



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.7677 of 2017

and

W.M.P. (MD)No.5981 of 2017

WEB COPY

K.Dhanalakshmi

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its Secretary(Finance Department),
Secretariat, Fort St.George,
Chennai.

2.The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Joint Director,
Health Services,
Tenkasi Government Hospital Campus,
Tenkasi-627 811.

4.The Divisional Manager,
United India Insurance Company Ltd.,
Divisional Office, PLA Rathna Towers,
V Floor, 212, Anna Salai,
Chennai-600 006.

5.The Registrar,
Manonmaniam Sundaranar University,
Tirunelveli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the third respondent pertaining to A.Thi.Mu.No.3624/Ka5/2014, dated 31.08.2016 and quash the same and consequently to direct the respondents herein to reimburse the medical expenses of Rs.4,17,057/- (Rupees Four Lakhs Seventeen Thousand and Fifty Seven Only) incurred by the petitioner in the medical treatment for her husband V.Ravikumar in the Lakshmi Hospital Southern Heart Centre, Tirunelveli.

For Petitioner : Mr.Anwar Sameem
for Mr.Deivanandam

For Respondents : Mrs.S.Srimathy
Special Government Pleader
for R.1 to R.3



ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorarified Mandamus calling for the records of the third respondent pertaining to A.Thi.Mu.No.3624/Ka5/2014, dated 31.08.2016 and quash the same and consequently to direct the respondents herein to reimburse the medical expenses of Rs.4,17,057/- (Rupees Four Lakhs Seventeen Thousand and Fifty Seven Only) incurred by the petitioner in the medical treatment for her husband V.Ravikumar in the Lakshmi Hospital Southern Heart Centre, Tirunelveli.

2. The case of the petitioner is that the petitioner's husband is a retired Government employee and his family comprises of his wife, his daughter and his son. While so, the petitioner's husband V.Ravikumar suffered with heart attack and was admitted in the Southern Heart Centre at Lakshmi Hospital, Tirunelveli. Since the petitioner's husband was in a critical stage fighting for his life, angioplasty surgery was done for him on the same day and for that, the petitioner incurred a sum of Rs.4,17,057/- (Rupees Four Lakhs Seventeen Thousand and Fifty Seven only) vide hospital bills for the above said treatment. Thereafter, the petitioner submitted an application on 05.02.2016 along with proof of medical expenditure for reimbursement of the medical expenditure for a sum of Rs.4,17,057/- (Rupees Four Lakhs Seventeen Thousand and Fifty Seven only) through the fifth respondent herein in the District Grievance Redressal meeting. The second respondent, vide his letter dated 05.02.2016 recommended 40 applications, including the petitioner's application and the same was forwarded by the third respondent to the fourth respondent for consideration dated Nil/03/2016. However, the said application was returned by the third respondent to the fifth respondent on 31.08.2016 for the reason that as per G.O.No.243/Finance (salary), dated 29.06.2015, the reimbursement of medical expenditure cannot be granted as prior permission was not obtained for treatment in the recognized hospital. Thereafter, the fifth respondent communicated to the petitioner vide letter dated 27.02.2017 that the third respondent has rejected the reimbursement for the reason that the above medical treatment was not taken in the approved hospital and also prior permission was not obtained. Challenging the same, the present writ petition has been filed.

3. Learned Counsel appearing for the petitioner would submit that the issue arises for consideration before this Court is no more *res integra* and the same was decided by the Honourable Apex Court in the case of **Shiva Kant Jha Vs. Union of India** reported in **(2018)16 Supreme Court Cases, 187**, wherein the Honourable Apex Court held that right to medical treatment cannot be denied merely because name of hospital was not empanelled in Government Order and further directed to settle the medical bills.



4. Learned Special Government Pleader appearing for the respondents 1 to 3 has not disputed the decision referred by the learned Counsel appearing for the petitioner.

5. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 3 and perused the materials placed on record.

6. The facts in the present case are not in dispute. Admittedly, the petitioner's husband is a retired Government employee and when he suffered with heart attack and he was admitted in the Southern Heart Centre at Lakshmi Hospital, Tirunelveli. Since the petitioner's husband was in a critical stage fighting for his life, angioplasty surgery was done for him on the same day and for that, the petitioner incurred a sum of Rs.4,17,057/- (Rupees Four Lakhs Seventeen Thousand and Fifty Seven only) vide hospital bills for the above said treatment. Thereafter, the petitioner submitted an application on 05.02.2016 along with proof of medical expenditure for reimbursement of the medical expenditure for a sum of Rs.4,17,057/- (Rupees Four Lakhs Seventeen Thousand and Fifty Seven only) through the fifth respondent and the second respondent, vide his letter dated 05.02.2016 recommended 40 applications, including the petitioner's application and the same was forwarded by the third respondent to the fourth respondent for consideration dated Nil/03/2016. However, the said application was returned by the third respondent to the fifth respondent on 31.08.2016 for the reason that as per G.O.No.243/Finance (salary), dated 29.06.2015, the reimbursement of medical expenditure cannot be granted as prior permission was not obtained for treatment in the recognized hospital. Thereafter, the fifth respondent communicated to the petitioner vide letter dated 27.02.2017 that the third respondent has rejected the reimbursement for the reason that the above medical treatment was not taken in the approved hospital and also prior permission was not obtained.

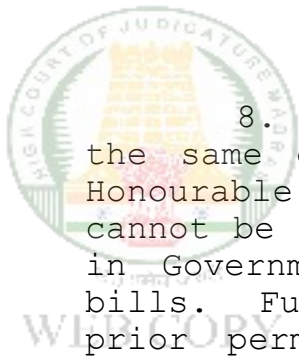
7. At this juncture, it is relevant to extract hereunder paragraph Nos.17 and 18 of the said judgment of the Honourable Apex Court in the case of **Shiva Kant Jha Vs. Union of India** reported in **(2018)16 Supreme Court Cases, 187:**

"17) 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.

18) 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 implanted 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 life which requirement was above the sanctions and treatment in empanelled hospitals."



8. On a perusal of the above decision, it makes it clear that the same decision is also applicable to the present case. The Honourable Apex Court clearly held that right to medical treatment cannot be denied merely because name of hospital was not empanelled in Government Order and further directed to settle the medical bills. Further it is also held that 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.

9. In view of the above, the respondents 1 to 3 are directed to settle the medical reimbursement claimed by the petitioner within a period of twelve weeks from the date of receipt of a copy of this order, in accordance with law and also as per the Scheme which is in exist.

10. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// 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 of Government of Tamil Nadu,
(Finance Department),
Secretariat, Fort St.George,
Chennai.

2.The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Joint Director,
Health Services,
Tenkasi Government Hospital Campus,
Tenkasi-627 811.

+1 CC to M/s.SPL GP (SR-14350[F] dated 30/03/2021)

+1 CC to M/s.DEIVANANDAM, Advocate (SR-14613[F] dated 31/03/2021)

W.P (MD) No.7677 of 2017

29.03.2021

SSS(CO)

KB(24.04.2021) 5P 6C

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