

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CMP.No.4175/2018
IN WA.SR.No.14324/2018

1.The Director of Treasuries and Accounts
Government of Tamil Nadu
Panagal Building, Saidapet,
Chennai 600 016.

2.The Director In-Charge
Seeds Certification and Organic Certification
142-A, Thadagam Salai,
Coimbatore-13.

3.The Deputy Director of Seed Inspection
4, Rajarajeshwari Nagar,
Opposite to New Bus Stand,
NGO-B Colony, Tirunelveli.

Petitioners /
Appellants in WA.SR.No.14324/2018

Versus

T.Subbiah

Respondent /
Writ Petitioner

Prayer:- Petition filed u/s.5 of Limitation Act, to condone the delay of 145 days in filing the writ appeal against the order passed on 28.08.2017 made in WP.No.42725/2016.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.42745/2016 dated 28.08.2017.

For Petitioner : Ms.Rose Kamalam, GA

ORDER

[Order of the Court was made by N.SATHISH KUMAR, J.]

The above miscellaneous petition in WA.SR.No.14324/2018 has been filed to condone the delay of 145 days in filing the writ appeal against the order dated 28.08.2017 passed in WP.No.42745/2016.

2 Before issuing notice in this matter, we have heard the learned Government Advocate appearing for the petitioners / appellants. After perusing the order of the learned Single Judge dated 28.08.2017, we are of the view that the petition for condonation of delay can be disposed of today itself, without ordering any notice to the other side.

3 For easy understanding, we also felt that the order of the learned Single Judge, which is impugned in this appeal, also to be extracted. The brief facts leading to filing of the writ appeal are as follows:

[a] Originally, the writ petition was filed by the respondent herein / writ petitioner seeking to quash the order of the 2nd respondent therein dated 25.07.2016 with a further direction to the 2nd respondent

therein to recommend and forward the writ petitioner's claim of Rs.42,397/- to the respondents 1 and 3 therein and to disburse the same towards medical reimbursement.

[b] The above writ petition was contested by the appellants/petitioners herein on the ground that the writ petitioner's wife has taken treatment in the hospital which was not approved under the New Health Insurance Scheme. Learned Single Judge, in paragraphs No.5 to 7 has observed as follows:-

"5. The very object of the medical scheme is to provide assistance to the Government employees for medical treatment. Merely taking treatment in an unapproved hospital cannot be a ground to deny the medical reimbursement claim of the Government employee. Right to life is a fundamental right enshrined under Article 21 of the Constitution of India. The Hon'ble Supreme Court of India time and again reiterated and emphasized that right to life cannot be interpreted as animal life and it is a decent life, which is to be enshrined. Enlarging the scope of Article 21 of the Constitution of India, the Hon'ble Supreme Court went one step ahead, providing medical facilities is also to be included in right to life. Thus, the medical facilities are to be extended to all the citizens of this great nation, which is also a right to life under the Constitution of India.

6. When the Constitutional Courts have repeatedly held that the medical reimbursement is also included under Article 21 of the Constitution of India. Denial of the same to be construed as violative of the fundamental rights. The State in this regard should be a modal

employer and the Insurance Companies as well as the State are duty bound to deliver the scheme promptly and more specifically, the health schemes. A State cannot deny the benefit of medical reimbursement on mere technicalities. It is for the respondents to find out the genuineness of the medical reimbursement claim, once the treatment undertaken is established by the person, who is claiming medical reimbursement. Then the same to be provided in accordance with the scheme.

7. In the case on hand, the writ petitioner states that in view of the urgency, his wife was admitted in the nearby hospital and underwent surgery. The respondents can very well verified the genuineness of the treatment provided to the wife of the writ petitioner and they cannot deny the claim on the ground that the hospital in which the treatment was taken is not an approved one under the said health scheme. In urgent circumstances, immediate medical help to the patient is eminent and the writ petitioner cannot be driven to search for the approved hospital and admit his wife, such is the relevance in this matter and denial of the medical reimbursement is improper."

and accordingly, allowed the writ petition, as against which, the present appeal came to be filed by the respondents in the writ petition, along with an application to condone the delay of 145 days.

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4 It is the stand of the petitioners/appellants in this miscellaneous petition that the certified order copy of the order was received only on 10.11.2017. Therefore, after obtaining the opinion of the Government Pleader, they have forwarded the same to the

Government for obtaining sanction and hence, there was a delay of 145 days in preferring the appeal. We are of the view that normally, the administrative delay is inherent in the Government Departments. But, at the same time, without any details as to when such exercise has been made, what are all the delay caused on the administrative side, such a casual and vague statement in the affidavit that the delay occurred due to administrative reasons/process, cannot be accepted mechanically. What is pitted against an ordinary litigant is also pitted against the Government before Court of law to establish a particular fact. Though the delay normally is condoned in a liberal manner, such liberal approach cannot be applied mechanically, without sufficient cause. Though the word "sufficient cause" has to be given a liberal approach, to exercise discretion for such liberal approach, there must be necessary facts in the affidavit filed in support of the same. But, on a perusal of the affidavit, we do not find plausible explanation for such delay except stating that there is an administrative delay. Such vague and bald explanation cannot be accepted mechanically. When Courts are extending such liberal approach mechanically, it has become a routine affairs of the Government Departments to file the appeals against every order passed by the Court. The present day scenario in filing the appeal, challenging every order by the Government Departments, clearly exhibits shirking responsibility of the Department

Heads. In fact, now the tendency has developed among the Department Heads, not to take any risk and to avoid any question relate to the litigation and only in order to avoid any query, the administrative side files these types of appeals, though there is no merit in the appeal.

5 The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to non-chalant attitude should be curbed at the initial stage itself. Though it is not fair on our part to touch upon merits of the appeal, still we are of the view that the order passed by the learned Single Judge cannot be faulted at all.

6 The only contention of the petitioners/appellants on merits in the matter is that since the hospital where the treatment was taken by the writ petitioner is not included in the list of hospitals mentioned in

the Insurance Scheme, reimbursement is not permissible. Such contention, in our view, cannot be countenanced for the simple reason that the Hon'ble Supreme Court of India in the decision reported in **2001 [9] SCC 217 [State of Punjab and others Vs. Mohan Lal Jindal]**, has held that *"when a Government Servant takes treatment from a hospital of his choice, the same cannot be curtailed, though the Government has power to restrict the claim by framing appropriate rules."* Similarly, in yet another judgment reported in **2008 [5] SCC 328 [State of Karnataka and another Vs. R.Vivekananda Swamy]**, it has been held by the Hon'ble Apex Court as follows:-

"24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such Rules furthermore having been framed the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognised Government hospital and on the other, he at his option, may get himself treated from other recognized hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited."

7 Considering the above aspects and further the affidavit filed for condoning the delay, did not contain any details as to how the delay of 145 days had occurred and that no plausible and proper explanation was assigned for each and every day's delay, we are of the view that it is a fit case where the discretion cannot be exercised for condonation of the delay.

8 Accordingly, the miscellaneous petition seeking condonation of 145 days delay in preferring the appeal is dismissed. Consequently, the writ appeal also stands dismissed.

[CTSJ]

[NSKJ]

01.03.2018

Internet : Yes

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To

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4.Mr.T.Subbiah
No.33/1, Bharathi Nagar
Melagaram, Tenkasi Taluk 627 818.

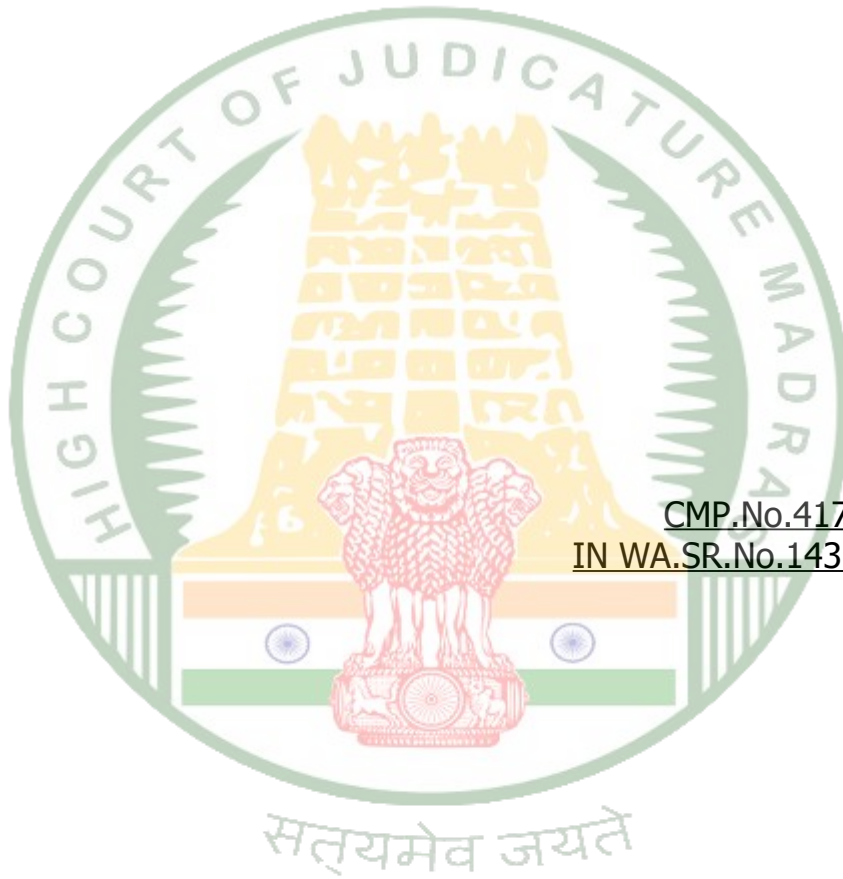
**Copy of the above order is also marked to the writ petitioner as per the order of this Court.

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C.T.SELVAM, J.,
AND
N.SATHISH KUMAR, J.,

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