

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.5284 of 2019

S.Venkittusamy

...Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary,
(Finance (Pension) Department),
Fort St.George,
Chennai-9.

2.The Director of Treasuries and Accounts,
Chennai 15.

3.The District Collector,
Erode District.

4.The Treasury Officer,
District Treasury,
Erode District.

5.M/s.United India Insurance Co. Ltd.,
Divisional Office,
5th Floor, PLA Rathna Tower,
212, Annasalai,
Chennai-6.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the fourth respondent vide his office proceedings No.Na.Ka.9236/U2/2018 dated 28/08/2018 and quash the same and consequently, directing the respondents 1 to 3 to reimburse the medical expenses of Rs.2,81,629/- incurred by the petitioner for taking medical treatment at G.Kuppusamy Naidu Memorial Hospital, Coimbatore with interest at the rate of 9% from 26.2.2018 i.e. the date of payment made by the petitioner to the hospital till date of reimbursement made to the petitioner within the time fixed by this Court.

(Prayer amended vide order of this Court dated 12.03.2019 made in WMP No.7330 of 2019 in W.P.No.5284 of 2019)

For Petitioner :Mr.Sri.IC.Vasudevan

For Respondents:Mr.SN.Parthasarathy for R1 to R4
Government Advocate
Mr.P.Sankaranarayanan for R5

O R D E R

The petitioner is aggrieved against the proceedings of the fourth respondent dated 28.08.2018, wherein and whereby, his medical claim was rejected on the ground that the petitioner has taken the treatment in a non network hospital in respect of a non scheduled treatment. Consequently, the petitioner seeks for a direction to the respondents to reimburse the medical expenses of Rs.2,81,629/- incurred by him for taking treatment at G.Kuppusamy Naidu Memorial Hospital, Coimbatore with interest at the rate of 9% from 26.2.2018

2. It is seen that the petitioner, who retired from the Revenue Department, seeks reimbursement of medical expenses met out by him in pursuant to the treatment, he has taken from G.Kuppusamy Naidu Memorial Hospital, Coimbatore on 19.02.2018. It is stated that the petitioner was admitted on 16.02.2018 and discharged on 20.02.2018. In between, it is stated that the petitioner had undergone his surgery on 19.02.2018. The petitioner seeks the reimbursement benefit under the Scheme introduced by the Government National Health Insurance Scheme, 2014. However, the claim of the petitioner for reimbursement was rejected by passing the impugned order only on the reason that the petitioner took the treatment in a non network hospital, which was not approved by the above said scheme.

3.Learned counsel for the petitioner by relying on recent decision of the Division Bench in W.A.No.2729 of 2018 dated 04.02.2019 submitted that if the Insurance Company is not liable to pay, it is for the Government to consider the claim and reimburse the petitioner.

4.On the other hand, the learned Government Pleader appearing for the respondents 1 to 4 submitted that the petitioner took the treatment in a non network hospital. Therefore, the impugned order was passed by citing the said reason.

5. The issue involved in this case as to whether the medical reimbursement can be denied to a person merely because he/she took treatment in a non network hospital, is no more res integra.

6. Under the above circumstances, this Court in other cases directed the Government of Tamil Nadu to examine the claim made by the respective applicant for medical reimbursement under the Tamilnadu Medical Attendance Rules and to disburse the eligible amount towards the same. In one such order made recently in Writ Appeal No.2729 of 2018 dated 04.02.2019, the Division Bench of this Court has considered the said issue and passed the following order:

The intra-Court Appeal arises out of the order dated 13.02.2017 passed by Learned Judge of this Court in W.P. No. 25362 of 2017. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner, who is employed as Jeep Driver in Kodumudi Panchayat Union, had opted to avail the benefits of the New Health Insurance Scheme, 2016, of the Government of Tamil Nadu by making his contributions towards insurance premia from his salary. As the Petitioner suffered a severe heart attack on 02.01.2017, he was admitted at Sudha Hospital in Erode and he was advised to undergo angio-blast with three stents placed in him and he was discharged from that Hospital on 05.01.2017 after incurring total medical expenses of Rs.2,55,356/-. When the Petitioner made a claim for reimbursement of the aforesaid expenses incurred for his medical treatment, it was informed to him by the Third Respondent, who is his employer, by letter in Na. Ka. No. 4000/2016/A2 dated 24.07.2017 that the treatment he had taken was at a Non-Network Hospital, which is not approved under the New Health Insurance Scheme, 2016, for reimbursement by the Fifth Respondent/Insurance Company.

3. In that backdrop, the Petitioner had filed W.P. No. 25362 of 2017 before this Court for a direction to the First to Third Respondents to reimburse the medical expenses of Rs.2,55,356/- incurred by him for taking medical treatment at the Sudha Hospital at Erode with interest at the rate of 9% per annum from 05.01.2017 till payment on the ground that even if the Fifth Respondent/Insurance Company is not liable under the New Health Insurance Scheme, 2016, the First to Third Respondents are liable to pay the same under the Tamil Nadu Medical Attendance Rules.

4. The Writ Court by order dated 13.02.2018 in W.P. No. 25362 of 2017 noticed that Sudha Hospital at Erode, where the Petitioner had undergone treatment, though had not been included in the list of Network Hospitals at the time of

treatment, it was subsequently added in that list by G.O. (Rt) No. 199, Finance (Salaries) Department dated 21.03.2017. However, in view of the settled legal position as reiterated in the judgments in S. Dhanalakshmi -vs- Government of Tamil Nadu (Order dated 12.10.2015 in W.P. (MD) No. 13159 of 2015) and N. Raja -vs- Government of Tamil Nadu [2016 (3) CTC 394] passed by this Court, the Writ Court held that in cases where the Insurance Company cannot be held liable for having treatment in a Non-Network Hospital, the Government Servant was entitled to his claim settled by the State Government under the Tamil Nadu Medical Attendance Rules. Accordingly, a direction was issued to the First Respondent to consider the case of the Petitioner and reimburse the medical expenses incurred by him along with interest at the rate of 9% per annum from 05.01.2017 till reimbursement within a period of four weeks from the date of receipt of copy of that order. Aggrieved thereby, the First, Second and Fourth Respondents have preferred this Appeal.

5. We have heard Mr. I.C. Vasudevan, Learned Counsel appearing for the Petitioner, Mr. S.R. Rajagopalan, Learned Additional Advocate General assisted by Mrs. Srijayanthi, Special Government Pleader appearing on behalf of the First, Second and Fourth Respondents, Mr. K. Arun Babu, Learned Counsel appearing for the Third Respondent, Mr. P. Sankaranarayanan, Learned Counsel appearing for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

6. It is strenuously urged by the Learned Additional Advocate General appearing on behalf of the First, Second and Fourth Respondent, who have preferred this Appeal, that the Writ Court ought not to have fastened any liability on the State Government when the Insurance Company undertook to bear the same under the New Health Insurance Scheme, 2016, and the direction to the Fourth Respondent to reimburse the medical expenses incurred by the Petitioner would lead to financial burden on the funds of the State Government and defeat the purpose of framing the New Health Insurance Scheme, 2016.

7. We are unable to countenance the submissions made on behalf of the First, Second and Fourth Respondents, particularly in view of the ruling of the Division Bench of this Court in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which has been followed in India Healthcare Services (TPA) Limited -vs- K.

Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension -vs- B. Sarada, reported in CDJ 2017 MHC 7488. In the aforesaid decisions, the earlier Judgments of the Hon'ble Supreme Court of India and this Court on the subject have been extensively referred. It would suffice here to refer to paragraphs 24 and 25 of the decision in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which read as follows:-

"24. In the present case, what we have to decide is whether the State is bound to reimburse the claim, whether the insurance company is bound to indemnify the beneficiary for the claim made by him. As held in the decisions referred to above, the insurance company is strictly bound to strictly by the terms of contract and cannot be asked to settle a claim which does not fall within the terms of the contract and therefore the claim made by the beneficiaries in respect of treatments that were taken in a Non-Network hospital or for reimbursement of the claim made the insurance company is not liable. For this reason, the insurance company had made it clear that only if the beneficiary took treatment in a Network hospital they would settle the claim and more importantly the facility itself is a cashless facility. The insurance company cannot pay cash and if we issue direction to the insurance company to reimburse the claim, we would be virtually re-writing the contract which we are not entitled to.

25. The Tamil Nadu Medical Attendance Rules ("the Rules" in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a Non-Network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself make the Network hospitals as intrinsic. However, the Petitioner/Claimants were also not no remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee."

8. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [2018 (5) MLJ 317], dealing with unfair treatment meted out to Government servants for medical reimbursement under similar provisions of the Central Government Health Scheme, held in paragraphs 13, 14 and 15 as follows:-

"13. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the Government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the Respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the Petitioner is compensated beyond the policy, it would have large ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

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. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. 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. In the facts of the present case, it cannot be denied that the Writ Petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implemented CRT-D device and have done so as one essential and timely. Though it is the claim of the Respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the Petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."

9. In view of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. Accordingly, we direct that the competent authority of the Government of Tamil Nadu to examine the claim made by the Petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and disburse the eligible amount towards the same along with interest thereon at the rate of 9% per annum from 05.01.2017 till date of payment and file report of such compliance before the Registrar (Judicial) of this Court by 18.02.2019.

10. It is made clear that the aforesaid direction issued to the First, Second and Fourth

Respondents, to forthwith settle the claim made by the Petitioner for reimbursement of medical expenses under the Tamil Nadu Medical Attendance Rules at the first instance, would not preclude those Respondents from placing the matter before the High Level Committee constituted under the implementation procedure in clause 17 of Annexure 1 of G.O. Ms. No. 222, Finance (Pension) Department dated 30.06.2018 issued by the Government of Tamil Nadu for a decision on the question whether the Insurance Company would be liable to meet claims, like the present one, where the Hospital at which the Government Servant concerned had undergone treatment had not been included in the list of Network Hospital at that time, has been subsequently added for coverage by the New Health Insurance Scheme, 2016.

11. In the upshot, the Writ Appeal is dismissed with the aforesaid observations. No costs. Consequently, the connected Miscellaneous Petition is closed."

7. I find the above decision of the Division Bench is squarely applicable to the present case as well. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the competent Authority of the first respondent Government is directed to examine the claim made by the petitioner for medical reimbursement under the Tamilnadu Medical Attendance Rules and disburse the eligible amount towards the same with interest at the rate of 9% per annum from the date of application viz., 26.02.2018 till date of payment. Such exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrarvri

To

1.The Secretery,
Government of Tamilnadu,
(Finance (Pension) Department),
Fort St.George,
Chennai-9.

2.The Director of Treasuries and Accounts,
Chennai 15.

3.The District Collector,
Erode District.

4.The Treasury Officer,
District Treasury,
Erode District.

+1cc to Mr.P.Sankaranarayanan, Advocate Sr.27356

+1cc to Mr.I.C.Vasudevan, Advocate Sr.27018

+1cc to the Government Pleader sr.26796

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