

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON : 13.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.27755 of 2005

Dr.K.Nagappan

...Petitioner

Vs

1. Government of Tamil Nadu  
rep. by  
The Secretary to Government,  
Health and Family Welfare (B2) Department,  
Fort St. George,  
Chennai-600 009.

2. The Director of Medical Education,  
Kilpauk,  
Chennai-600 010.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the order in G.O.(Rt) No.2164, Health and Family Welfare (B2) Department, dated 28.09.2000 and to quash the same and direct the respondents to pay a sum of Rs.2,63,539/- in full as medical reimbursement for the emergency treatment of Coronary Angio Plasty undergone by the petitioner at Apollo Hospitals, Chennai between 07.03.1998 and 16.03.1998.

For Petitioner : Mrs.AL.Gandhimathi

For Respondents : Mrs.K.Bhuvaneswari, AGP

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O R D E R

The petitioner herein, while working as a Tutor in Anatomy in Kilpauk Medical College, Chennai, underwent Coronary Anchioplasty and was under treatment for Coronary Artery Disease with unstable angina from 07.03.1998 to 16.03.1998 at Apollo Hospitals, Chennai. When the petitioner sought for financial assistance of Rs.2,63,539/- towards the total medical expenditure incurred by him in Apollo Hospitals, the first respondent herein had restricted the medical claim and

sanctioned a sum of Rs.57,025/- towards reimbursement through the impugned Government Order, which is under challenge in the present Writ Petition.

2. Heard Mrs.AL.Gandhimathi, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents.

3. The Government Employees Health Fund Scheme has been constituted to overcome the distress caused to the families of the Government Employees, where the employees are struck by major ailments. For the purpose of availing the said facility, the Government had earmarked a list of Scheduled Private Hospitals, wherein, the employees and the family members were extended the facility to avail medical treatment for certain scheduled diseases/ailments.

4. In G.O.Ms.No.1023, Health and Family Welfare Department, dated 17.06.1990, the Government of Tamil Nadu had permitted the Government servants to avail specialised treatment in private hospitals on certain conditions. In the said Government Order, the claims were restricted to the expenditure that would have been incurred, had the employee taken treatment in a Government hospital.

5. In G.O.Ms.No.423, Health and Family Welfare Department, dated 22.06.1995, the fees to be collected from patients, other than Government employees for Percutaneous Transluminal Coronary Angioplasty (PTCA) has been fixed at Rs.50,000/-.

6. Citing the aforesaid two Government Orders, the claim of the petitioner has been restricted to Rs.57,025/-, which is claimed to be the fees that would have been charged by a Government Hospital for PTCA procedure.

7. Rejection of medical financial assistance or claim of medical reimbursement is not uncommon in the recent past. Various Writ Petitions have been filed before this Court, challenging the rejections on the ground that the Government Employee had taken treatment in a Non-Scheduled Private Hospital or that the medical ailment was a Non-Scheduled Ailment/Disease or the amount claimed is over and above the fees that would have been charged for a similar treatment in the Government Hospital etc.

8. When a case of rejection of the request for medical reimbursement came up for consideration before the Hon'ble Supreme Court, in the case of Surjit Singh V. State of Punjab and others reported in 1996 (2) SCC 336, it was held that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of

India and that the patient had the right to take steps in such preservation. It was held therein that when the State itself has enlisted the list of private hospitals and the patient had been treated in a Non-Scheduled Hospital, the doctors causing the treatment are presumed to have done so, being essential and timely and on that hypothesis, the reimbursement came to be ordered. Following the ratio laid in the aforesaid decision of the Hon'ble Supreme Court, this Court in the case of Dr.B.Ramamurthy V. Government of Tamil Nadu rep. by its Secretary, Health and Family Welfare Department, Secretariat, Chennai and another reported in 2000 (3) LLN 248 had set aside the denial of actual expenditure of the claimant therein. In B.Ramamurthy's case (supra), the claimant was sanctioned a sum of Rs.1 lakh alone under the Health Scheme and the actual expenditure of over Rs.6 lakhs was rejected. When it was brought to the notice of the High Court about an identical case of Dr.J.Rajappa, whose entire costs of surgery amounting to over Rs.15 lakhs was reimbursed, this Court had held the same to be discriminatory and the objection that a prior sanction was not obtained was overruled. The relevant portion of the said decision reads as follows:-

"37. Merely because the petitioner did not apply in advance, the denial of actual expenditure, and the reimbursement of Rupees one lakh alone, is arbitrary, and it offends Art. 14 as well as Art. 21 as has been held by the Apex Court in Surjit Singh V. State of Punjab AIR 1996 SC 1388 cited supra. This Court is of the considered view that the respondents should have sanctioned the actual expenditure incurred by the petitioner instead of assuming that the maximum amount the petitioner is entitled to is Rupees one lakh. When the petitioner had applied for revision of the claim, the respondents should have considered the petitioner's claim not only under the Medical reimbursement scheme, but also under other schemes or under the Chief Minister's Relief Fund and should have sanctioned the amount as it is a bona fide claim which the petitioner had to incur to save his wife.

38. There cannot be any difference between Dr.J.Rajappa or for that matter in the case of petitioner's wife. At the risk of repetition, it has to be pointed out that for the same disease which is identical and gruesome, the two have undergone the same treatment in the same private hospital. Merely because, the petitioner had not applied for prior approval or sanction, the respondents are not justified

in denying reimbursement of substantial portion of the claim as it is a matter of urgency which the petitioner has to face. During those periods of urgency, when undergoing the sense of deprivation of life companion of the Government Servant from the gruesome disease, which the Government servant's wife had to extricate herself, it cannot be said that not obtaining prior approval is a reason to justify and to deny the actual reimbursement. There is no dispute as to the truth or genuineness of the treatment undergone by the petitioner's wife.

39. In the foregoing circumstances, in the fitness of things, the respondents should have considered the petitioner's claim as was done in the case of Dr.Rajappa, the then Director of Medical Education. Merely because Dr.Rajappa was an ex-service man or that he has obtained prior approval cannot be a reason to deny actual reimbursement in the case of the petitioner as it is the urgency or the feeling of risk which endangered the life of the petitioner's wife would have prevented the petitioner from applying in advance. The petitioner had not been apprised or advised of the other schemes. Now, the petitioner had relied upon the very same G.O. under which Rs.15,11,997 was sanctioned to Dr.Rajappa, it would have been proper to consider the claim in the proper perspective.

40. In the foregoing circumstance, while holding that the sanction of Rs.1 lakh is wholly insufficient and taking note of the admission of the respondents that the petitioner had actually incurred the expenditure of Rs.6,18,969.41, this Court allows the Writ Petition, quashes the impugned order and holds that the writ petitioner is entitled for reimbursement of the whole of the amount claimed by him."

9. Likewise, in the case of C. Ganesh V. The Central Administrative Tribunal, Chennai Bench rep. by its Registrar, City Civil Court Buildings, High Court Compound, Chennai-600 104 and others in W.P.No.11583 of 2011, a Division Bench of this Court, had held that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserved to be preferred. Holding so, the rejection of a portion of the medical reimbursement was set aside. The relevant portion of the said decision reads as follows:-

"35. We deem it appropriate to state that the right to health and medical care is a fundamental right enshrined by Article 21 of the Constitution of India, inasmuch as the health is vital for making the life of an employee meaningful, purposeful and compatible with personal dignity. Therefore, in a welfare state, like ours the primary duty of the Government is to secure the welfare of the people and to provide adequate medical facilities is an obligation undertaken by the Government in a welfare state. The Government Hospitals run by the State are bound to provide Medicare to the persons who seek to make use of the available facilities. Failure on the part of the Government Hospital to provide timely medical treatment to a needy person or like the injured Petitioner may result in violation of his right to life, guaranteed under Article 21 of the Constitution of India. Indeed, the Medical Officers employed in the Government Hospitals are duty bound to extend medical assistance for preserving the human life. Article 21 of the Constitution of India enjoins that it is the obligation of the State to protect the life of every individual. The timely medical assistance/treatment rendered to an individual invigorates his health and also harness the human resource.

36. No wonder the Article 25(2) of Universal Declaration of Human Rights, 1948, provides an assurance that every person has the right to a standard of living adequate for health and well being of himself and family ... including medical care, sickness, disability ... Therefore, when our Constitution of India speaks of socio economic justice, undoubtedly right to health is a fundamental right to an employee like the Petitioner. The health and strength of the Petitioner is a part and parcel of the right to life, which floats from Article 21 of the Constitution.

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39. It is not in dispute that the Petitioner was reimbursed a sum of Rs.80,840/- to which sum he was entitled to, according to the Respondents 2 to 5. For Doctors strike in the Government General Hospital certainly the Petitioner can not be found fault with. One

should bear in mind that the reimbursement of medical expenses ought to be given to the Petitioner for the treatment received by him in regard to the injuries sustained in the accident as a monetary measure. The said reimbursement amount needs to be paid to the Petitioner on equitable consideration too. Although the Respondents harp on technicalities of rules while disallowing the portion of the claim made by the Petitioner, this Court comes to an inevitable conclusion that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred for the Respondents 2 to 5 cannot claim to have vested right in injustice being done to the Petitioner. Further, it must be seen that the judiciary is respected not on account of its power to legalise injustice on technical grounds but, because it is capable of removing injustice and is expected to do so."

10. In the present case in hand also, the learned counsel for the petitioner had submitted that denial of reimbursement for the entire expenditure is unjustifiable. The learned Additional Government Pleader, had placed reliance on the Government Orders, restricting the claim amount and therefore, attempted to substantiate the impugned order. In the light of the decisions referred above, denial of full reimbursement cannot be substantiated. As held by the Division Bench of this Court in C.Ganesh's case (supra), the petitioner herein would be entitled for the full reimbursement for the actual expenditure incurred by him in the interest of fair play, good conscience by adopting a liberal, meaningful, pragmatic, rational and common sense approach.

11. I do not find any logic in the conditions of the Welfare Scheme by permitting the Government Employees to avail medical facilities in the Private Hospitals and restricting the expenditure equating to that of Government Hospitals. The learned counsel for the petitioner had raised a ground that the facility for treatment of Coronary Artery Disease was not available in the Government Hospitals at that point of time, which is denied by the learned Additional Government Pleader stating that such a treatment was available in the Government General Hospital, Chennai. In matters like this, the Government Orders should not be strictly construed to the mere fact of availability of the facility alone. What requires to be borne in mind is that the concept of PTCA treatment has advanced techniques with use of modern and sophisticated equipments. Speciality Hospitals are established for treatment of specified

ailments and the services of specialists in a discipline are availed by patients, only to ensure proper, required and safe treatment. Apart from these aspects, various advanced techniques/methods are provided during investigations or tests conducted by para-medical staff in these private hospitals, which is an integral part of the treatment. The real test therefore would be as to whether all these facilities ensuring the proper, required and safe treatment, as well as the availability of specialists are equally available in a Government Hospital also. As such, when the factum of treatment and the actual expenditure meted out is not denied, the employee should be reimbursed for the full medical expenditure.

12. For all the foregoing reasons, I do not find any justification on the part of the first respondent herein in having denied the petitioner's claim of Medical reimbursement. Consequently, the Government Order in G.O.(Rt) No.2164, Health and Family Welfare (B2) Department dated 28.09.2000, is hereby quashed and the first respondent is directed to pay a sum of Rs.2,63,539/- towards full medical reimbursement for the emergency treatment of PTCA undergone by the petitioner at Apollo hospitals between 07.03.1998 and 16.03.1998, within a period of three months from the date of receipt of a copy of this order. Consequently, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Secretary,  
Government of Tamil Nadu,  
Health and Family Welfare (B2) Department,  
Fort St. George,  
Chennai-600 009.

2.The Director of Medical Education,  
Kilpauk,  
Chennai-600 010.

+1cc to Mr.Al.Gandhimathi, Advocate, S.R.No.48362

W.P.No.27755 of 2005

SV(CO)

RRS (11/07/2019)