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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.37569 of 2015
and
M.P.Nos.1 and 2 of 2015

N.Murugesan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance (Salaries) Department,
Secretariat, Fort St. George,
Chennai-600 009.
 2. The Joint Director of Health and Welfare Services,
District Government Hospital,
Mohanur Road,
Namakkal-637 001.
 3. The Treasury Officer,
District Treasury,
Namakkal.
 4. The Divisional Manager,
United India Insurance Company Limited,
3rd Party Administrator,
National Health Insurance Scheme 2012,
Divisional Office VI, 5th Floor,
P.L.A.Rathna Towers, 212 Anna Salai,
Chennai-600 006.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 4th respondent in No.Nil dated 22.01.2014 and the subsequent impugned proceedings issued by the 4th respondent in No. Nil dated 23.06.2015 and to quash the same and consequently directing the respondents to pass orders for medical reimbursement for the treatment taken for the mother of the petitioner Tmt.Kaliammal under New Health Insurance Scheme 2012 (NHIS) within a time frame to be fixed by this Hon'ble Court.



6. Even in case, the medical treatment was taken in a deleted hospital, the authorities are bound to verify the genuinity of the treatment undergone, but not the list of hospitals. If the treatment taken is genuine, then the medical reimbursement claim need not be denied. The principles in this regard are considered by this Court in W.P.(M.D)No.12403 of 2010 - M.Selvaraj Vs. The Director, Central Marine Fisheries Research Institute and another. The relevant portions of the said Judgement are as follows:

"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



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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



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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."

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7. In view of the fact that the impugned order in the present Writ Petition has been passed only on the ground that the treatment was taken in a deleted hospital, the impugned order passed by the 4th respondent is liable to be set aside.

8. Accordingly, the impugned order passed by the 4th respondent in proceedings dated 22.01.2014 and the subsequent impugned proceedings issued by the 4th respondent dated 23.06.2015 are quashed. The respondents are directed to settle the medical reimbursement claim of the Writ Petitioner as per his eligibility within a period of 8 weeks from the date of receipt a copy of this order.

9. Accordingly, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No Costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

shr/kan

To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance (Salaries) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Joint Director of Health and Welfare Services,
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212 Anna Salai,
Chennai-600006.

+1cc to the Government Pleader, S.R.No.69826

W.P.No.37569 of 2015
and
M.P.Nos.1 and 2 of 2015

UM(CO)
SU(31/01/2022)