

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.15444 of 2018
and
WP.MP.No.18332 of 2018

R.Kesavan

...Petitioner

Vs

1. The State of Tamil Nadu Rep. by
The Additional Chief Secretary to
Government,
Finance Department,
Fort St.George,
Chennai - 600009.

2. The Director of Pensions,
Integrated Complex of Finance
Department,
Finance Department,
Nandanam,
Chennai.

3. The Treasury Officer,
District Treasury,
Namakkal.

4. The District Collector Cum Chairman,
District Empowered Committee,
Tamil Nadu New Health Insurance
Scheme,
Namakkal.

5. The Public Information Officer,
Office of the District Treasury
Officer,
District Treasury,
Namakkal.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the 5th respondent in O.MU.Na.Ka.No. 897/18/A2 dated 06.04.2018 and the subsequent order of the 3rd respondent issued in proceeding Na.Ka.No.00197/A1/2018 dated 19.04.2018 and quash these orders and consequently direct the respondent to pay a sum of Rs.85,000/- towards medical reimbursement with interest at the rate of 12% per annum.

For Petitioner : Ms.Swadhi Subramanian

For Respondents: Mr.S.Suresh Kumar, GA

O R D E R

The order under challenge in the present Writ Petition is the rejection of the petitioner's request for medical reimbursement. The petitioner herein, who was admitted for acute urinary retention, was subjected to catheterization at Chellam Hospital, Namakkal and in connection with the medical procedure, he had incurred a sum of Rs.85,000/- towards medical expenses. When the petitioner herein had requested for reimbursement of the same through a representation dated 17.01.2018, his request came to be rejected on the ground that the petitioner had undergone medical treatment in a hospital, which was not recognized under the Insurance Scheme and therefore, his request was not recommended by the District Empowerment Committee.

2. The learned counsel for the petitioner, by relying upon a decision of the Hon'ble Division Bench of this Court reported in 2019 (2) MLJ 1, submitted that such a reasoning by the respondents herein quoting that treatment in a non-panelled hospital will not be covered under the Insurance Scheme, is impermissible. According to the learned counsel for the petitioner, the Hon'ble Apex Court has already dealt with this issue in a decision reported in 2018 (5) MLJ 317, which decision has also been relied upon by the Division Bench of this Court and therefore, the respondents are not justified in rejecting the petitioner's claim.

3. The learned Additional Government Pleader on the other hand, submitted that in view of various decisions of the Hon'ble Apex Court reported in 2001 (9) SCC 217 and 1998 (4) SCC 117, the respondents are justified in rejecting the petitioner's claim, since the treatment was taken in a hospital which does not fall under the list of approved hospitals under the scheme.

4. As rightly pointed by the learned counsel for the petitioner, the Division Bench had placed reliance on the decision of the Hon'ble Apex Court reported in 2018 (5) MLJ 317,

which had dealt with a similar issue and held 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 scale 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 implanted 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.

5. The above observation of the Hon'ble Apex Court is self explanatory. The Apex Court, while taking into consideration about the treatment taken by retired Government employees in a hospital which is not approved under the scheme, had come to the conclusion that medical reimbursement cannot be denied on such technical grounds, since the real test must be on the factum of treatment. This decision has also been relied upon by a Division Bench of this Court reported in 2019 (2) MLJ 1. In the light of the aforesaid decisions, the respondents may not be justified in rejecting the petitioner's claim for medical reimbursement.

6. For all the foregoing reasons, the order dated 19.04.2018, passed by the 3rd respondent herein by quoting the decision of the District Empowerment Committee and rejecting the petitioner's claim is quashed. Consequently, the 4th respondent herein is directed to forthwith reimburse the petitioner's medical claim, without reference to any disqualification on the

ground that he has taken treatment in a private hospital not empanelled under the Health Insurance Scheme, subject to the validity of the bills produced by the petitioner herein and reimburse the same to the petitioner, preferably within a period of 6 weeks from the date of receipt of copy of this order.

7. Accordingly, the Writ Petition stands ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

hvk

To

1. The Additional Chief Secretary to Government,
Finance Department,
Fort St.George,
Chennai - 600009.
2. The Director of Pensions,
Integrated Complex of Finance
Department,
Finance Department,
Nandanam, Chennai.
3. The Treasury Officer,
District Treasury, Namakkal.
4. The District Collector cum Chairman,
District Empowered Committee,
Tamil Nadu New Health Insurance
Scheme, Namakkal.
5. The Public Information Officer,
Office of the District Treasury
Officer, District Treasury, Namakkal.

+1cc to Mr.R.Premnarayan, Advocate SR.No.19780

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LN(CO)
GMY(08/04/2019)