

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.18276 OF 2020

P.Munusamy

... Petitioner

vs.

1. The Secretary to Government,
Finance Department, Secretariat, Chennai 600 009.
2. The Director of Medical & Rural Health Services,
Teynampet, Chennai 600 006.
3. The State Level Empowered Committee,
Office of Commissioner of Treasuries and Accounts,
Anna Salai, Nandanam, Chennai 600 035.
4. The District Level Empowered Committee,
Office of District Collectorate, Chennai - 600 001.
5. The Director of Treasuries & Accounts,
Panagal Buildings, Saidapet,
Chennai 600 015.
6. The Regional Manager,
United India Insurance Company Ltd.,
5th Floor, Anna Salai,
Chennai 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order dated 06.01.2017 made in Letter No.919/S(E)/Fin (Pension) 2017 by the first Respondent as well as the orders passed by the District Level Committee held on 22.04.2015 and the State Level Empowered Committee held on 25.05.2016 and consequently quash the same and sanction the claim reimbursement of Rs.2.50 lakhs incurred on Medical expenses for By-Pass Surgery (CABG) operated on the Petitioner in C.Kuppusamy Naidu Memorial Hospital, Coimbatore under 'cashless scheme' during the period from 11.09.2014 to 18.09.2014 with 9% interest per annum with effect from 18.09.2014 to him, within a period of four weeks.

For Petitioner : Mr.A.S.Palanisamy
For Respondents 1 to 5 : Mr.P.V.Selvakumar,
Addl. Government Pleader
For 6th Respondent : Mr.R.Sankaranarayanan

O R D E R

Petitioner seeks to quash the impugned order dated 06.01.2017 passed by the 1st Respondent, by which, his request for medical reimbursement was rejected on the ground that, the Hospital, in which he underwent treatment is not an approved Hospital. The Petitioner/pensioner also sought a direction to the Respondents to reimburse the medical expenses claimed by him with interest at 9% per annum.

2. While dealing with the similar issue pertaining to medical reimbursement, I have considered all the aspects, referred to various judgments of this Court and passed an elaborate order in W.P.No.2059 of 2017 [T.Balamani vs The Principal Secretary to Government, Finance (Salaries) Department, Secretariat, Chennai-9 and others] decided on 27.02.2017 and directed the Government to sanction the amount to the Petitioner therein. For better appreciation, the said order is extracted hereunder:

"The petitioner seeks to quash the impugned order dated 04.10.2016, by which her request for medical reimbursement was rejected on the ground that the hospital, in which she underwent treatment is not an approved hospital. The petitioner also sought a direction to the 1st respondent to reimburse the medical expenses of Rs.4,44,965/- to the petitioner with adequate interest

2. The petitioner, who was an employee during the period of treatment and now attained superannuation, has approached this Court against the rejection order in respect of her medical claim for the treatment. The request of the petitioner has been rejected by the Government followed by the rejection of the High Level Committee.

3. Learned Government Advocate would submit that the Government, having entered into a contract with the Insurance Company and having paid huge amount to them, cannot be compelled to reimburse the amount for the second time. He would further submit that there are number of net

work hospitals in the State and it is impermissible for the Government employees to choose their own hospitals for treatment and thereafter claiming reimbursement. If this practice is allowed, then the very purpose of entering into the the contract with the Insurance Company will be defeated.

4. Learned counsel for the petitioner would contend that the Government issued an order in G.O.Ms.241 Finance (Salaries) Department dated 24.08.2016, which states that in order to redress the grievances of the Government employees/pensioners under New Health Insurance Scheme, District Level Empowered Committee / State Level Empowered Committee / High Level Committee have been constituted, which will go through the records and thereafter decide with regard to reimbursement of the amount and prior to that, the Government only extended the monetary benefits for the treatment.

5. Heard the learned counsel on either side.

6. It is seen that the Government has entered into a contract with the Insurance Company between the years 2014 and 2018 and as per the contract, the Insurance Company is liable to pay the entire amount directly to the network hospital and it cannot reimburse the amount in terms of money, as the facility extended itself is the cashless facility. But, at the same time, the State cannot take a stand that there is no provision to reimburse the amount to its employees in terms of money at all.

7. Admittedly, the petitioner has taken treatment in a non-network hospital on account of emergent situation, which ultimately resulted in rejection of her claim. Subsequently, the High Level Committee has also rejected the claim of the petitioner. It is not in dispute that if the claim is approved, the petitioner would be paid the medical benefits based on Tamil Nadu Medical Attendance Rules (in short "the Rules"). The benefit of scheme, namely, the contract cannot be rewritten and it is only the Government to pay the amount incurred by the petitioner/employee/patient/pensioner irrespective of constitution of the Committee. It is pertinent to mention here

that the patient cannot search for network hospital for getting admitted or for taking treatment during emergency.

8. This Court in the case of N.Raja vs. The Government of Tamil Nadu, rep. by its Secretary, Chennai and others, reported in 2016 (3) CTC 394, has clearly held that when the Insurance Company is not liable on account of the violation of the terms and conditions of the contract, it is the duty of the Government to reimburse the medical expenses incurred. The Hon'ble Division Bench of this Court also, by order dated 16.12.2016 in W.A.(MD) No.1579 of 2016 [MD India Healthcare Services (TPA) Ltd., rep. by the Branch Manager, Chennai, Chennai vs. K.Parameshwari and others], directed the Government to reimburse the medical expenditure. In view of the above, this Court is of the view that pursuant to the existence of the contract, the Insurance Company cannot be directed to pay the amount and therefore, it is the Government, which is liable to reimburse the amount.

9. Accordingly, this writ petition is allowed and the impugned order dated 04.10.2016 is hereby set aside. The concerned respondent, namely, the 1st respondent is directed to sanction the medical expenses incurred by the petitioner/employee/pensioner, as per the eligibility criteria in terms of amount under the Scheme along with interest @ 9% p.a. without standing on technicalities and release the eligible amount within a period of two months from the date of receipt of a copy of this order.

10. Before parting with the matter, it is suggested that the Government shall ensure devising a proper scheme so that the employees / pensioners, who are the backbones for smooth running of Government machineries are not made to run from pillar to post for their claims, on the ground of technicalities being raised by the Insurance Company."

4. Finding that, the issue in the case on hand is squarely covered by the said order of this Court dated 27.02.2017 made in W.P.No.2059 of 2017, the impugned order dated 06.01.2017 passed by the 1st Respondent, is hereby set aside. The concerned Respondent is directed to sanction the medical expenses incurred by the Petitioner/Pensioner as per the eligibility criteria in

terms of the amount under the Scheme along with interest @ 9% per annum, without standing on technicalities and release the eligible amount to the Petitioner within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
Finance Department, Secretariat, Chennai 600 009.
2. The Director of Medical & Rural Health Services,
Teynampet, Chennai 600 006.
3. The State Level Empowered Committee,
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6. The Regional Manager,
United India Insurance Company Ltd.,
5th Floor, Anna Salai, Chennai 600 006.

+2cc to Mr.A.S.Palanisamy, Advocate, S.R.No.13644
+1cc to Mr.R.Sankaranarayanan, Advocate, S.R.No.13679
+1cc to the Government Pleader, S.R.No.14845

W.P.No.18276 of 2020

GPL (CO)
CS/26/03/2021