

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.30209 of 2018

K.Kamalakkannan

.. Petitioner

Vs.

1. The District Treasury Officer,
Krishnagiri, Krishnagiri District.
2. The Secretary to Government,
Finance Department,
St. George Fort, Chennai-9.
3. The United India Insurance Co. Ltd.,
Divisional Office VI,
5th Floor, P.L.A. Rathna Towers,
No.212, Anna Salai,
Chennai-600 006.

.. Respondents

* * *

Prayer :

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records in pursuant to the first respondent's impugned letter in : Na.Ka.No.3564/2017/A1, dated 29.05.2018 and quash the same as illegal consequently direct the respondents to sanction and pay the medical reimbursement claim amount of Rs.1,04,317/- with interest at the rate of 12% per annum within a period stipulated by this Court.

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For Petitioner	:	Mr.R.Subburaj
For Respondents	:	Mr.E.Balamurugan
		Special Government Pleader for RR1 and 2

O R D E R

Challenging the order dated 29.05.2018 passed by the first respondent and seeking a direction to the respondents to sanction and pay the medical reimbursement claim amount of Rs.1,04,317/- with interest at the rate of 12% per annum, the petitioner is before this Court.

2. Heard Mr.R.Subburaj, learned counsel appearing on behalf of the petitioner and Mr.E.Balamurugan, learned Special Government Pleader appearing on behalf of the respondents 1 and 2.

3. The petitioner is a pensioner having retired as Sub Inspector of Police on 31.08.2017. He is a subscriber to the Tamil Nadu Government's Health Insurance Scheme, 2014. Due to illness, his wife, who is the beneficiary under the said scheme, was admitted in SBS Hospital, which is one of the approved hospitals covered under the scheme, on 22.04.2017 and underwent treatment till 14.05.2017, and thereafter, she took further treatment at Bengaluru. When the petitioner made a claim petition on 13.06.2017, the first respondent rejected the said claim on the ground that the treatment was taken in non-network hospital and it cannot be considered as per the Government Orders in vogue. Questioning the said order, the petitioner has filed this writ petition.

4. This Court in K.Mani V. Secretary to Government, Health and Family Welfare Department, Chennai, and others, (2007) 3 Mad LJ 34, allowing the claim of medical reimbursement of a Head Constable of the State Uniformed Service, after relying upon a catena of decisions, observed as follows :

"5. If we do not protect the man who protects us all the time, then who will protect those protectors. This is a serious question which the State had to address itself. If this is the attitude of the State in protecting the lives of its own constabulary and that too, for a person having served for 25 years' of its forces, then it is really a sad state of affairs. The Supreme Court as early as in its decision in Vincent Panikurlangara v. Union of India, [(1987) 2 SCC 165], described the obligation of the State in a Welfare State regarding the health of its citizen and in Para. 16 of the judgment, it was observed as follows:

"A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khalu dharma Sadhanam." In a Welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health".

25. If the Government servants including the members of the uniformed services are driven from pillar to post in getting reimbursement of the expenses involved in saving their life, death will become inexpensive rather a desire to live."

5. A Division Bench of this Court in the judgment dated 09.11.2017 made in W.A.(MD)No.1382 of 2017, (the Director of Pension V. B.Sarada), after relying upon a number of Government Orders and a plethora of decisions governing the medical reimbursement, sustained the direction of medical reimbursement issued by the writ court holding 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."

6. The Apex Court in *Shiva Kant Jha V. Union of India*, 2018 SCC OnLine SC 370, held as hereunder :

"14. 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.

15. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force."

7. Now the right to health has become a fundamental right. The obligation is cast on the State to protect the citizens from health hazards and to provide state of the art free medical facilities. The petitioner was an uniformed service officer and having retired from service, he subscribed the health insurance schemes. His wife underwent treatment at SBS Hospital, an approved hospital, for sometime and thereafter, she was given further treatment at Bengaluru. As observed by the Hon'ble Apex Court a very little scope was left to the petitioner to decide as to the manner in which the ailment should be treated and it is within the domain of the Doctors, who specialized in a discipline, to advise the specialty Hospitals and treatment of specified ailments.

8. In view of the categorical directions issued by the Apex Court and this Court, this Court directs the respondents 1 and 2 to sanction medical reimbursement benefit to the petitioner, after scrutinizing the bills and release the eligible amount within a period of four weeks from the date of receipt of a copy of this order.

9. With the aforesaid directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The District Treasury Officer,
Krishnagiri, Krishnagiri District.
2. The Secretary to Government,
Finance Department, St. George Fort, Chennai-9.
3. The United India Insurance Co. Ltd.,
Divisional Office VI,
5th Floor, P.L.A. Rathna Towers,
No.212, Anna Salai, Chennai-600 006.

+1cc to Mr.R.Subburaj, Advocate, S.R.No.88314
+1cc to the Government Pleader, S.R.No.88948

W.P.No.30209 of 2018

RJI (CO)
CS/08/01/2019