

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2018  
Coram

The Hon'ble Mr. Justice Satrugana Pujahari

Writ Petition No. 21594 of 2018  
and  
W.M.P.No. 25344 of 2018

M. Sampath

...Petitioner

Vs.

1. The Director General - CISF,  
Block No. 13 - CGO Complex Lodhi Road,  
New Delhi - 110003.
2. The Commandant CISF,  
NLCI Campus,  
Valayamadevi - Neyveli Road,  
Neyveli - 607802.
3. The Chief Medical Officer,  
NLC Hospital,  
Block - 6, Neyveli T.S, Neyveli - 607 803.
4. The Additional Director,  
CGHS, E2C- Rajaji Bhavan,  
Besant Nagar, Chennai - 600 090.
5. M/s. Apollo Hospital,  
No. 21, Greams Lane, off Greams Road,  
Chennai - 600 006.
6. MIOT Hospital,  
No. 4/112, Mount Poonamalle High Road,  
Sathya Nagar, Manapakkam,  
Chennai - 600 089.
7. Additional Director (CGHS),  
Central Government Health Scheme,  
Rajaji Bhavan, Besant Nagar,  
Chennai - 600 090.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the third and

seventh respondents to sanction and disburse the required funds towards the entire cost of the procedure pertaining to the petitioner's liver transplantation including the donor's medical treatment and post transplantation care and medication for the petitioner as well as the donor.

For Petitioner : Mrs. K.Subhashini

For Respondents : Mr. K.Sasi Kumar,  
Standing Counsel for R.1, 2 & 7

Mr.S.Dayaleeshwaran for R.5

Mr. N. Nithyanandam  
Standing Counsel for R.3

Mr.R.Shanmugasundaram,  
Senior Counsel for  
Mr.A.Gopinath for R6

ORDER

It appears that the petitioner was a Head Constable under the Central Industrial Security Force (CISF). He superannuated from his service while being posted as such under the second respondent. The CISF personnel posted under the control of second respondent used to render service to Neyveli Lignite Corporation (NLC). During their such posting the NLC Hospital used to cater to their need in the medical matter. The third respondent being the head of NLC Hospital also used to refer to them for treatment to its referral institution for better management in case of need and admittedly the fifth respondent hospital that is Apollo Hospital, Chennai a referral hospital of third respondent. The petitioner who was suffering from liver Chyrosis was referred to the fifth respondent hospital, where they assessed his health condition and advised immediately for liver transplant. The petitioner also had undergone all the preliminary check up and test necessary for such transplant and donor was also ready for the same. Then his date of transplant was fixed on a date which was after his superannuation. After his superannuation the petitioner is coming under the CGHS Scheme and his medical expenses are required to be taken care of by the seventh respondent and in its network hospital. Accordingly, the petitioner was admitted in sixth respondent hospital for the purpose. They stated to have assessed his case and estimated the expenditure to be between 35 to 40 lakhs which is more than the amount given as a package to take up such transplant under the CGHS Scheme, inasmuch as, the maximum expenditure that can be reimbursed or paid to the institution under the CGHS Scheme is 11.5 lakhs besides the 2.5 lakhs

payable to the donor. But when the liver to be transplanted is belongs to cadaver one, the same is eleven lakhs. As such, the petitioner is not in a position to meet the remaining part of the expenditure in MIOT Hospital for such transplantation as he is a superannuated poor head constable. His condition is a serious one. Hence, he came to file this writ petition seeking the prayer directing a writ of mandamus to the third and seventh respondents to sanction and disburse the required funds of the entire cost of the transplant so also, the post transplantation care and medication.

2. As it appears the 7<sup>th</sup> respondent has filed counter affidavit indicating the fact that the petitioner's case is covered by the CGHS Scheme as per the Health and Family Welfare Ministry of the Government of India OM.No.S15025/3/2010-MS/CGHS (P), dated 16.01.2013, wherein the package for liver transplant including the payment to the donor is Rs.14,00,000/- but liver transplant involving a deceased donor is Rs.11,00,000/- in a CGHS empaneled Hospital and the same can only be after request has been approved and recommended by the Standing Committee on examining the documents and as such, averment has been made to direct the respondent to comply with the aforesaid direction in the Office Memorandum for getting the benefit under the CGHS Scheme for such transplant.

3. As it appears the seventh respondent is the only contesting respondent in this case, however sofaras the expenditure are concerned, it is not disputed by the MIOT Hospital, the expenditure shall be more than 35 to 40 lakhs so also the other contention of the petitioner that he was referred to Apollo Hospital which was also a referral hospital while working under the second respondent by the third respondent and the expenditure of liver transplant in an empaneled hospital under CGHS scheme is more than the double the cap of expenditure to which the petitioner is entitled to under the CGHS Scheme. The aforesaid expenditure therefore in a empaneled hospital like 5<sup>th</sup> respondent hospital is more than 20 lakhs than a non empaneled hospital like 5<sup>th</sup> respondent hospital, inasmuch as, the expenditure in the Apollo Hospital can be met for the transplantation of liver within the cap provided under the CGHS Scheme or some little more amount to which the petitioner counsel stated the petitioner can easily made. In the aforesaid factual backdrop, I have heard the learned counsel for the petitioner as well as the respondent No.7.

4. The counsel for the petitioner submits that the petitioner is a Reitred Head Constable and to save his life, he needs the transplant of liver. The same was assessed by Apollo Hospital while he was in service. If the surgery could have

been taken in the said hospital at that time in view of the reference of the third respondent, the entire expenditure could have been met by the third respondent through the health insurance scheme. However, he now being out of service, he is covered by the CGHS Scheme and under treatment in the Sixth respondent MIOT Hospital, an empaneled hospital under the scheme. The expenditure of such surgery of the petitioner in the said empaneled hospital is much more than the cap of expenditure, the seventh respondent is going to reimburse under the scheme. The petitioner, therefore unable to have his transplant in the empaneled hospital inasmuch as he cannot pay to the sixth respondent the balance expenditure. The fifth respondent hospital who had made preliminary assessment is ready to do the transplant with an expenditure estimated by them which the petitioner can very well meet as the same is coming near the expenditure under the CGHS Scheme as provided in the aforesaid Office Memorandum (OM) or little bit more. However the CGHS Authority under the OM shall not reimburse the same or pay the same to the 5<sup>th</sup> respondent being not an empaneled hospital under CGHS Scheme. In such premises, either the seventh respondent be directed to meet the entire expenses of transplant if done in the sixth respondent hospital or make payment to the fifth respondent hospital for such transplant the amount permissible under the scheme though the same is non-empaneled hospital inasmuch as the surgery is an emergent one and cannot in view of the deteriorating condition of the petitioner await and the petitioner is a poor retired Head Constable. The same is more so as the petitioner was also while in service treated in the fifth respondent hospital which is a referral hospital of the third respondent.

5. Learned counsel however appearing for the seventh respondent submits that unless the Standing Committee approves and the treatment is taken up in an empaneled hospital under CGHS scheme, the petitioner is not entitled to the relief sought for.

6. Before appreciating the contention of the parties, it would be apposite to mention here that i am reminded of a decision of the Apex Court rendered in writ petition Civil No.694 of 2015 (Shivakant Jha Vs. Union of India), wherein the Apex Court dealing with the similar problem that is reimbursement of medical expenditure of retired Central Government servant who had undertaken treatment in a non empanelled hospital in emergency, in exercise of the writ jurisdiction directed reimbursement of the amount notwithstanding the CGHS scheme speaks of reimbursement only if treatment is taken up in a empaneled hospital and also more than the amount held by the committee to be permissible under the CGHS Scheme.

7. Keeping in mind the aforesaid law laid down and also the fact that the petitioner's case was earlier assessed for transplant in the Apollo Hospital being referred by the third respondent, who is competent to do the same. But in the meanwhile, the petitioner having been retired his such expenditure in the Apollo Hospital cannot be met for such transplant in pursuance to such reference and the petitioner now admitted with sixth respondent being covered under the CGHS Scheme and also the estimated expenditure of the sixth respondent for the same is more than twice of the amount to be permissible under the Scheme for the aforesaid transplant whereas the expenditure of the fifth respondent appears to be near or little more than the amount of expenditure that is payable under the CGHS scheme and it is stated that the petitioner's health condition is deteriorating and he needs immediate transplant, this Court directs the seventh respondent to allow the petitioner to take up his transplant in the fifth respondent hospital provided the sixth respondent hospital certify the same to be urgent one, without awaiting the approval of the Standing Committee. For the same, the seventh respondent shall give an intimation to the fifth respondent to take up such transplant of the petitioner and the amount shall be paid to them on obtaining the approval of the standing committee. Further more, since the case of the petitioner has been stated to have been assessed by the fifth and sixth respondent and the necessary papers be supplied with the applications by the petitioner to the 7<sup>th</sup> respondent, if not already done immediately on receipt of which, the 7<sup>th</sup> respondent shall take up the follow up action with all promptitude by sending the same to the Standing Committee for completion of the formalities for payment of the expenditure to the concerned hospital. It is hope and trust that the Standing Committee shall also do the needful with all promptitude on receipt of such papers taking a pragmatic approach without insisting for completion of formalities which are trivial in nature, moreso, taking note of the law laid down in the case of Shivakant Jha (supra) by the Apex Court. It goes without saying that if the petitioner case can await the approval of the Standing Committee the hospital concerned may do the same and take up the transplant only after receipt of such approval. However, if the same is urgent and certifying the same, Hospital concerned i.e the 5<sup>th</sup> respondent hospital can do the transplant but the amount that is payable by the 7<sup>th</sup> respondent for the same is as admissible under the CGHS Scheme and if anymore amount is payable, the same shall be borne by the petitioner. The aforesaid direction is also given considering the fact that the petitioner case all formalities as required under the Transplant of Human Organs Act and the rules thereunder as applicable in the State of Tamil Nadu has been

completed or shall be completed before the transplant. Therefore, in no manner this order should be construed as a license to do the transplant without compliance to the requirement under the aforesaid Act and Rules. However, in these circumstances there shall be no order as to costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.S.Dayaleeshwaran, Advocate, S.R.No.62200

+1cc to Mr.A.Gopinath, Advocate, S.R.No.61188

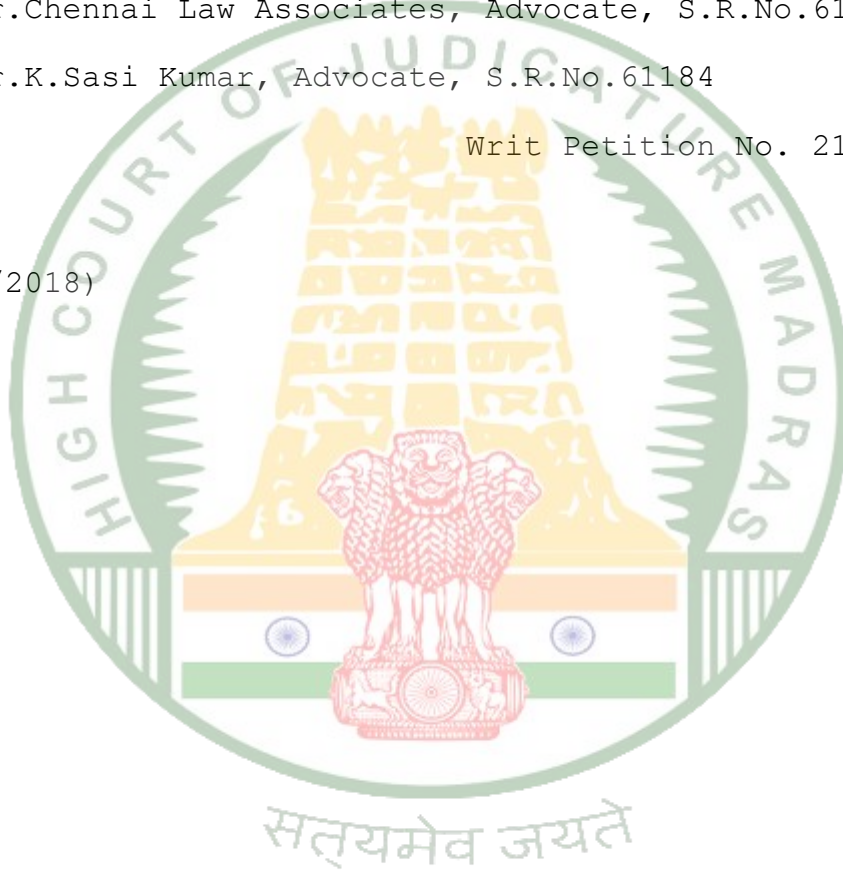
+1cc to Mr.N.Nithianandam, Advocate, S.R.No.61366

+4cc to Mr.Chennai Law Associates, Advocate, S.R.No.61534

+1cc to Mr.K.Sasi Kumar, Advocate, S.R.No.61184

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MPI (CO)  
GSP (07/09/2018)



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