IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.28744 of 2018

S. Ganesan .. Petitioner

Vs.

1. Government of Tamilnadu
Represented by Secretary to Government
Finance (Pension) Department
Secretariat,
Chennai- 600 009.

2. The Director of Treasuries
and Accounts
Panagal Building
Chennai- 600 015.

3. The Director of Medical and Rural Health Service
Chennai- 600 006.

4. The District Level Empowered Committee
Office of the Joint Director of Medical
and Rural Health Service,
Chennai- 600 006.
Represented by its Chairman,
The District Collector,
Chennai - 600 001.

5. United India Insurance Company Ltd
Represented by the Divisional Manager,
Divisional Office VI
No.212, Anna Salai
Chennai- 600 006.

6. The Additional Treasury Officer,
District Treasury
Krishnagiri -635 115.

7. Narayana Hrudayalaya Limited
NH Health City, 258/A, Bommasandra Industrial Area
Anekal Taluk,
Bangalore - 560099. .. Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other writ or order or direction in the nature of writ, calling for the records of the 6th respondent relating to the orders in Na.Ka.No.3564/2017/B1 dated 21.08.2017 to quash the same and to issue consequential directions 5 & 6 to settle the Medical reimbursement claim of the petitioner for Rs.3,75,179.00 with 18 % interest for delayed payment and disburse the same within a time framed and pass such further or other orders.

For petitioner : Mr. J. Muthukumaran
For Respondents : Mrs. A. Srijayanthy, AGP
for R1 to R4 and R6

O R D E R

The petitioner filed this Writ Petition seeking direction calling for the records of the 6th respondent relating to the orders in Na.Ka.No.3564/2017/B1 dated 21.08.2017 to quash the same and to issue consequential directions to respondents 5 & 6 to settle the Medical reimbursement claim of the petitioner for Rs.3,75,179.00 with 18 % interest for delayed payment and disburse the same within a time frame.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3. The case of the petitioner is that the petitioner retired from service on 30.06.2003 and receiving pension. The Government of Tamil Nadu have introduced the Tamil Nadu Government Pensioners Health Fund Scheme, 1995 for the welfare of the retired State Government employees to meet out their medical expenses. Subsequently, the Tamil Nadu Government introduced New Health Insurance Scheme 2014 for pensioners (including spouse)/ family pensioners. The petitioner is a subscriber to the above said scheme and the subscription of Rs.150/- is regularly deducted from his monthly pension. While so, on 27.05.2016, the petitioner was attacked by mild LV DYS function and underwent medical treatment in NH Narayana Institute of Cardiac Sciences, Bangalore- 560099 from 09.06.2016 to 13.06.2016 and ICD implantation was done. For the above implantation, the petitioner incurred a total medical expenses of Rs.3,75,179/- through Medical Bill No.INVO.104-16010875 dated 13.06.2016 for Rs.3,55,179/- and Bill No.VNV-104-16009773 dated 28.05.2016 for Rs.20,000/-. The abovesaid bill-amounts were remitted by the

petitioner, but the 5th respondent has not so far paid the said amount to the petitioner. Thereafter, the petitioner made an application for medical reimbursement to the 6th respondent, and the same was rejected by the 6th respondent vide impugned order dated 29.08.2017 stating that the 5th respondent returned the bills of the petitioner stating that "Procedure not covered". Hence, this writ petition.

4. Learned counsel for the petitioner submitted that an amount of Rs.150/- has been regularly deducted towards medical insurance from the monthly pension of the petitioner and therefore, the petitioner is entitled to claim medical reimbursement. However, when similar issue came up for consideration before this Hon'ble Court, in the following decisions, 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."

5. Learned Government Advocate appearing for the respondents has not disputed the facts submitted by the learned counsel appearing for the petitioner.

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 6th respondent is hereby quashed. This Court directs the 6th respondent to examine the claim made by the petitioner for medical reimbursement and disburse the eligible amount towards the same. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Secretary to Government, Government of Tamilnadu
Finance (Pension) Department, Secretariat,
Chennai- 600 009.

2. The Director of Treasuries and Accounts
Panagal Building
Chennai- 600 015.

3. The Director of Medical and Rural Health Service
Chennai- 600 006.

4. The Chairman/District Collector,
District Level Empowered Committee
Office of the Joint Director of Medical
and Rural Health Service,
Chennai- 600 006.

5. The United India Insurance Company Ltd
Divisional Office VI,
No.212, Anna Salai
Chennai- 600 006.

6. The Additional Treasury Officer,
District Treasury
Krishnagiri -635 115.

+1 cc to M/s.T.Shanmugam, Advocate Sr.No. 80145
+1 cc to M/s.J.Muthukumaran, Advocate Sr.No.79889

AKM/28.11.19/9P- 9C /

W.P.No.28744 of 2018