



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.1495 of 2017
and
C.M.P. (MD) .No.11922 of 2017

1.The Special Secretary to Government,
Finance (Salaries) Department,
Government of Tamil Nadu,
Chennai.

2.The District Collector,
Kanyakumari District,
Nagercoil.

3.The Joint Director,
The Medical and Rural Health Services
Department, Kanyakumari District,
Nagercoil.

.. Appellants/
Respondents 1 to 3

Vs.

1.M.Sivagnanam Pillai

.. 1st respondent/
Writ petitioner

2.Star Health and Allied Insurance Co. Ltd.,
rep. by its Project Officer,
Tamil Nadu Government Employees-
New Health Insurance Scheme,
Old No.64-A, New No.2-A,
Ganga Nagar Road,
Opp. to BSNL Office,
Kodambakkam,
Chennai.

.. 2nd respondent/
4th respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order, passed in W.P.(MD).No.18265 of 2014, dated 17.06.2015, which was corrected on 21.09.2017 through Rev.Aplw(md). No.40 of 2017, by a learned Single Judge of this Court.

Prayer in Rev.Apl(MD)No.40/2017:-

<https://hcservices.ecourts.gov.in/hcservices/>
Petition filed under Section 114 CPC and Order 47 Rule 1 CPC to review the Order passed by this Court in WP(MD)No.18265 of 2014 dated 17/6/2015.



Prayer in WP(MD). 18265/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to I.D KKM/01/RE460/69534 dated 01.04.2014 on the file of the 4th Respondent and quash the same and consequently direct the respondents to reimburse the amount of Rs. 1,93,009 (Rupees one lakh ninety three thousand and nine only) with 9% interest and pass such further or other orders.

For appellants	: Mr.A.Muthukaruppan, Additional Government Pleader
For 1 st respondent	: Mr.N.Sivakumar
For 2 nd respondent	: Mr.Anwar Sameem

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The official respondents in W.P.(MD).No.18265 of 2014 are the appellants.

2. The first respondent had filed the said writ petition praying to quash the proceedings, dated 01.04.2014, on the file of the second respondent herein, in and by which they expressed no liability under the scheme for reimbursing the expenses of the treatment undergone by the first respondent / petitioner. The learned Single Judge, vide impugned order dated 17.06.2015, after following various decisions, has passed a positive order by quashing the said proceeding with a further direction directing the 2nd respondent herein / 4th respondent therein to reimburse the medical expenses incurred by the first respondent / writ petitioner within a period of four weeks. The 2nd respondent herein / 4th respondent in the writ petition has filed Review Application (MD).No.40 of 2017 and vide order dated 21.09.2017, the learned Single Judge directed the 3rd appellant / 3rd respondent therein to reimburse the medical expenses incurred by the first respondent / writ petitioner. Challenging the legality of the same, the present writ appeal is filed.

3. Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the appellants, would submit that admittedly, with regard to the treatment taken at non accredited hospital, the first respondent / writ petitioner is not entitled to get any refund / reimbursement and though the illness said to have been suffered by the first respondent / writ petitioner does not require emergent treatment, the fact remains that he got the treatment in a non accredited hospital and as such, there cannot be any positive



direction directing the appellants herein to reimburse the said amount.

4. Per contra, the learned counsel appearing for the first respondent / writ petitioner has drawn the attention of this Court to the judgment, dated 09.11.2017, made in W.A.(MD).No.1382 of 2017 (The Director of Pension, DMS Complex, Thenampet, Chennai; the District Collector, Madurai District; the Joint Director, Medical and Rural Health Services Department, Madurai District Head Quarters, Madurai; and the Treasury Officer, District Treasury, Madurai Vs. B.Sarada) and would submit that in similar facts and circumstances of the case, this Court has held that the concerned petitioner / patient is entitled to get the reimbursement of the medical expenses incurred by him for taking treatment in non accredited hospital. He has also drawn the attention of this Court to the learned Single Judge judgment reported in 2016 (3) CTC 394 (N.Raja Vs. the Government of Tamil Nadu, rep. by its Secretary, Adi Dravidar Welfare Department, Fort St. George, Chennai and others).

5. This Court considered the rival submissions and also perused the materials placed before it.

6. A Division Bench of this Court in W.A.(MD).No.1382 of 2017 had surveyed and considered all the judgments with regard to the reimbursement of medical expenses incurred by a person for taking treatment in a non accredited hospital and it is relevant to extract the following paragraphs:

"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



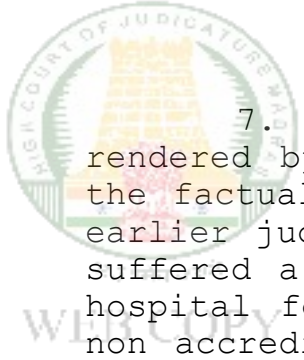
immediate/forthwith and if one has to comply with the procedure, ultimately, 'waiting' in this regard may prove disastrous and fatal.

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%."



7. In the considered opinion of this Court, the judgment rendered by the Coordinate Bench has taken into consideration all the factual aspects as well as legal points by considering all the earlier judgments. It is also to be noted that the petitioner had suffered a heart attack on 06.04.2010 and got admitted in a local hospital for emergent treatment and thereafter, got admitted in a non accredited hospital on 09.06.2010 and incurred expenditure for taking medical treatment. The Division Bench in the above said judgment also pointed out that it is for the patient to choose the best hospital to take a treatment. In the considered opinion of this Court, the said judgment is fully applicable to the facts of this case.

8. In the result, this writ appeal is dismissed, confirming the order dated 17.06.2015, which came to be subsequently clarified, vide order dated 21.09.2017, in Rev.Aplw.(MD).No.40 of 2017. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

+1cc to The Special Government Pleader, SR.No.58386

+1cc to M/s.N.Sivakumar, Advocate, SR.No.57705

gcg
RL/3C/5P/SKN/RSK/SAR1/19/4/2018

JUDGMENT MADE IN
W.A(MD)No.1495 of 2017

23.03.2018