

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34628 of 2019

1.Shanaz Zaheer
2.Dr.J.Zaher Ahmed

... Petitioners

.Vs.

1.State of Tamil Nadu,
Rep.by its Principal Secretary,
Commissioner of Treasuries & Accounts,
3rd Floor Integrated Office Complex for
Finance Department, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai 600 035.

2.The District Treasury Officer,
Udhagamandalam,
Nilgiris District.

3.United India Insurance Company Ltd,
Regional Office 134 Silingi Building,
Greens Road,
Chennai 600 006.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Order vide NK No.94/2018/D3 dated 28.05.2019 of the second respondent and quashing the same and directing the Respondents to reimburse to the petitioners the expenses of Rs.4,62,875/- [Rupees Four Lakhs Sixty Two Thousand Eight Hundred and Seventy Five Only].

For Petitioners : Mr.George P.J

For Respondents : Mr.V.Prabhu
Government Advocate

O R D E R

This writ petition has been filed challenging the order passed by the 2nd respondent denying the claim made by the petitioner who sought for reimbursement of the medical expenses and for a consequential direction to the respondents to reimburse the medical expenses to the petitioners.

2.The case of the petitioners is that the 2nd respondent is a Doctor, who retired as Hospital Superintendent from Government Hospital, Udhagamandalam, in the year 1997. The 2nd petitioner is drawing pension from the Government of Tamil Nadu from the year 1998 onwards. Deductions are being made every month from the pension under the Health Scheme for pensioner and his family from 2012 onwards till date.

3.The 1st petitioner, who is the wife of the 2nd petitioner, fell down from the stairs in her house and sustained serious injuries. She had to be given emergency care and therefore she was immediately shifted to Chennai on 27.12.2017, and admitted in a private hospital. She underwent bilateral, total knee replacement. The petitioners were not aware as to whether the hospital in which the 1st petitioner was operated is listed under the Health Insurance Scheme. The total expenses that was incurred towards the surgery and treatment worked out for a sum of Rs.4,62,875/-. The amount was paid by the petitioners. Later, when they sought for reimbursement, it was denied on the ground that the concerned hospital is not a listed hospital under the Health Insurance Scheme. The petitioners infact had appeared before the District Level Medical Board at Udhagamandalam, and they had examined the 1st petitioner and also given a report with regard to the operation and the treatment taken by the 1st petitioner. This report was sent to the 2nd respondent and he in turn had sent to the 3rd respondent Insurance Company. In spite of the recommendation of the District Level Medical Board, the claim was rejected.

4.Heard Mr.P.J.George, learned counsel appearing on behalf of the petitioner and Mr.V.Prabhu, learned Government Advocate appearing on behalf of the respondents.

5.The issue that has been raised in this writ petition has already been settled by a series of judgments and the latest judgment on this issue was delivered in W.P.No.27504 of 2019, dated 17.09.2019. The relevant portion of the judgment is extracted hereunder :-

"4. Learned counsel for the petitioner submitted that amount has been deducted towards

medical insurance from the monthly income of the petitioner and therefore, the petitioner is entitled to claim medical reimbursement. However, the same issue came up for consideration in the following judgments, wherein it is held that the pensioner, who underwent treatment in a non network hospital, is also entitled for medical reimbursement.

(i) (2018) 16 SCC 187 (Shiva Kant Jha vs. Union of India);

"17. It is a settled legal position that the Government employee during his lifetime 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 CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court."

(ii) Order of the Division Bench of this Court dated 04.02.2019 made in W.A.No.2749 of 2018 (The Government of Tamil Nadu, Rep. by its

Secretary, Rural Development and Panchayat Department, Fort St. George, Secretariat, Chennai-600 009 and others vs. K.Rajendran and others);

"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 16.03.2017 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."

6. In the light of the above said judgments, I am inclined to allow this writ petition. Accordingly, the writ petition stands allowed and impugned order of the 4th respondent is hereby quashed. This Court directs the 4th respondent to examine the claim made by the petitioner for medical reimbursement and disburse the eligible amount towards the same.

No costs. Consequently, connected Miscellaneous Petition is closed."

6.It is clear from the above judgment that the medical reimbursement cannot be rejected merely on the ground that the operation was done in a hospital which does not form part of the scheme. This Court had directed the medical reimbursement to be made by setting aside the order. The above judgment will clearly apply to the facts of the present case also.

7.In view of the above discussion, the impugned order passed by the 2nd respondent is hereby quashed and the 2nd respondent is directed to examine the claim made by the 2nd petitioner and disburse the reimbursement amount to the 2nd petitioner within a period of six weeks from the date of receipt of copy of this order.

This writ petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary,
State of Tamil Nadu,
Commissioner of Treasuries & Accounts,
3rd Floor Integrated Office Complex for
Finance Department, Veterinary Hospital Campus,
Anna Salai, Nandanam, Chennai 600 035.

2.The District Treasury Officer,
Udhagamandalam, Nilgiris District.

3.United India Insurance Company Ltd,
Regional Office 134 Silingi Building,
Greens Road, Chennai 600 006.

+1cc to the Government Pleader Sr.104498
+1cc to Mr.P.J.George, Advocate Sr.104633

W.P.No.34628 of 2019

ssd[co]
srg 29/01/2020