

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL  
AND  
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.33178 of 2017

M.Prakasan

... Petitioner

vs.

1.The Government of Tamil Nadu,  
rep.by its Additional Chief Secretary,  
Home Department,  
Fort St.George,  
Chennai-600 009.

2.The Registrar(District Judiciary),  
High Court,  
Chennai-600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the Proceedings dated 29/8/2017 R.O.C.No.20261/2017/C4, on the file of the second Respondent herein - quash the same, and consequently direct the respondents herein to reimburse the sum of Rs.52,500/- incurred by the petitioner as detailed by the petitioner's representation dated 11/2/2017.

For Petitioner : Mr.Murugamanickam,Sr.counsel  
for Ms.Zeenath Begum

For Respondents : Mr.Rajendra Prasad,  
Addl.Govt.Pleader for R1  
Mr.P.Kannankumar for R2

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner, the Learned Additional Government Pleader for the First Respondent and the Learned Counsel for the Second Respondent.

2.The Petitioner has filed the present Writ Petition praying for calling of the records relating to the Proceedings dated 29.08.2017 in R.O.C.No.20261/2017/C4, on the file of the Second Respondent and to quash the same. Further, he has sought for passing of an order by this Court in directing the Respondents to reimburse the sum of Rs.52,500/- incurred by him as detailed in his representation, dated 11.02.2017.

3.The Learned Counsel for the Petitioner submits that the Petitioner is a retired District Judge and further that the Petitioner and his wife are entitled to claim reimbursement of expenses incurred for medical treatment. It is the stand of the Petitioner that his wife was admitted as an inpatient from 09.10.2016 to 30.10.2016, in Arya Vaidya Chikitsalyam and Research Institute, Coimbatore and incurred a sum of Rs.1,15,267/- towards medical expenses for her treatment.

4.It comes to be known that the Petitioner claimed reimbursement for the medical expenses incurred by him through his representation dated 11.02.2017, addressed to the Registrar (General), High Court, Madras.

5.The Learned Counsel for the Petitioner brings it to the notice of this Court that the Second Respondent/Registrar (District Judiciary) through Proceedings dated 29.08.2017 in R.O.C.No.20261/2017/C4, accorded sanction only for a sum of Rs.62,767/-, out of the total expenses of Rs.1,15,267/-, incurred towards medical expenses.

6.The grievance of the Petitioner is that the sanction was not accorded in regard to the accommodation expenses incurred for the period when his wife was treated as an inpatient.

7.Added further, the Learned Counsel for the Petitioner proceeds to point out that the Second Respondent/Registrar (District Judiciary), High Court, Madras, referred to a Letter dated 20.06.2017, issued by the First Respondent/Additional Chief Secretary, Home Department, Government of Tamil Nadu, stating that 'the proposal to include the room rent in the actual medical expenses incurred by the Judicial Officers is not feasible or compliance and as per Shetty Commission report, reimbursement except extent of room rent is permissible' and the contention of the Petitioner is that the impugned order dated 29.08.2017, in R.O.C.No.20261/2017/C4 of the Second Respondent and the reference made to the First Respondent's Letter dated 20.06.2017, are violative of the Shetty Commission's Report and hence, the present Writ Petition is filed, challenging the Proceedings of the Second Respondent dated 29.08.2017.

8. Expatiating his submission, the Learned Counsel for the Petitioner refers to the First National Judicial Pay Commission Report, Volume III, under the caption 'Medical Facilities', wherein, at paragraph No.19.122, the following recommendations were made by the Commission.

"(ii) The Judicial Officers shall be entitled to claim expenses incurred by them for the medical attendance and the treatment obtained by them and their family members in such notified Hospitals/Dispensaries.

The expenses shall be inclusive of the charges for accommodation in the place where such treatment is taken.

(iii) The Judicial Officers shall be entitled to reimbursement of the expenses incurred by them or for their family members for the medical attendance and treatment obtained by them in any place other than in a hospital or dispensary maintained by the State Government and other than the hospitals or dispensaries notified by the Government to the same extent as they are entitled to under the rules for reimbursement of expenses incurred by them for medical attendance and treatment obtained in the notified Hospital or Dispensary."

9. The Learned Counsel for the Petitioner adverts to the Government Order in G.O.(Ms) No.985, dated 16.10.2006 of the Government of Tamil Nadu, wherein, at paragraph Nos.1 and 2, under the head 'Medical Facilities', it is mentioned as under:-

"1) The Judicial officers shall be entitled to claim expenses incurred by them for the medical attendance and the treatment as out-patient or in-patient obtained by them and their family members in hospitals and dispensaries maintained by the Government or notified Hospitals/Dispensaries. The expenses shall be inclusive of the charge of accommodation in the place where such treatment is taken.

2) The Judicial officers shall be entitled to reimbursement of the expenses incurred by them or for their family members for the medical attendance and treatment

obtained by them both as out-patient or in-patient in any hospital or dispensary or Registered Medical Practitioner other than the hospitals or dispensaries maintained by the State Government or notified by the Government. Expenses shall be inclusive or charges for accommodation."

10.The Learned Counsel for the Petitioner places reliance on the recent decision of the Hon'ble Supreme Court in Shiva Kant Jha vs. Union of India (reported in 2018 0 Supreme (SC) 329), wherein at Paragraph No.13, it is observed as under:

"13. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the

petitioner forcing him to approach this Court."

11.The Learned Counsel for the Petitioner seeks in aid of the Judgment of this Court in W.A.(MD) No.1382 of 2017 (1.The Director of Pension, DMS Complex, Thenampet, Chennai-6 and three others vs. B.Sarada), dated 09.11.2017 (in which one of us MVJ is a member), wherein at paragraph Nos.35 to 40, it is observed and laid down as follows:-

"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%."

12.Per contra, it is the submission of the Learned Counsels for R1 and R2 that the First National Judicial Pay Commission in its Report in Volume-III (called as Hon'ble Justice Shetty Commission) at Paragraph No.19.122(iv) of its recommendation, had observed the following:

"Expenses shall be inclusive of charges for accommodation.

iv. There should not be any restriction on reimbursement except to the extent of in-patient from entitlement. Further, there should not be any ceiling on reimbursement of expenditure on expensive treatments like kidney transplant, open heart surgery etc., full reimbursement of actual expenses should be allowed."

Furthermore, the Government of Tamil Nadu had issued a Government Order in G.O.(Ms)No.985, Home (Cts.IA), Department, dated 16.10.2006, wherein at paragraph No.3, it is mentioned as under:-

"3) There should not be any restriction on reimbursement except to the extent of in-patient room entitlement. Further, there should not be any ceiling on reimbursement of expenditure on expensive treatments like kidney transplant, open heart surgery etc. Full reimbursement of actual expenses should be allowed."

13. In the instant case on hand, the First Respondent/The Government of Tamil Nadu, through Additional Chief Secretary to Government, had addressed a communication in Letter No.29410/Cts-I/2014-2016, dated 20.06.2017, to the Registrar (Management), High Court of Madras, wherein it was mentioned that the proposal to include the room rent in the actual medical expenses incurred by the Judicial Officers was not feasible of compliance and as per Shetty Commission report reimbursement except extent of room rent was permissible.

14. There is no quarrel in regard to the grant of sanction for reimbursement of medical expenses to an extent of Rs.62,767/- as seen from the Proceedings of the Second Respondent/Registrar (District Judiciary), in reference No.R.O.C.No.20261/2017/C4 dated 29.08.2017.

15. A perusal of the contents of sanction Proceedings of the Second Respondent, dated 29.08.2017, blatantly and

patently indicates that the Principal District Judge, Salem was authorised to draw and disburse a sum of Rs.62,767/- incurred by the Petitioner for his wife's treatment in the 'Kurinji Super Speciality Hospitals, Salem' and 'Arya Vaidya Chikitsalayam and Research Institute, Coimbatore' for 'Osteoarthritis - Knees', for the period from 16.9.2016, 23.09.2016, 26.09.2016, 2.10.2016 as outpatient and from 9.10.2016 to 30.10.2016 as inpatient, as per G.O.(Ms) No.542, Home (Cts-I) Department dated 08.07.2009.

16.Later, the Petitioner, on 11.02.2017 had addressed a representation to the Second Respondent/Registrar (District Judiciary), High Court, Madras, wherein, he had pointed out that a sanction was granted only for a sum of Rs.62,767/-, less a sum of Rs.52,500/- towards accommodation, by an order dated 29.08.2017, which was contrary to G.O.No.542, dated 08.07.2009, wherein, 'C' of the said G.O. states that if the Medical reimbursement claim/Bill exceeds above Rs.1 Lakh, the proposal has to be sent to the Government for sanction. In effect, the representation of the Petitioner, dated 11.02.2017, points out that by mistake clause 'B' of the said G.O. has been invoked and consequently a sum of Rs.52,500/- was deducted towards accommodation without assigning any reason. Ultimately, the Petitioner had made a request to the Second Respondent/Registrar (District Judiciary) for forwarding his claim to the Government for sanctioning of full 'medical reimbursement' amount of Rs.1,15,267/- and after obtaining necessary orders from the Government, the entire sum may be settled to him.

17.It transpires that the Second Respondent in R.O.C.No.20261/2017/C4, dated 05.10.2017, had addressed a Proceedings to the Principal District Judge, Salem, inter alia stating that in reply, the Government in the Letter No.29410/Cts-I/2014-16, Home (Cts-I), Department, dated 20.06.2017 (copy enclosed) had stated that the proposal to include the room rent in the actual medical expenses incurred by the Judicial Officers is not feasible or compliance and as per Shetty Commission Report reimbursement except extent of room rent is permissible.

18.Apart from that, in the afore stated communication of the Second Respondent, dated 05.10.2017, it was mentioned that the High Court, after due consideration, had sanctioned a sum of Rs.62,767/-, as against the claim of Rs.1,15,267/- (after deducting a sum of Rs.52,500/- towards accommodation). As such, the request of the Petitioner to forward his application to the Government for sanction of full 'medical reimbursement' could not be reconsidered because of the Government Letter No.29410/Cts-I/2014-16 Home (Cts-I), Department, dated 20.06.2017.

19.As far as the present case is concerned, the Petitioner had obtained an 'Essentiality Certificate', dated 05.10.2016, in and by which, his wife-Mrs.Maheswari,P., was certified to be suffering from 'Sandhigatavatham (Osteoarthritis - Knees)' and after careful clinical analysis of her case, the Senior Physician of the Arya Vaidya Chikitsalayam and Research Institute, Coimbatore, had advised her to get admitted as an inpatient to undergo a course of 'Intensive Ayurvedic Therapy' for a period of three weeks, which, in his opinion, was absolutely necessary for bringing a qualitative improvement in her medical condition.

20.It is quite evident that the Director of Medicine and Rural Health Services (in-charge), Chennai-6, had addressed a letter to the Petitioner on 18.01.2017, wherein, he had certified that the medical treatment undergone by the Petitioner's wife and the medical expenses incurred (annexed), as per his letter seeking reimbursement, was correct.

21.The Petitioner had addressed a representation dated 11.02.2017 to the Registrar (General) of this Court, seeking reimbursement of his claim towards total medical expenses incurred for his wife, viz., Rs.1,15,267/- and sought for sending of his representation to the Government for obtaining sanction.

22.In the instant case, the communication of the First Respondent in Lr.No.29410/Cts-I/2014-2016, dated 20.06.2017, addressed to the Registrar (Management) of this Court, wherein it was mentioned among other things that proposal to include the room rent in the actual medical expenses incurred by the Judicial Officers was not feasible of compliance and as per Shetty Commission report reimbursement except of room rent was permissible, was not a correct one, because of the simple reason that in the Shetty Commission's Report as well as in G.O.(Ms) No.985, dated 16.10.2006, at Paragraph Nos.1 and 2, it is mentioned as under:-

"1)The Judicial officers shall be entitled to claim expenses incurred by them for the medical attendance and the treatment as out-patient or in-patient obtained by them and their family members in hospitals and dispensaries maintained by the Government or notified Hospitals/Dispensaries. The expenses shall be inclusive of the charge of accommodation in the place where such treatment is taken.

2)The Judicial officers shall be entitled to reimbursement of the expenses incurred by them or for their family members for the medical attendance and treatment obtained by them both as out-patient or in-patient in any hospital or dispensary or Registered Medical Practitioner other than the hospitals or dispensaries maintained by the State Government or notified by the Government. Expenses shall be inclusive or charges for accommodation."

23.Although in Paragraph No.3 of the aforesaid Government Order it is mentioned that there should not be any restriction on reimbursement except to the extent of in-patient room entitlement, this Court is of the considered view that it is for the Petitioner to take a subjective decision as to how his wife ought to be treated by a Doctor and which type of treatment, viz., either Allopathy or Siddha or Unani or Ayurvedha can be taken and it is for the Petitioner to take a final call in the subject matter in issue, of course, after consulting a Doctor. The right to 'medical claim' cannot be denied because of the reason that proposal to include the room rent in the actual medical expenses incurred by the Judicial Officers was not feasible of compliance and as per Shetty Commission report reimbursement except extent of room rent was permissible and ascribing the afore stated reason for denying the claim in respect of room rent is legally untenable one because of the fact that a Government Servant, during his life time or after retirement, is very much entitled to secure the benefit of medical facilities, either to him or to his wife/to his members of family as per Rules and Government Orders.

24.It is to be relevantly pointed out that the claim for medical reimbursement expenses is not a 'bounty', but it is the compelling obligation of the Government to pay or bear the expenditure incurred by the concerned employee.

25.At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in S.Jagannath vs. Union of India and Others, reported in 1997(2) SCC 87, wherein, it is held that 'if the Government Servant has suffered an ailment, which requires treatment at a Specialized approved hospital and on reference whereat, the Government Servant had undergone such treatment therein, it is but the duty of the State to bear the expenses incurred by the Government Servant.

26.It is to be pointed out that a 'Right to Life' inclusive of the 'Right to Life with Human Dignity' would mean

the existence of such kind of right till the end of one's life. As a matter of fact, 'Right to Life' with Human Dignity envisaged under Article 21 of the Constitution derives its source from the Directive Principles of State Policy and especially Clauses (e) and (f) of Article 39 and Articles 41 and 42 of the Constitution of the India. In reality, every individual is entitled to a quality life consisting with human personality.

27. In the instant case, the Petitioner's wife was advised by a Senior Physician of the Arya Vaidya Chikitsalayam and Research Institute, Coimbatore, as per Essentiality Certificate, dated 05.10.2016, to get admitted as an inpatient to undergo a course of 'Intensive Ayurvedic Therapy' for a period of three weeks. The Senior Physician of the said Research Institute is quite competent and well versed as an expert and as such, his opinion cannot be brushed aside simply and there is no option left either to the Petitioner or his wife or anybody for that matter to determine as to the mode/manner in which the ailment ought to be treated. The Research Institute, which is

established for treatment of certain kind of ailment/specified ailment and when the services of a particular Doctor, who is specialized and expert in certain discipline, is availed by the Petitioner/patient, then it must be ensured in a proper and realistic manner, that the particular patient requires a safe and particular mode of treatment. When out of the claim of Rs.1,15,267/-, a sum of Rs.62,767/- was sanctioned by the second Respondent/Registrar (District Judiciary), then the room rent amounting to Rs.52,500/- cannot be denied to the Petitioner, in the considered opinion of this Court. It is not the case of any one of the Respondents that the Petitioner's wife had not taken treatment and when the factum of treatment, the expenses incurred are all duly certified by the Doctor/Research Institute concerned, then it is not open to any of the Respondents to negative the claim of the Petitioner on technicalities or harping on hyper technicalities, as the case may be. By adopting a pedantic approach and not resorting to a pragmatic, purposeful, practical a meaningful and a rational approach and also not considering the aspect of human element involved in the subject matter in issue, the First Respondent cannot deny the grant of medical reimbursement in full (inclusive of room rent expenses) to the Petitioner, thereby leaving the Petitioner to approach this Court.

28. Be that as it may, considering the fact that the Petitioner's wife was issued with the Essentiality Certificate, by the Senior Physician of the Arya Vaidya Chikitsalayam and

Research Institute, Coimbatore and also taking note of the primordial fact that only a sum of Rs.62,767/- was sanctioned by the First Respondent and yet another vital fact that out of the claim of Rs.1,15,267/-, only a sum of Rs.62,767/- was sanctioned and the room rent expenses amounting to Rs.52,500/- was not sanctioned by the First Respondent, this Court unhesitatingly holds that the said communication of the First Respondent in Letter No.29410/Cts-I/2014-2016, dated 20.06.2017, addressed to the Registrar (Management), High Court of Madras, is not a legally tenable one.

29. In the same manner, the impugned Proceedings of the Second Respondent in R.O.C.No.20261/2017/C4, dated 29.08.2017, is not valid in the eye of law and this Court, based on the attendant facts of the present case in an encircling fashion, is inclined to interfere with the said Proceedings of the Second Respondent and sets aside the same, in furtherance of substantial cause of justice. Consequently, the Writ Petition succeeds.

In fine, the Writ Petition is allowed. No costs. The communication of the First Respondent in Letter No.29410/Cts-I/2014-2016, dated 20.06.2017, addressed to the Registrar (Management) of this Court as well as the impugned Proceedings of the Second Respondent in R.O.C.No.20261/2017/C4, dated 29.08.2017, are set aside by this Court for the reasons assigned in this Writ Petition. Since this Court has set aside the Proceedings of the First Respondent in Letter No.29410/Cts-I/2014-2016, dated 20.06.2017, as well as the Proceedings of the Second Respondent in R.O.C.No.20261/2017/C4, dated 29.08.2017, the Respondents 1 and 2 are directed to accord sanction for the balance sum of Rs.52,500/- (Rupees Fifty Two Thousand Five Hundred Only) to and in favour of the Petitioner and settle the same within a period of six weeks from the date of receipt of a copy of this order.

Sd/-

सत्यमेव जयते  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Additional Chief Secretary,  
The Government of Tamil Nadu,  
Home Department,  
Fort St.George,  
Chennai-600 009.

2.The Registrar(District Judiciary),  
High Court,  
Chennai-600 104.

+1cc to Mr.Zeenath Begum, Advocate, S.R.No.28550

+1cc to the Government Pleader, S.R.No.28894

W.P.No.33178 of 2017

KAN(CO)

RRK(19/04/2018)



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