

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

C O R A M

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

Writ Petition No. 13447 of 2018

P.Sankaran

... Petitioner

Vs.

- 1.The State of Tamil Nadu Rep by its
Secretary to Government
Department of Finance
Secretariat, Fort St. George
Chennai - 600 009.
- 2.The Director of Treasuries and Accounts
Second Floor, Panagal Building
Jeenish Road, Saidapet
Chennai - 600 015.
- 3.The District Collector
Collectorate, Kokirakulam Road
Thirunelveli - 627 009.
- 4.The District Treasuries Officer
District Treasuries
Collectorate Campus
Thirunelveli - 627 009.
- 5.The United India Insurance Company Limited
Divisional Officer 010600
5th Floor, P.L.A. Rathina Towers
No.212, Anna Salai, Chennai - 600 006.

... Respondents

PRAYER Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent pertaining to the impugned order Na.Ka. 16053/2016/No.1 dated 14.11.2016 and quash the same and consequently, direct the respondents 1 to 5 herein to disburse of sum of Rs.2,11,623/- together with interest at 18% p.a. which the petitioner has spent towards his medical treatment within the time limit fixed.

For Petitioner : M/s.M.Krishnaveni

For Respondents : Mr.D.Suriya Narayanan [For R1 to R4]
Additional Government Pleader
Mr.P.Sankara Narayanan [For R5]

ORDER

The relief sought for in the present writ petition is to quash the order Na.Ka. 16053/2016/No.1 dated 14.11.2016 rejecting the claim of the writ petitioner for medical reimbursement.

2.The learned counsel for the writ petitioner states that the petitioner served in the Tamil Nadu Police Department and retired from service on 31.01.2000 on attaining the age of superannuation. The writ petitioner is a member of the New Health Insurance Scheme and the monthly premiums are deducted / recovered from the monthly pension of the writ petitioner without any default. Accordingly, he is eligible for medical reimbursement for the treatment undergone.

3.The writ petitioner had undergone a surgery in a hospital which is not listed in the Government orders. In view of the fact that the treatment was taken in an unapproved hospital, the fifth respondent United India Insurance Company rejected the claim of the writ petitioner to reimburse the medical claim of the writ petitioner. Along with the bills and the discharge summary, the petitioner submitted an application, seeking Medical Reimbursement as he is the member of the Medical Reimbursement Scheme. The United India Insurance Company Limited, rejected the claim on the ground that the Hospital, in which, the writ petitioner had taken treatment, is not a listed hospital and therefore, as per the terms and conditions of the Medical scheme, the writ petitioner is not entitled for Medical Reimbursement. In this regard, in respect of the cases, where the treatment is taken in an unapproved hospitals, this Court passed orders in W.P.No.26508 of 2017 dated 09.10.2018 and the relevant paragraphs 8 and 9 are extracted hereunder:-

“8. It is brought to the notice of this Court that the Government Order is in accordance with the provisions of the guidelines for implementation of New Health Insurance Scheme, 2008. Even the treatment taken in the unapproved Hospitals, the retired pensioners, Government Employees are entitled to get medical reimbursement by submitting an application directly to the Government.

9. Whatever it may be, the second respondent-Insurance Company ought to have settled the medical reimbursement claim of the writ petitioner to the extent for which the treatment had been taken in the approved Hospital. Thus, the writ petitioner is once again permitted to submit the Medical Bills and all other relevant documents to the second respondent-Insurance Company in respect of the treatment taken by him at Holy Cross Hospital at Nagercoil, which is the approved Hospital.”

3. However, the Hon'ble Division Bench this Court also passed an order on the similar issue in W.A.No.2729/2018 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.

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."*

4.The Hon'ble Division Bench directed the competent authorities of the

Government of Tamil Nadu to examine the claim made by the petitioner for Medical Reimbursement under the Tamil Nadu Medical Attendance Rules at the and disburse the eligible amount towards the same along with interest thereon at the rate of 9% per annum.

5.As per the judgment of this Court as well as the judgment of the Hon'ble Division Bench, the claim of the writ petitioner for Medical Reimbursement is to be considered now by the competent authorities of the Department. If at all, any dispute arises between the Government and the United India Insurance Company Limited, the same is to be resolved between the authorities in accordance with the terms and conditions of the Medical Reimbursement Scheme.

6.As far as the petitioner is concerned, the respondents 1 to 4 are directed to consider the Medical Reimbursement claim of the writ petitioner and settle the same in accordance with his eligibility and disburse the amount within a period of 12 weeks from the date of receipt of a copy of this order and by verifying the eligibility and other conditions stipulated in the scheme.

7. With these observations, this writ petition stands disposed of.

However, there shall be no order as to costs.

12.04.2019

Internet : Yes / No

Index : Yes / No

Speaking / Non-speaking

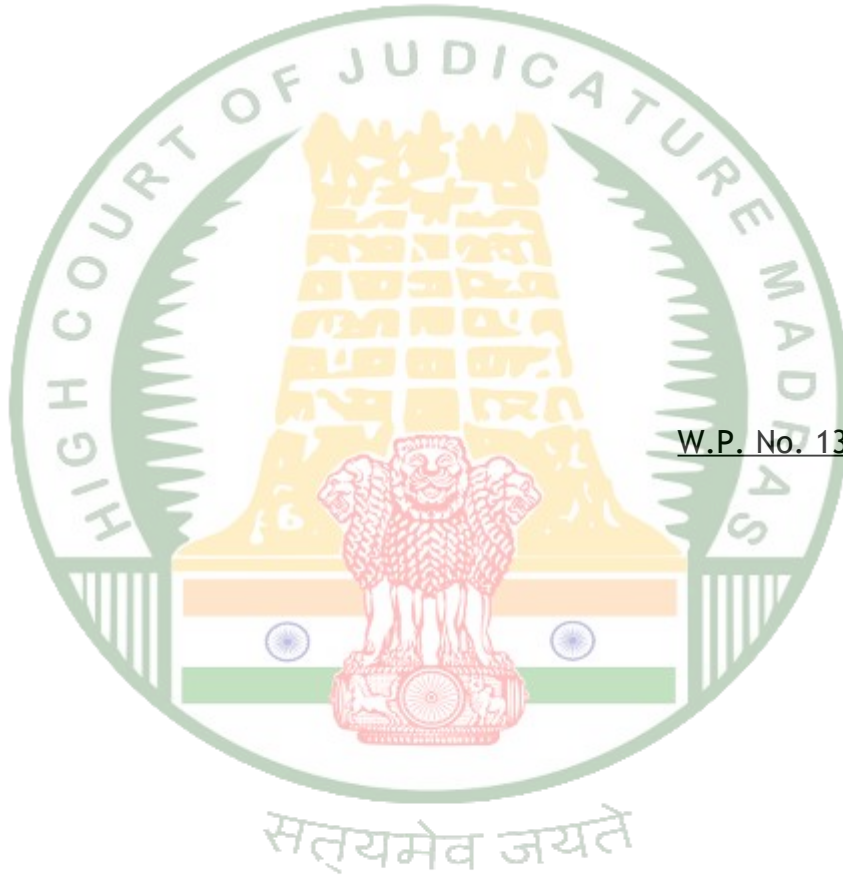
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To

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S.M.SUBRAMANIAM, J.

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