IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 40892 of 2015

1.S.Vadivelu

2.Dr.S.Prabha
(Legal heir of deceased S.Vadivelu)
(P2 substituted as LR of Deceased Sole Petitioner vide order dated 11.01.2022 made in WMP.No.28635 of 2021 in W.P.No.40892 of 2015) ...Petitioner

Vs

1. The Principal Secretary to
   Government of Tamil Nadu
   Health and Family Welfare Department,
   Secretariat,
   Chennai - 600 009.

2. The Principal Secretary to Government,
   Finance Department,
   Secretariat,
   Chennai - 600 009.

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

4. The Director of Pension,
   369 Anna Salai,
   DMS Campus,
   Chennai - 600 009.

5. United India Insurance Company Limited,
   Chennai - 600 006. ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the entire records of the first respondent in G.O.M.S.No.171 of Finance (Pension) Dept dated 26.06.2014 and the consequential proceedings of the third respondent in O.M.NO.819/KA P.1/3/2015 dated 19.08.2015 and quashing the same insofar as the petitioner

is concerned as being in violation of Article 300-A of the Constitution and Article 14 of the Constitution and direct the first respondent Government to reimburse the entire expenditure of Rs.1,82,700/- (Rupees One Lakh Eighty Two Thousand and Seven Hundred Only) incurred by the petitioner for undergoing prostate surgery in the Guest Hospital, Poonamallee High Road, Chennai-600 010 on 24.12.2014.

For Petitioner : Mr.P.Chandrasekaran

For R1 to R4 : Mr.M.Rajendiran
Additional Government Pleader

For R5 : Mr.P.Sankara Narayanan

ORDER

The order impugned dated 19.08.2015 rejecting the claim of the writ petitioner for medical reimbursement is under challenge in the present writ petition.

2.The petitioner is a member of the Medical Insurance Scheme. The petitioner retired as Commissioner and Secretary to Government, Law Department and receiving pension from the Pension Office, Chennai and his PPO Numberis A96721. The petitioner underwent Prostate Surgery on 24.12.2014 at Guest Hospital, Poonamallee High Road, Kilpauk, Chennai-600 010. The petitioner was admitted on 23.12.2014 and discharged on 27.12.2014. The copy of the discharge summary is also enclosed along with the typed set of papers. The petitioner incurred an expenditure of Rs.1,82,700/- for his treatment. The petitioner submitted an application for medical reimbursement under the scheme along with the medical bills, discharge summary, etc. However, the claim of the petitioner was rejected on the ground that the hospital the petitioner had taken treatment is not included in the list of approved hospital in the Government Order. Thus, the petitioner is not entitled for medical reimbursement.

3.This Court is of the considered opinion that on certain medical emergency, one cannot expect to verify the list of hospitals and get themselves admitted. This apart, various specialized treatments are provided in number of hospitals and those hospitals are not in the list of approved hospitals by the Government. In such circumstances, the Courts have repeatedly held that the genuinity of the treatment is alone to be verified for the purpose of medical reimbursement and not the hospital under which the treatment is taken. In the event of restricting

the claim, the rights of the aggrieved persons are affected, and very purpose and object of the medical reimbursement is to remove the medical expenditure. This being the very purpose and object of the claim, merely on the ground that the hospital is not listed in the Government Order, the claim cannot be rejected.

4.The legal principles in this regard were already considered by this Court in W.A.No.2749 of 2018 dated 04.02.2019 and the relevant paragraphs of the judgment are extracted hereunder :

> "4. The Writ Court by order dated 13.02.2018 in W.P. No. 22270 of 2017 noticed that Sudha Hospital at Erode, where the Petitioner had undergone treatment, though had not been included in the list of Network Hospitals at the time of treatment, it was subsequently added in that list by G.O. (Rt) No. 199, Finance (Salaries) Department dated 21.03.2017. However, in view of the settled legal position as reiterated in the judgments in S. Dhanalakshmi -vs- Government of Tamil Nadu (Order dated 12.10.2015 in W.P. (MD) No. 13159 of 2015) and N. Raja -vs- Government of Tamil Nadu [2016 (3) CTC 394] passed by this Court, the Writ Court held that in cases where the Insurance Company cannot be held liable for having treatment in a Non-Network Hospital, the Government Servant was entitled to his claim settled by the State Government under the Tamil Nadu Medical Attendance Rules. Accordingly, a direction was issued to the First Respondent to consider the case of the Petitioner and reimburse the medical expenses incurred by him along with interest at the rate of 9% per annum from 16.03.2017 till reimbursement within a period of four weeks from the date of receipt of copy of that order. Aggrieved thereby, the First, Second and Fourth Respondents have preferred this Appeal.
>
> 7. We are unable to countenance the submissions made on behalf of the First, Second and Fourth Respondents, particularly in view of the ruling of the Division Bench of this Court in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which has been followed in India Healthcare Services (TPA) Limited -vs- K. Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension -vs- B. Sarada, reported in CDJ 2017 MHC 7488. In the aforesaid decisions, the earlier Judgments of the Hon'ble Supreme Court of India and this Court on the subject have been extensively referred. It would suffice here to refer to paragraphs 24 and 25 of the decision in Star Health and

Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which read as follows :-

> "24. In the present case, what we have to decide is whether the State is bound to reimburse the claim, whether the insurance company is bound to indemnify the beneficiary for the claim made by him. As held in the decisions referred to above, the insurance company is strictly bound to strictly by the terms of contract and cannot be asked to settle a claim which does not fall within the terms of the contract and therefore the claim made by the beneficiaries in respect of treatments that were taken in a Non-Network hospital or for reimbursement of the claim made the insurance company is not liable. For this reason, the insurance company had made it clear that only if the beneficiary took treatment in a Network hospital they would settle the claim and more importantly the facility itself is a cashless facility. The insurance company cannot pay cash and if we issue direction to the insurance company to reimburse the claim, we would be virtually re-writing the contract which we are not entitled to.
>
> 25.The Tamil Nadu Medical Attendance Rules ("the Rules" in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a Non-Network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself make the Network hospitals as intrinsic. However, the Petitioner/Claimants were also not no remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee."

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

5.In view of the legal principles enunciated, this Court is of the considered opinion that the impugned order is not in consonance with the settled principles of law. Accordingly, the impugned order passed by the third respondent in letter O.M.No.819/KA P.1/3/2015 dated 19.08.2015 is quashed. The respondents are directed to settle the medical reimbursement claim of the writ petitioner as per his eligibility within a period of twelve weeks from the date of receipt of a copy of this order.

6.With these directions, the Writ Petition is allowed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nti/Raja

To

1. The Principal Secretary to
   Government of Tamil Nadu
   Health and Family Welfare Department,
   Secretariat,
   Chennai - 600 009.

2. The Principal Secretary to Government,
   Finance Department,
   Secretariat,
   Chennai - 600 009.

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

4. The Director of Pension,
   369 Anna Salai,
   DMS Campus,
   Chennai - 600 009.

+1cc to Mr.P.Chandrasekaran, Advocate, S.R.No.2170
+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.2510
+1cc to the Government Pleader, S.R.No.2780

W.P.No. 40892 of 2015

MT(CO)
RGA(07/03/2022)