

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.01.2020
CORAM
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.35911 of 2019

S.Anthony

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Secretary to Government,
Finance Department,
Secretariat, Chennai 600 009.
 2. The Principal Secretary/Commissioner of Treasuries
and Accounts Integrated Office Complex for Finance
Department,
III Floor, Nandanam, Annasalai,
Chennai - 600 015.
 3. The Additional Chief Secretary to Government,
High Level Empowered Committee,
Finance Department,
Fort St. George,
Secretariat, Chennai 600 009.
 4. The State Level Empowered Committee,
Rep. by the Commissioner of Treasuries and Accounts.
 5. The Joint Director of Medical and Rural Health Service /
Member Secretary, District Level empowered Committee,
DMS Compound, Chennai 600 006.
 6. M/s. United India Insurance Company Limited,
Rep.by the Divisional Manager,
Division Office VI, PLA Rathna Towers,
V Floor, No.212, Annasalai,
Chennai 600 006.
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Certiorarified Mandamus to call for the records pertaining to the order passed by the 3rd respondent herein in his proceedings in O.Mu.No.7545/Ka.Pi/1/3/2018 dated 03.01.2019 and quash the same and consequentially direct the respondents to grant medical reimbursement of Rs.2,03,841/- towards my medical claim dated

19.12.2017 for the medical treatment taken to the petitioner's wife Mrs.A.M.V.Viola, together with interest at the rate of 12% per annum for the delayed payment and disburse the same.

For Petitioner	: Mr.S.Sathish Rajan
For Respondents	: Mr.P.S.Sivashanmuga Sundaram Special Government Pleader

O R D E R

This writ petition has been filed challenging the order passed by the 3rd respondent dated 03.01.2019, rejecting the claim made by the petitioner for medical reimbursement and for a consequential direction to direct the respondents to grant medical reimbursement towards the claim made by the petitioner for the medical treatment given to his wife.

2. The case of the petitioner is that he is a retired Government servant, who is a Member of the Tamil Nadu Government New Health Insurance Scheme for pensioners. The petitioner is contributing towards the said claim. The petitioner's wife suffered a serious problem and she has admitted in a hospital for an emergency operation. This operation was conducted in the year 2016 and the petitioner incurred a sum of Rs.2,03,841/- towards medical expenses.

3. The petitioner made a claim for Medical reimbursement and the same was rejected on the ground that the hospital where the operation was undertaken does not fall within the Network hospitals stipulated in the scheme.

4. The learned counsel for the petitioner submitted that as against the rejection of the claim, the petitioner made an Appeal before the 4th respondent and the 4th respondent has also rejected the Appeal by an order dated 03.01.2019 on the very same ground. The learned counsel submitted that even though a second appeal has been filed before the 3rd respondent, the petitioner has directly approached this Court since the issue is covered by the earlier order passed by this Court.

5. Per contra, Mr.P.S.Sivashanmuga Sundaram, learned counsel appearing for the respondents submitted that the petitioner has already preferred an Appeal before the 3rd respondent and therefore, necessary direction can be issued to the 3rd respondent to pass orders in the Appeal, in line with the earlier orders that have been passed by this Court.

6. This Court has carefully considered the submissions made on either side and also perused the entire materials available on record.

7. The issue with regard to the rejection of the medical reimbursement on the ground of treatment undertaken in a non-network hospital has already been dealt with by this Court on a number of occasions. It will be relevant to extract the latest order that was passed by this Court in WP No.34456 of 2019 dated 11.12.2019 :-

This writ petition has been filed challenging the impugned order passed by the 4th respondent rejecting the claim of medical reimbursement made by the petitioner and for a consequential direction to direct the respondents to pay the petitioner the medical reimbursement with interest.

2. It is seen from the records that the petitioner is a retired Head Master of the Panchayat Union School. The petitioner is a subscriber to the New Health Insurance scheme, which was introduced by the government in the year 2014. The subscription towards the insurance is being deducted regularly from the monthly pension. During May 2019, the wife of the petitioner underwent an operation and an emergency surgery was done on 17.05.2019. The petitioner was under the bonafide impression that he is covered by the scheme and he will be getting the medical reimbursement. The Hospital in which the operation was done, gave a final bill for a sum of Rs.95,925/-. The hospital authorities refused to take the medical insurance and left with no other option, the petitioner had to pay the entire bill amount.

3. The petitioner made a representation to the first respondent on 17.08.2019 and requested for reimbursement of the hospital expenses incurred by the petitioner. The impugned order came to be passed on 05.09.2019 by the 4th respondent wherein, the medical reimbursement was rejected on the ground that the hospital where the operation was done is not covered under the list of hospital that forms part of the scheme. Aggrieved by the same, the petitioner has approached this Court.

4. Heard Mrs.C.Anandha Ramani, learned counsel appearing on behalf of the petitioner and Mr.A.Zakir Hussain, 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 4th respondent is hereby quashed and the 4th respondent is directed to examine the claim made by the petitioner and disburse the reimbursement amount to the petitioner within a period of four(4) weeks from the date of receipt of a copy of this order, if the petitioner satisfies all the other requirements.

8. This writ petition is allowed in view of the above direction.

8. It is clear from the above order that the Medical reimbursement can never be rejected on the ground that the treatment was undertaken in a non-network hospital. There are always cases of emergency where the primary concern will be to attend to the emergency of a patient, which will not give any time for the employee or the family member to first check whether the concerned hospital falls within the list of Network hospital. In such circumstances, it will not be fair to deny the medical reimbursement on the ground that the treatment was taken in a non-network hospital. Such an approach will clearly defeat the very object of the scheme.

9. In view of the above discussion, there shall be a direction to the 3rd respondent to pass necessary orders in the Appeal filed by the petitioner on 21.03.2019, within a period of four weeks from the date of receipt of copy of this order, in line with the above order that has been passed by this Court and the petitioner shall be settled with the medical reimbursement at the earliest possible time. The petitioner is directed to make a fresh representation to the 3rd respondent along with a copy of the Appeal dated 21.03.2019 and copy of this order.

10. This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(Inspcell)

//True Copy//

Sub Assistant Registrar

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To

1. The Government of Tamil Nadu,
Represented by the Secretary to Government,
Finance Department,
Secretariat, Chennai 600 009.
 2. The Principal Secretary/Commissioner of Treasuries
and Accounts Integrated Office Complex for Finance
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- +1cc to M/s.S.Sathish Rajan Advocate sr3071
+1cc to Government Pleader sr1007

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