

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7738 of 2018

P.Govarthanan

..Petitioner

vs

1. The Treasury Officer,
District Treasury,
Thiruvanamalai District.
 2. Joint Director of Medical & Rural Services,
Thenimalai, Thiruvanamalai District.
 3. The Director of Treasuries & Accounts,
Panagal Buildings,
Saidapet, Chennai - 600 015.
 4. The Director of Medical & Rural Health Services,
DMS Compound,
Chennai - 600 006.
- .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to reimburse the Medical expenses incurred by the petitioner for a sum of Rs.79,306/- together with interest @ 12% p.a. to the petitioner based on the proposal submitted by the Fourth respondent herein in his proceedings Rc.No.22579/2016/PNHIS dated 13.06.2016.

For Petitioner : Mr.G.Bala
For M/s.G.Bala and Daisy
For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to reimburse the Medical expenses incurred by the writ petitioner for a sum of

Rs.79,306/- together with interest @ 12% p.a. to the petitioner based on the proposal submitted by the 4th Respondent in his proceedings dated 13.06.2016.

2.The writ petitioner is a pensioner and had taken treatment in a Hospital, which is not listed as approved Hospital in the Government order. The petitioner was employed as Inspector of Police and retired from service on 30.06.2006 on attaining the age of superannuation.

3.The learned counsel for the writ petitioner states that the wife of the writ petitioner was admitted as inpatient for six days in the Hospital on certain emergency circumstances and underwent treatment. The writ petitioner is a member of the New Health Scheme and paying the subscriptions regularly. Thus, the petitioner is eligible to avail the benefit of Medical Reimbursement on submission of the Medical bills. After treatment, the writ petitioner submitted the Medical Bills along with the application seeking Medical Reimbursements and the said application was rejected on the ground that the Hospital, in which, the treatment was taken, is not listed in the approved Hospital in the Government order.

4.The issues raised in the present writ petition is no more less integral and decided by this Court as well as the Apex Court. It is relevant to cite the observations made by the Hon'ble Division Bench in Writ Appeal No.2749 of 2018 dated 04.02.2019 and the relevant paragraphs are extracted hereunder:-

"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.

5. In view of the fact that the legal principles in this regard are already settled by the Courts and it is for the respondents to verify the genuinity of the treatment taken by the Member of the Medical scheme and not the Hospital. During certain emergent circumstances, it may not be possible for the pensioners to take treatment in the approved hospital and in such circumstances, the claim for Medical Reimbursement is to be considered without reference to the Hospital, in which, the treatment was taken by the pensioners. However, the genuinity of the treatment taken alone, is to be verified by the competent authorities before settling the Medical Reimbursement claim.

6. In this view of the matter, the respondents are directed to settle the Medical Reimbursement claim of the writ petitioner as per his eligibility and as per the terms and conditions of the Medical Health Scheme within a period of 12 weeks from the date of receipt of a copy of this order.

7.With this direction, the writ petition stands allowed.
However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Treasury Officer,
District Treasury,
Thiruvanamalai District.
2. Joint Director of Medical & Rural Services,
Thenimalai, Thiruvanamalai District.
3. The Director of Treasuries & Accounts,
Panagal Buildings,
Saidapet, Chennai - 600 015.
4. The Director of Medical & Rural Health Services,
DMS Compound,
Chennai - 600 006.

+1cc to M/s.G.Bala and Daisy, Advocate, S.R.No.40507
+1cc to the Government Pleader, S.R.No.41326

W.P.No.7738 of 2018

TM(CO)
CS/16/07/2019

सत्यमेव जयते

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