



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.12403 of 2010

M.Selvaraj

... Petitioner

Vs.

1.The Director,
Central Marine Fisheries Research Institute,
P.B.No.1602, Tatapuram Post,
Kochi-682 014.

2.The Scientist-in-Charge,
Tuticorin Research Centre of Central Marine
Fisheries Research Institute,
South Beach Road,
Thoothukudi-628 001.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned communication in F.No.17-1/2009-Adm dated 20.01.2010 on the file of the Respondent No.2 and quash the same as illegal and consequently direct the Respondent No.2 to provide the medical reimbursement as per the claim of the petitioner dated 06.11.2009, 11.11.2009 and 01.01.2010 for Rs.46,607-85/-, Rs.9,920-60, Rs.10,370/-, Rs.10,359/-, Rs.10,691/- & Rs.11,031/-.

For Petitioner : Mr.T.Lajapathi Roy

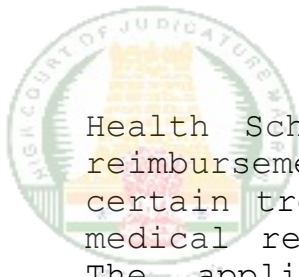
For R1 : Mr.R.Sundar

For R2 : No appearance

ORDER

The order of rejection, dated 20.1.2010 rejecting the claim of the writ petitioner for grant of medical reimbursement, is under challenge in the present writ petition.

2.The writ petitioner was employed as Technical Officer in the second respondent Research Centre and retired from service. It is an admitted fact that the writ petitioner is a member of the Medial



Health Scheme and therefore, he is eligible to get the medical reimbursement under the scheme. The petitioner's wife underwent certain treatment and accordingly, submitted an application seeking medical reimbursement along the original bills and other records. The application submitted by the petitioner seeking medical reimbursement was rejected in proceedings dated 20.01.2010 on the ground that the writ petitioner had taken treatment for his wife in a hospital which is not approved by the respondents. In other words, Arul Hospital at Trichy is not a recognized hospital by the respondents organisation.

3. The Constitutional Courts have repeatedly held that providing a decent medical facility is a integral part of Article 21 of the Constitution of India. This apart, the claim regarding medical reimbursement cannot be rejected merely on the ground that the treatment was taken in an unapproved hospital. The genuinity of the treatment taken by the employee/pensioner alone is to be verified by the competent authority and not the hospital in which the treatment was taken. Some time, it may not be possible to approach the hospital when a person is on emergency circumstances. An employee in distress cannot search for a approved hospital for taking certain urgent treatments. Under those circumstances, if the treatment was taken in an unapproved hospital the authorities competent are empower to verify the genuinity of the treatment undertaken and not the hospital.

4. This being the legal principles repeatedly held, the rejection of the claim of the writ petitioner is not in consonance with the legal principles settled. Even recently, this Court passed an order on 28.05.2019 in W.P(MD)No.13429 of 2013 etc., batch and the relevant paragraphs are extracted hereunder:-

"78. Assuming that the non network hospital and non listed disease are the major reasons for rejection of most of the claims, even that reasons cannot stand in the legal scrutiny, in view of the catena of decisions, as has been cited above of both this Court as well as the Apex Court. Therefore, all these reasons given in the respective impugned orders are not at all worthy or sustainable and therefore all these impugned orders, in the respective writ petitions, are liable to be quashed.

80. In order to reconsider all these claim made by the respective writ petitioners for medical reimbursement, by remitting the matters back, the following directions are issued:

(i) All the impugned orders in the respective writ petitions in this batch of cases, are hereby quashed.

(ii) The writ petitions where impugned orders are quashed as well as the writ petitions where mandamus sought



for, are hereby remanded with directions to the concerned District Level Empowered Committee, before whom, these matters shall be placed and the Committee shall reconsider every individual case.

(iii) While reconsidering, the Committee shall not reject any claim merely on the reason of non network hospital or non listed disease.

(iv) The Committee, wherever possible, shall give suitable direction to the Insurance Company to reimburse the claim made by the respective claimant / employee / pensioner.

(v) If the Committee finds some cases where the Insurance Company cannot be directed to reimburse, in those cases, suitable orders shall be passed directing / recommending the State authorities to reimburse the claim under Medical Attendance Rules.

(vi) Once such orders are passed, the Insurance Company shall immediately reimburse the medical claim with 6% interest from the date of due till date of payment, within a period of thirty days from the date of receipt of such order to be passed by the Empowered Committee of the District concerned.

(vii) On receipt of such orders / recommendation from the Empowered Committee, the Sanctioning authority / State authority / High Power Committee in the State Level shall pass necessary orders allowing the medical reimbursement claimed by the individual claimant / employee / pensioner under the Medical Attendance Rules.

(viii) While ordering medical reimbursement under Medical Attendance Rules, the rate approved, accepted or quoted by the Insurance Company under the Medical Insurance Scheme shall be taken as the rate and by calculating the reimbursement on the said rate, the reimbursement claim shall be immediately sanctioned and the amount shall be reimbursed to the claimant with 6% interest from the date of due till date of payment, within a period of thirty days from the receipt of the recommendation / order from the District Empowered Committee."

5. 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, 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.?

6. In view of the legal principles settled, the order impugned issued by the respondents in proceedings, dated 20.01.2010 is quashed. The respondents are directed to settle the medical reimbursement claim of the writ petitioner as per his eligibility under the scheme within a period of eight weeks from the date of receipt of a copy of this order.

7. With these directions, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Director,
Central Marine Fisheries Research Institute,
P.B.No.1602, Tatapuram Post,
Kochi-682 014.

2.The Scientist-in-Charge,
Tuticorin Research Centre of Central Marine
Fisheries Research Institute,
South Beach Road,
Thoothukudi-628 001.

+1 CC to M/s.R.SUNDAR, Advocate (SR-84240[F] dated 29/08/2019)

+1 CC to M/s.T. LAJAPATHIROY, Advocate (SR-84824[F] dated 03/09/2019)

W.P. (MD) No.12403 of 2010
29.08.2019

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