



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD).No.13169 of 2013
and
M.P. (MD)No.1 of 2013

Subramanian

... Petitioner

-Vs-

- 1.The Joint Director Medical and Rural
Health Services, Nagerocil,
Kanyakumari District.
- 2.The Special Commissioner and
Commissioner of Treasuries and Accounts,
Panagal Building, Saidapet, Chennai-15.
- 3.Government of Tamil Nadu,
Rep. by its Secretary,
Finance Department,
Fort St. George, Chennai.
- 4.United India Insurance Company
Third party Administrator,
Represented by its Divisional Manager,
Xavier Building,
Second Floor, Assisi Campus,
Nagercoi-1,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records in respect of the proceedings of the first respondent in and by his endorsement A.Thi.Mu.No. 2075/E3/2013, dated 03.07.2013 made in the letter of the fourth respondent dated 11.06.2013 and quash the same and consequently direct the respondents to sanction the medical reimbursement of Rs.2,53,167.57 the medical expenses incurred by the petitioner.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.D.Muruganantham
Additional Government Pleader
(for R1 to R3)



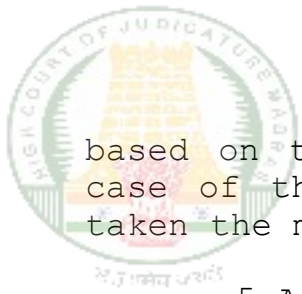
ORDER

The endorsement made by the fourth respondent in proceeding, dated 11.06.2013, that the writ petitioner had taken treatment in an unapproved hospital and therefore, he is not entitled for medical reimbursement, is under challenge in the present writ petition.

2.The writ petitioner was working as Assistant and he underwent medical treatment for certain ailments. It is an admitted fact that the writ petitioner is a member of the New Employees Health Fund Scheme which was approved by the United India Insurance Company and therefore, the writ petitioner is entitled for medical reimbursement as per the scheme. However, on account of certain urgency, the writ petitioner was admitted as inpatient in Kerala Institute of Medical Science, Thiruvananthapuram in an emergency condition on 10.04.2013, since he was suffering with abdominal discomfort and associated with weakness and weight loss of 5 kgs in two months and UGI Endoscopy and Colonoscopy. On 16.04.2013, the writ petitioner underwent extended right hemicolectomy for carcinoma proximal transverse colon done. He was discharged on 23.04.2013 from the hospital and was continuing the medical review for months. The petitioner had incurred an expenditure of Rs.2,53,167.57 and along with the valid receipts and medical report, the petitioner submitted an application for medical reimbursement. Such a reimbursement claim was rejected by the respondent on the ground that the KIMS, Thiruvananthapuram is not in the approved hospitals by TPA and therefore, he is not entitled for the medical reimbursement.

3.The learned counsel for the writ petitioner made a submission that the writ petitioner was admitted in an emergency circumstance and therefore, it may not be possible for him to search the listed hospital and whether such facilities were available in Madurai. It is far away from the residence of the writ petitioner and the distance between Madurai and place of the residence of the writ petitioner is around 22 Kms. Contrarily, the distance between the residence of the writ petitioner and Tiruvananthapuram was about 70 Kms. Thus, the writ petitioner was admitted an emergency condition.

4.The learned counsel appearing on behalf of the United India Insurance Company/fourth respondent contended that the company is liable to reimburse the medical claim based on the terms and conditions of the agreement. The Insurance Company entered into a contract with the Government in respect of the medical reimbursement claims. Thus, the company is not liable to pay the claim, if it is found that the treatment is not taken in the approved hospital. It is further contended that the petitioner ought to have approached the District Level Committee and he has not exhausted the remedy available under the scheme. This apart, the company has to pay only



based on the terms and conditions of contract and therefore, the case of the writ petitioner cannot be considered, as he had not taken the medical treatment in the hospital which is listed.

5. As far as the medical reimbursement claims are concerned, it is a basic need of a person. A man in distress and pain cannot be expected to search for an listed hospital for taking certain emergency treatment. Providing decent medical facility is the constitutional perspective on the part of the State. Merely on the ground that a person has taken treatment in an unapproved hospital, the claims made otherwise on genuine reasons cannot be rejected. In other words, the genuinity of the medical treatment alone is to be verified and not the hospital in which, the treatment was taken. Though there is a contractual obligations as far as the Insurance Company is concerned, it is for the Insurance Company to set out the claim against the Government in all such cases for getting reimbursement. In other words, the Insurance Company at the first instance can settle the medical reimbursement claim and get it back from the Government in all such cases which does not fall within the terms and conditions of the agreement. Of course, Insurance Company is a commercial institution. Thus, if there is any violation of the terms and conditions of the contract with the Government, then they are at liberty to get it back from the Government by filing appropriate claim petition. Contrarily, a man in distress cannot be made to suffer by the Government servant who had underwent surgery, cannot be made to wait for years together for medical reimbursement claim. He would have borrowed money and taken treatment by spending huge expenditure. In the event of long delay, it may not be possible for such a Government servant to countenance the expenditure already met out. This being the principles to be followed, the rejection of the claim of the writ petitioner is not based on the sound principles. The similar issues were considered by this Court 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

<https://hcservices.courts.mn/hcservices> 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 of 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."

6.As per the judgment of the Hon'ble Division Bench, the claim of the writ petitioner for medical reimbursement is to be considered by the competent authorities of the Department themselves. If at all any dispute arises between the Government and the United India Insurance Company, the same is to be resolved between the authorities in accordance with the terms and conditions of the contract between the United India Insurance Company and the Government. Contrarily, the medical reimbursement claim of the writ petitioner cannot be delayed or denied.

7.Under these circumstances, the fourth respondent is 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. If any dispute arises on account of certain contractual obligations between the Government and the United India Insurance Company in the manner known to law, thereafter, the fourth respondent is at liberty to claim the same from the Government as per the terms and conditions of the contract.

8.Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The Joint Director Medical and Rural
Health Services, Nagerocil,
Kanyakumari District.
- 2.The Special Commissioner and
Commissioner of Treasuries and Accounts,
Panagal Building, Saidapet, Chennai-15.
- 3.The Secretary,
Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai.

+1 CC to Mr.V.KANNAN, Advocate SR-84386.
+1 CC to SPL GP SR-84578.

**W.P. (MD) .No.13169 of 2013
29.08.2019**

CS(16.09.2019) 8P 6C