rural Welfare Scheme Department,
Government of Tamil Nadu,
Secretariat,
Chennai.

2.The District Collector,
Madurai District,
Madurai.

+1 cc to MR.A.HAJA MOHIDEEN, Advocate SR.No.410

+1 cc to Special Government Pleader SR.No.796

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and
M.P (MD) No.1 of 2013
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SMA/RR-ME/23.01.2017:5P/5C