



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: **15.09.2020**  
CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR**

W.P. (MD) No.11412 of 2020

(Through Video conferencing)

K.Dhinakaran

...Petitioner

-Vs-

1.The District Collector,  
Sivagangai District,  
Sivagangai.

2.The District Treasury Officer,  
Sivagangai District,  
Sivagangai.

3.The Superintendent of Police,  
Sivagangai District,  
Sivagangai.

4.The Joint Director,  
Health and Rural Development,  
Sivagangai.

5.The Senior Divisional Manager,  
United India Insurance Company Ltd.  
Divisional Office : 010600, 5<sup>th</sup> Floor,  
PLA Rathna Tower,  
Raji Buildings, 212,  
Anna Salai, Chennai - 600 006.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records pertain to the impugned order dated 08.06.2020 passed by the 5<sup>th</sup> respondent and quash the same and consequently direct the respondents to reimburse the medical expenses a sum of Rs.1,12,125/- (Rupees one lakh twelve thousand one hundred and twenty five only) which was paid by his mother in Madurai Meenakshi Mission Hospital with 9% interest within a reasonable time to the petitioner in the light of the judgment rendered by the Hon'ble Madras High Court in W.P.No.35621 of 2019 dated 02.01.2020.

For Petitioners : Mr.G.R.Sathish

For Respondents : Mrs.J.Padmavathi Devi, for RR1 to 4  
Mr.A.Shajahan, for R5

**ORDER**

The Prayer sought for in this writ petition is for a writ of Certiorari Mandamus, calling for the records pertain to the impugned order dated 08.06.2020 passed by the 5<sup>th</sup> respondent and quash the same and consequently direct the respondents to reimburse the medical expenses a sum of Rs.1,12,125/- (Rupees one lakh twelve thousand one hundred and twenty five only) with 9% interest within a reasonable time to the petitioner in the light of the judgment rendered by the Hon'ble Madras High Court in W.P.No.35621 of 2019 dated 02.01.2020.

2.The petitioner is working as Grade-I Police Constable in the police department at Sivagangai District. He has become a member of New Health Insurance Scheme for Government Servants, 2016 undertaken by the State Government. Accordingly, G.O.Ms.No.202, Finance (salaries) Department dated 30.06.2016 was issued and the petitioner has been regularly contributing to the said Health Insurance Scheme. While so, on 25.09.2019, the petitioner's mother one Irulayee was suffered with a serious health issue. Therefore, she was admitted as in-patient at a private hospital in Madurai. After conducting medical test, the Doctors diagnosed the disease and accordingly, she was given treatment from 25.09.2019 to 29.09.2019 and she was discharged on 30.09.2019, for which, the petitioner incurred expenses of Rs.1,12,215/-. When the said expenses was sought to be reimbursed by way of request made by the petitioner, the same having been considered was turned down through the impugned order passed by the 5<sup>th</sup> respondent insurance company on 08.06.2020, where, the reason cited is that, the treatment taken for the mother of the petitioner at Meenakshi Mission Hospital Research Centre, Madurai from 25.09.2019 to 30.09.2019 would not be covered under G.O.Ms.No.202, as it provides coverage only for parents of the employee, in the case of unmarried employee until the employee gets married and since the petitioner got married and since the treatment is not covered under NHIS, they rejected the claim of the petitioner for medical reimbursement. Challenging the said order dated 08.06.2020 passed by the 5<sup>th</sup> respondent, the present writ petition has been filed.

3.Heard the learned counsel appearing for the petitioner, who would submit that, the mother is also a family member and merely because of the explanation given as condition No.3 of Annexure 1 of G.O.Ms.No.202, dated 20.06.2016, the mother cannot be excluded from the purview of the family of a government servant, even though he got married. In this regard, the learned counsel appearing for the petitioner would submit that, a similar issue was considered by the learned Judge of this Court in W.P.No.35621 of 2019 in the matter of **R.Kathiravan Vs. Principal Secretary and Others**, by order dated 02.01.2020, where, the learned counsel appearing for the petitioner has relied upon the following:

"8.The object of the Health Insurance Scheme 2016



is to help the employee to tide over the crisis faced by the employee due to a sudden and emergent medical emergency. The Government had thought it fit to appoint the United India Insurance Company Limited (the fifth respondent herein) for the implementation of the scheme and for the disbursement of the medical reimbursement. The scheme itself contemplates the list of hospitals where the employee and his family members can undergo treatment. It becomes important to take note of Annexure-I in G.O.Ms.202, dated 30.06.2016. Under Clause 4 of the Annexure, 'Family members' are defined. Clause 4(iii) states that the parents of the employee will also be covered only till the employee remains unmarried. The said Clause, if it is read literally, on the face of it, sounds illegal and illogical. The parents of an employee will not cease to be parents after the marriage of the employee. Unfortunately, even though this society is moving towards a state where the parents are disregarded after marriage, this Court does not expect the Government to give a similar treatment for the parents of employees, who get married. This Clause cannot be read in isolation and it cannot be given a literal meaning, since it will end up with disturbing consequences. The only way to read this Clause is that the parents will continue to be treated as family members till they continue to be the dependants of the Government employee. If this Clause is not assigned this meaning, the poor parents will be left in lurch during the evening of their life and more particularly, considering the cost of medical care that is prevailing at present. Therefore, the real purport of this Clause is that the parents of the employee must continue to be the dependants of the employee and in which case they will also fall within the definition of 'Family members'.

9. It will also be relevant to rely upon judgment cited by the learned counsel for the petitioner in this regard. This Court in W.P.(MD).No.4117 of 2018 dated 21.03.2018 passed an order on similar facts and the same is extracted hereunder:

*"The petitioner is working as Salesman in a liquor outlet run by TASMAL. He is a regular employee. He is a member of the Medical reimbursement scheme introduced by TASMAL. The petitioner's father underwent a Lung surgery. When a claim for reimbursement was made, it was denied on the only ground that the petitioner got married and that therefore his father cannot be a beneficiary.*

*2. This ground of rejection was specifically*



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frowned upon by this Court in W.P. (MD) No. 7365 of 2010 dated 26.07.2011. Therefore, the order impugned in this writ petition is quashed. The second respondent is directed to process the petitioner's medical reimbursement claim and effect settlement in terms of the scheme announced by the TASMAG for its employees. The medical reimbursement shall be done within a period of 8 weeks from the date of receipt of a copy of this order."

9. The above order was taken on appeal before the Division Bench in W.A.No.1472 of 2018 and the Division Bench by an order dated 24.10.2018 dismissed the appeal. The relevant portion in the order is extracted herein:

"3. The learned counsel appearing for the appellants would submit that a reading of the aforesaid Rule would make it clear that only the 'wife and children' of a male working employee are entitled for the benefit under the scheme, as they alone come within the purview of "family". In support of his contention, the learned counsel has made reliance upon the following decisions:

- (i) (1998) 2 SCC 554 [State of M.P. and others Vs. M.P.Ojha and another;
- (ii) (1991) 3 SCC 11 [Union of India and others Vs. Tejram Parashramji Bombhate and others]
- (iii) (2006) 4 MLJ 1183 [K.Sundararaj Vs. Management of Tamil Nadu State Transport Corporation (Madurai), Ltd., Madurai, rep.by its Managing Director, Bye-pass Road, Madurai.

4. The learned counsel appearing for the respondents would submit that the submission of the learned counsel for the appellants on the construction of the Rule, is not correct. One has to see the object of the Rule. A restrictive interpretation cannot be given to the word "family". It merely says the other categories to be included. Thus, there is no exclusion of the father from the definition. Therefore, no interference is required. It is further submitted that any restricted interpretation, would go against the very object of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which mandates a son to maintain the aged parents. The learned counsel further submitted that Section 3 of the aforesaid enactment deals with, the act to have overriding effect on the provisions of any other



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enactment, which is inconsistent. The learned counsel seeks support from Section 20 of the aforesaid enactment, which provides for medical support for senior citizens by the State Government.

5.The Rule is meant for public purpose. Therefore, a literal interpretation cannot be adopted for understanding it. As rightly submitted by the learned counsel appearing for the respondents, the Rule does not specifically exclude a dependant parent. When we interpret the word 'include', it can adverse the illustration in nature. To put it differently, such definition does not exclude any other category. Therefore, when the definition "family" is mentioned to include the wife and children, it cannot be stated that it excludes dependant parent. There cannot be a different yardstick that has to be adopted for a married son and an unmarried son. The question is with respect to the dependency of the parent which has got no rationale with the status of the son. After all, as per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, a son is the duty bound to maintain the dependant parent. Though Section 3 of the aforesaid enactment has got an overriding effect, we have to read the said provision along with other provisions of different Rules and enactments by way of purposive interpretation. Even under the Hindu Law, there is an implicit obligation upon the son to maintain the dependant parent. Thus, the contention of the learned counsel for the appellants cannot be sustained.

6.Coming to the decisions relied upon by the learned counsel appearing for the appellants, in our considered view that there is no applicability to the case on hand. In fact, the decision rendered in **(1998) 2 SCC 554 [State of M.P. and others Vs. M.P.Ojha and another]**, helps the case of the respondents. It is apposite to refer paragraph 13 of the said judgment, which reads as under:

13.The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need



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not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even otherwise by getting a pension of Rs.414 per month which by any standard is a paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to



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reimbursement for the expenses incurred on the treatment of his father and other traveling expenses.

7.From the above, one can say that it is still open to the appellants to reject a request for reimbursement, if they are satisfied that a parent is not a dependant. Secondly, in the aforesaid judgment, the Hon'ble Apex Court was dealing with the provision which defines a "family". There is a difference between the words "omits" and "includes". Hence, the aforesaid judgment cannot be read in support of the contention of the learned counsel appearing for the appellants.

8.The judgment rendered by the Hon'ble Apex Court in the case of Union of India and others Vs. Tejram Parashramji Bombhate and others reported in (1991) 3 SCC 11, also does not have an application. The facts are totally different in the said case. The respondent therein sought for regularisation, which was rejected. Much reliance has also been made on the decision of the learned Single Judge in the case of K.Sundararaj Vs. Management of Tamil Nadu State Transport Corporation (Madurai), Ltd., Madurai, rep.by its Managing Director, Bye-pass Road, Madurai, reported in (2006) 4 MLJ 1183. With due respect to the learned Single Judge, we are unable to agree with the reasoning rendered therein, particularly in the light of the reason furnished above. After all, we are dealing with the Rule, which is meant to help the members of a family in an employee and thus, requires a purposive interpretation.

9.This writ appeal is dismissed accordingly. However, we make it clear that it is still open to the appellants to consider the matter on merit and if they are satisfied that the parent of the first respondent is not dependant, then, it is open to them to reject the claim of reimbursement. No costs. Consequently, CMP(MD) No.10479 of 2018 is closed."

10.The above judgment of the Division Bench makes it clear that the parents will also be a part of family members of the employee provided that they are also dependant on the employee. This judgment will also squarely apply to the facts of the present case.



11. In view of the above discussion, this Court has no hesitation to interfere with the impugned letter of the third respondent dated 25.04.2019 and accordingly the same is quashed. There shall be a direction to the third respondent to re-consider the claim made by the petitioner and after satisfying himself that the father of the petitioner is dependant on the petitioner, the third respondent shall reimburse the medical expenses incurred by the petitioner for the surgery of his father, within a period of four weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the third respondent along with a copy of this order."

4. By relying upon the said judgment, the learned counsel appearing for the petitioner contends that, the impugned order would not be sustainable in view of the said legal position as has been clarified by this Court. Therefore, the reason cited by the 5<sup>th</sup> respondent insurance company in the impugned order of rejecting the claim of the petitioner for medical reimbursement for the amount incurred for the medical treatment given to his mother may not be justifiable and sustainable. Hence, the learned counsel seeks indulgence of this Court against the impugned order.

5. However, on the other hand, the learned counsel appearing for the 5<sup>th</sup> respondent would submit that, the relationship between the Government and the insurance company is covered only by the contract condition, pursuant to which only, the insurance company has been entrusted to deal with the insurance claim for the government employees and pensioners under two different schemes, for which, insofar as the employee's claim is concerned, G.O.Ms.No.202, dated 30.06.2016 was issued and what are all the conditions imposed therein in Annexure 1 would hold good even today. Therefore, against the said conditions, the 5<sup>th</sup> respondent insurance company cannot be compelled to make the medical reimbursement of any of the employee.

6. This clause 4 of the Annexure I to the G.O. has been relied upon by the learned counsel appearing for the 5<sup>th</sup> respondent, which reads thus:

"4. The following family members of the employee shall be covered under the New Health Insurance Scheme, 2016:

- (i) Legal Spouse of the Employee;
- (ii) Children of the Employee - till they get employed or married or attain the age of 25 years whichever is earlier and dependent on the Employee.
- (iii) Parents of the Employee, in the case of unmarried employee until the Employee get married; and



(iv) Physically Challenged and Mentally Retarded children of the employee without any age restriction, subject to the minimum of the handicap to the extent of 40% as certified by the District Disability Welfare/Rehabilitation Officer and wholly dependent on the employee."

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7. Under clause (iii) Parents of the Employee, in the case of unmarried employee until the Employee get married, would be entitled to come under the New Health Insurance Scheme, 2016 to get medical reimbursement. Here, in the case in hand, admittedly, the petitioner got married, therefore, the parents of the petitioner cannot be included for the purpose of medical reimbursement, therefore, according to the said conditions annexed in Annexure I to the said Government Order only, such rejection order has been made. Therefore, the learned counsel appearing for the 5<sup>th</sup> respondent would submit that, no interference is required in the impugned order.

8. However, the learned Special Government Pleader appearing for the respondents 1 to 4 would submit that, in view of the judgment of the learned Judge referred to above in **R.Kathiravan's case** and also in view of the judgment of this Court in a batch of cases dated 28.05.2019 in W.P.(MD) No.13429 of 2013, the issue can be decided by the District Level Empowered Committee, where the entitlement of the petitioner as to the medical reimbursement claimed by him for the expenses incurred for the treatment given to his mother, would be acceptable and medical reimbursement has to be made, can only be decided by the District Level Empowered Committee and therefore, the issue can be remitted back to the District Level Empowered Committee to take appropriate decision.

9. I have considered the submissions made by the learned counsel for both parties and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel appearing for the petitioner, the learned Judge of this Court, before whom, the issue has already been confronted, where, he has taken a decision on 02.01.2020, where, the learned Judge has also taken note of the Division Bench judgment of this Court made in W.P. (MD) No.4117 of 2018 dated 21.03.2018, where the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been interpreted and the provisions under Section 3 of the said Act since would have the overriding effect on the provisions of any other enactment, which is inconsistent, the Court took the view that it includes the parents. This analogy was taken note of by the learned Judge and accordingly, he has allowed the said writ petition by giving direction at para 11 of the judgment referred to above dated 02.01.2020. I am in agreement with the said view taken by the learned Judge in the said order dated 02.01.2020 in **R.Kathiravan's**



**case.** That apart, in a batch of cases, where, I had an occasion to consider with regard to the medical reimbursement, by order dated 28.05.2019 in W.P.(MD) No.13245 of 2013 in the matter of **S.Marimuthu, E.X. V.A.O. Vs. The Government of Tamil Nadu, Represented by its Secretary, Department of Health and Family Welfare, Fort St.George, Chennai and two others**, I have passed the following order:

"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."

11. Therefore, if at all the contract condition between the Government and insurance company like the 5<sup>th</sup> respondent does not permit for clearing any medical reimbursement for any employee or pensioner, who are members of the said scheme, those claim can very well be considered and decided as per the provisions of Medical Attendance Rules and this aspect also can be considered initially by the District Level Empowered Committee, subsequently, by the State Level Committee. Therefore, as has been rightly pointed out by the learned Special Government Pleader appearing for the respondents 1 to 4, the issue can very well be decided by the District Level Empowered Committee as per the judgment in the batch of cases dated 28.05.2019 and also as per the decision of the learned single Judge in W.P.No.35621 of 2019 dated 02.01.2020.

12. In that view of the matter, this Court is inclined to pass the following orders:

"The impugned order is quashed and the matter is remitted back to the respondents for reconsideration. While reconsidering the same, the respondents, especially, the respondents 1 and 2, who are members of the District Level Empowered Committee can place the same before the District Level Empowered Committee and decide the same in accordance with law. While taking a decision, the District Level Empowered Committee shall have in mind the aforesaid two decisions made by this Court and according to the import of the said decision, the Committee can take a decision, if not under G.O.Ms.No.202, under Medical Attendance Rules and accordingly, calculate the reimbursement amount payable to the petitioner and disburse the same. The aforesaid exercise shall be undertaken by the respondents including the District Level Empowered Committee, within a period of 12 weeks from the date of receipt of a copy of this order."



13. With the above direction, this writ petition is disposed of.  
No costs.

Sd/-

Assistant Registrar (Records)

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// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Collector,  
Sivagangai District,  
Sivagangai.
2. The District Treasury Officer,  
Sivagangai District,  
Sivagangai.
3. The Superintendent of Police,  
Sivagangai District,  
Sivagangai.
4. The Joint Director,  
Health and Rural Development,  
Sivagangai.

+1CC to M/s G.R.Sathish SR.No.17041 dated 16/09/2020

+1CC to M/s.SPL GP SR.No.17319 dated 17/09/2020

+1CC to M/s.A.Shajahan SR.No.17194 dated 16/09/2020

W.P. (MD) No.11412 of 2020  
15.09.2020

DKS (CO)  
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