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RAJESH
SOPARKAR

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PRIYA RAJESH
SOPARKAR

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4253 OF 2021

Shubham Siyaram Choudhary ... Petitioner
V/s.
Union of India and ors. ... Respondents

Mr.Yogendra Pratap Singh, Advocate for the Petitioner.
Mr.Rui Rodrigues alongwith Mr.Aniruddha A. Garge, Advocates for
Respondent No.1.
Mr.Ashutosh R. Gole, Advocate for Respondent Nos.2 to 4.

**CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.
DATE : SEPTEMBER 07, 2021.**

P.C.:-

Heard Mr.Y.P.Singh, learned counsel for the petitioner;
Mr.Rui Rodrigues, learned counsel for respondent No.1; and
Mr.Ashutosh Gole, learned counsel for respondent Nos.2 to 4.

2. This petition has been filed under Article 226 of the
Constitution of India seeking the following reliefs:-

“a. Rule may be issued.

b. Issue appropriate writ/order/direction to
Respondents particularly Respondent No.4 to continue
the treatment of the petitioner under the scheme of
ECHS pursuant to Government of India, MoD, Dept. of
Ex-servicemen Welfare Letter No.18(77)/2017/
WE/D(Res-1) dated 18/09/2018;

c. Issue appropriate writ/order/direction to restrain
the Respondents from stopping the treatment of the
petitioner under ECHS Scheme;

d. Direct the Respondent No.4 or the Respondents to refund the amount spent by the petitioner towards taking treatment at his own expenses;

e. Pending the hearing and final disposal of the Petition, restrain the respondents from stopping the treatment of the petitioner under ECHS Scheme;

f. Ad-interim and interim reliefs in terms of prayers at para (b) and (c) as aforesaid, pending final hearing and disposal of this Writ Petition;

g. Grant such further and other reliefs as this Hon'ble Court may deem fit."

3. This court after hearing learned counsel for the parties, passed the following order on 6th May, 2021:-

"Learned Counsel for Respondent Nos.2 to 4 seeks time to file reply.

2. It is not in dispute that the Petitioner was being given treatment under the ECHS scheme for End Stage Renal Disease and requires maintenance Haemodialysis as a life saving therapy thrice a week. However, the same has been stopped on account of the fact that the Petitioner has attained the age of 25 years.

3. Learned Counsel for the Petitioner has pointed out the Office Memorandum dated 7th May, 2018 issued by the Government of India, Ministry of Health and Family Welfare wherein it is inter alia stated that an unmarried son of a CGHS beneficiary suffering from any permanent disability of any kind physical or mental will be entitled to CGHS facility even after attaining the age of 25 years. He has also invited our attention to letter dated 18th September, 2018 issued by Government of India, Ministry of Defence which states that the Office Memorandum dated 7th May, 2018 would be applicable to ECHS beneficiaries in r/o dependent unmarried sons of ECHS beneficiaries beyond 25 years of age w.r.t. definition of 'permanent disability'.

4. In view of the above, we direct that until the next date, the treatment of the Petitioner by Respondent No. 4 shall be continued under ECHS scheme.

5. List the Petition on 22nd June, 2021. Respondent to file Reply.”

4. The above order dated 6th May, 2021 has since been continued by this court.

5. During the hearing today, learned counsel for the petitioner very fairly submits that father of the petitioner Siyaram Choudhary has approached the Armed Forces Tribunal, Regional Bench at Mumbai (briefly “The Tribunal” hereinafter) on the same subject matter by filing O.A. No.76 of 2021. Since at the relevant point of time, the Tribunal was not functional and petitioner was confronted with an emergency situation i.e. stoppage of treatment, he was compelled to approach this court by filing the present writ petition. Now the Tribunal is functioning through video conferencing, the matters being taken up by the learned Chairperson and Administrative Member from Delhi.

6. Having regard to the law laid down by the Supreme Court in **L. Chandra Kumar Vs. Union of India, (1997)3 SCC 261**, we are of the view that petitioner and his father should pursue their remedy before the Tribunal in the pending O.A.No.76 of 2021.

7. However, after considering the medical condition of the petitioner which is evident from the medical certificate dated 21st December, 2020 (Ex.F page 37 to the writ petition) which is reflected in our order dated 6th May, 2021, we direct that till disposal of O.A. No. 76 of 2021 the interim order passed by this

court shall continue. We also make it clear that if in case the decision of the Tribunal goes against the petitioner or the original applicant, such decision may be kept in abeyance for a period of six weeks to enable the petitioner or the original applicant to avail their further legal remedy.

8. We make it clear that we have not expressed any opinion on merit and all contentions are kept open.

9. Writ petition is disposed of.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)

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