



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2021

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.2090 of 2019
and W.M.P. (MD).No1682 of 2019

Pascal Pancharathinam

...Petitioner

Vs.

1.The Secretary to Government,
Finance (Pension) Department,
Secretariat,
Chennai-600 009.

2.The Divisional Manager,
United India Insurance &Co., Ltd.,
PLA Rathina Towers, 5th Floor,
212, Anna Salai,
Chennai-600 006.

3.The Director of Medical and Rural Health Services,
DMS Complex, Teynampet,
Chennai-600 006.

4.The Treasury Officer,
District Treasury,
Ramanathapuram.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the third and fourth respondents i.e., the Director of Medical and Rural Health Services, Chennai in his Oo.Mu.No.7545/KaBi 1/3/2018, dated 03.01.2019 and the Treasury Officer, District Treasury, Ramanathapuram in his letter Na.Ka.No.2553/G5/2018, dated 12.03.2018 and quash the same and consequently direct the first respondent, i.e., the Secretary to Government, Finance (Pension) Department, Chennai to sanction the eligible amount to the petitioner since the claim of the petitioner cannot be rejected on the only ground that the Hospital in which the petitioner undergone treatment is Non-Network hospital particularly after issuance of G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016 within a specified time frame that may be fixed by this Court.



For Petitioner : Mr.S.Visvalingam, Advocate
For Respondents 1, 3 & 4 : Mr.P.Mahendran
Additional Government Pleader
For Respondent No.2 : No appearance

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O R D E R

The petitioner herein had met with an accident on 12.09.2017 and suffered injuries. Consequently, he was admitted in a hospital, namely, Neuro One Hospital at Karur by-pass Road, Trichy, wherein the surgery was performed to his backbone and he was admitted as an in-patient between 12.09.2017 and 19.09.2017. The petitioner claims to have been incurred medical expenditure to the tune of Rs.1,94,139/-. His claim for medical reimbursement came to be rejected by the District Level Empowered Committee on 12.03.2018 and the appeal against the rejection to the State Level Empowered Committee was also rejected on 03.01.2019, on the ground, that the treatment is taken in a Non-network hospital.

2. The learned counsel for the petitioner would submit that such reason for rejection has been considered by this Court on various occasions, as well as the Hon'ble Supreme Court and held that treatment taken in a Non-network hospital cannot be a reason for rejecting the claim for medical reimbursement.

3. The learned Additional Government Pleader submitted that as against the State Level Empowered Committee, the petitioner is required to file an appeal before the High Level Empowered Committee of Tamilnadu and therefore, in view of the non-availment of the statutory appeal remedy, the writ petition cannot be maintained.

4. I have given careful consideration made by the respective counsels. As rightly pointed out by the learned counsel for the petitioner, the issue with regard to the rejection of medical claims on the ground that the treatment taken by the employee in a Non-network hospital came up for consideration in various cases and in the case before the Hon'ble Supreme Court in **Shiva Kant Jha vs. Union of India**, reported in **2018 (5) MLJ 317 (SC)**, it was held that the claim for medical reimbursement cannot be rejected on the ground that the treatment taken in a non-network hospital. The relevant portion of the order reads as follows:

"13.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."

5. Insofar as the non-availment of the alternate appeal remedy is concerned, the reason assigned by the first Appellate Authority is not sustainable in view of the well laid down legal principles. Even assuming that the petitioner is directed to approach the Appellate Authority, it would be a futile exercise since such Authority will also be bound by the ruling held by the Hon'ble Supreme Court in **Shiv Kant Jha (Supra)** and hence, no useful purpose would be served by directing the petitioner to a further appeal. When the law is well established and the authorities below have chosen to ignore the law, this Court would be empowered to invoke its extraordinary power under Article 226 of the Constitution of India and interfered with the rejection orders and therefore, the non-availment of the statutory appeal remedy will not be fatal to the present case.

6. In the light of the above observations, the impugned order, dated 03.01.2019 stands closed. Consequently, the first respondent herein shall sanction the eligible medical claim to the petitioner, without making reference to the treatment taken in the Non-network hospital, within a period of twelve weeks from the date of receipt of a copy of this order.



7. This Writ Petition stands allowed accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Secretary to Government,
Finance (Pension) Department,
Secretariat,
Chennai-600 009.

2.The Director of Medical and Rural Health Services,
DMS Complex, Teynampet,
Chennai-600 006.

3.The Treasury Officer,
District Treasury,
Ramanathapuram.

+1 CC to M/s.GP (SR-5133[F] dated 15/02/2021)

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-4800[F] dated 12/02/2021)

W.P. (MD) No.2090 of 2019

12.02.2021

PJL

TK/SAR/24.02.2021/4P/6C