IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 14151 of 2017

A.Andrews ...Petitioner

-vs-

1. The State of Tamilnadu,
   Rep. by its Secretary,
   Finance (Salaries) Department,
   Fort St.George, Chennai-9.

2. The Director of Treasuries & Accounts,
   Saidapet, Chennai-15.

3. Tamilnadu Generation and Distribution
   Corporation Ltd.,
   Rep. by its Secretary,
   144, Anna Salai, Chennai-2.

4. The Chairman-cum-Managing Director
   Tamilnadu Generation and Distribution
   Corporation Ltd.,
   144, Anna Salai, Chennai-2.

5. The Director of Medical & Rural
   Health Services, D.M.S. Compound
   Teynampet, Chennai 600 006.

6. The United India Insurance Co. Ltd.
   Divisional Office
   First Floor, Silingi Building
   134, Greams Road, Chennai 600 006.

7. MD Indian Health Care Services (TPA) Pvt.Ltd.,
   Regional office
   No.27/7, Lakshmi Towers
   3rd Floor, Dr. R.K.Salai, Mylapore,
   Chennai-4.

...Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Declaration, declaring that the order in G.O.Ms. No.202, dated 30.06.2016 notifying the New Health Insurance Scheme, the order in G.O.Ms.No.241, dated 24.08.2016 both issued by the First Respondent, the order in (Per) CMD TANGEDCO Proceedings

No.140, dated 30.07.2016 passed by the Third Respondent, in so far as restricting the members of the scheme and their family members taking treatment only in the hospitals included in the approved list and not providing for reimbursement of medical expenses and the consequential orders of rejection dated 22.03.2017 issued by the Third Respondent in Letter No. 14593/A17/A172/2017-1 and the orders dated 17.03.2017 passed by the Sixth and Seventh Respondents refusing to allow reimbursement of medical expenses incurred by the petitioner, on the ground that there is no provision for reimbursement in the scheme and also on the ground that there is no provision for getting reimbursement if the treatment is taken in a hospital which is not included in the approved list as unconstitutional, arbitrary, discriminatory and unreasonable and consequently direct the respondents to reimburse the petitioner forthwith a sum of Rs.2,49,766/- which he has incurred towards treatment and surgery expenses, together with interest.

For Petitioner : Mr. V.Ajoy Khose

For Respondents : Mrs. C.Sangamithirai (For R1, R2 & R5)
Special Government Pleader
Mr. P. Subramanian [For R3 & R4]
Mr. P. Sankaranarayanan [For R6]
R7-No appearance

O R D E R

Heard Mr. V.Ajoy Khose, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First, Second and Fifth Respondents, Mr. P.Subramanian, Learned Counsel for the Third and Fourth Respondents and Mr. P.Sankaranarayanan, Learned Counsel for the Sixth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is working as Junior Engineer, Electrical Grade-II in the services of the Third Respondent, has availed the benefits of the New Health Insurance Scheme, 2016, of the Government of Tamil Nadu in G.O. Ms. No. 202, Finance (Salaries) Department dated 30.06.2016 by making periodical contributions towards insurance premia from his salary. It is the case of the Petitioner that he had underwent heart surgery at Apollo Hospitals, Tiruchirappalli from 01.12.2016 to 15.12.2016 and had incurred medical expenses of Rs. 2,49,766/-, which has been paid by him. When the Petitioner made a claim for reimbursement of the said medical expenses under the New Health Insurance Scheme, 2016, the Sixth and Seventh Respondents by letter dated 17.03.2017 and the Third Respondent by Letter No. 14593/ A17/A172/2017-1 dated 22.03.2017 informed him that his request for reimbursement is not feasible for compliance as the treatment

had been taken in a non-network hospital, which are challenged by the Petitioner in this Writ Petition with a consequential direction to the Respondents to make payment of the said sum of Rs. 2,49,766/- towards reimbursement of medical expenses with interest from the date of making the claim till actual payment.

3. The Third Respondent in the Counter-Affidavit dated 09.08.2017 and the First, Second and Fifth Respondent in the Counter-Affidavit dated 06.12.2018 has reiterated the rejection of the claim for reimbursement of the medical expenses made by the Petitioner under the New Health Insurance Scheme, 2016, of the Government of Tamil Nadu and has informed that the Petitioner would have to make an application under the Tamil Nadu Medical Attendance Rules to the extent permissible and subject to its conditions in that regard.

4. It is now trite as held by the Division Bench of this Court in Star Health and Allied Insurance Company Ltd. –vs- A.Chokkkar [(2010) 2 LW 90] that when the Insurance Company is not liable to reimburse the medical expenses under the New Health Insurance Scheme to the Government Servants/Pensioners, it would have to be processed under the Tamil Nadu Medical Attendance Rules by the Head of the Office with the concerned Department in which that employee had served and pay the eligible amount to him. In this context, it would also be useful to refer to clause 14(4) of the Guidelines for Implementation of New Health Insurance Scheme, 2018, for Pensioners (including Spouse)/Family Pensioners in the Appendix to G.O. Ms. No. 222, Finance (Pension) Department, dated 30.06.2018 issued by the Government of Tamil Nadu, which is extracted below:-

> "14.(4) In case, a Pensioner/Family Pensioner undergoes emergency treatments/surgeries not covered under this Scheme in either Network Hospital or Non-Network Hospital, no claim can be filed under the Health Insurance Scheme. However, they shall be eligible for claim to the extent permissible under the Tamil Nadu Medical Attendance Rules and the G.O. Ms. No. 1023, Health and Family Welfare Department, dated 17.06.1980. It may be noted that the Tamil Nadu Medical Attendance Rules requires that treatment in private hospitals should not be resorted to except in case of emergencies. Clause 2 (3) of the aforesaid Government Order states that in genuine cases of emergency, the claims will be restricted to the expenditure that would have been incurred had the patient taken treatment in a Government hospital excepting diet charges. For claims under Tamil Nadu Medical Attendance Rules, the Beneficiaries may apply to the authority in the department in which the Government employee last served who is competent to process and forward

pension proposal to the Accountant General, Tamil Nadu. The Head of Office shall process the claims and pay the eligible claims under the Tamil Nadu Medical Attendance Rules."

Though that Governmental Order has been issued after the claim has been made in this case, the aforesaid guidelines, which are based upon the instructions provided in the earlier Government orders and the Tamil Nadu Medical Attendance Rules, are obviously clarificatory in nature and would apply to past cases as well.

5. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [(2018) 16 SCC 187], dealing with unfair treatment meted out to several retired Government servants in their old age for medical reimbursement under similar provisions of the Central Government Health Scheme, has held 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.”

6. In view of the aforesaid legal position coupled with the facts of this case, the following order is passed:-

(i) it shall be incumbent upon the concerned authority of the Government of Tamil Nadu to examine the claim made by the Petitioner for reimbursement of medical expenses incurred by him under the Tamil Nadu Medical Attendance Rules forthwith;

(ii) if it is found that any details or supporting documents satisfying the eligibility criteria for the actual amount claimed has not been produced, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 15 clear working days in that regard;

(iii) in the event of not being satisfied with the requirements thereafter, an enquiry shall be conducted affording opportunity of personal hearing to the Petitioner to explain his position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law with details of any deductions made under various heads and the decision taken communicated under written acknowledgment;

(iv) if the Petitioner is found entitled to the claim made, the eligible amount with interest at the rate prescribed under the Rules and if no such rate of interest has been prescribed, at the rate of 4% per annum from the date on which the claim for reimbursement was made by the Petitioner, shall be disbursed within a period of 30 days from the date of passing of that order;

(v) if the Petitioner still has any grievance to be redressed in the matter, he is not precluded from working out his rights before the proper forum in the manner recognized by law; and

(vi) the report of completion of the aforesaid exercise shall be filed by 30.09.2022 before the Registrar (Judicial) of this Court.

In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Secretary,
Finance (Salaries) Department,
Fort St.George, Chennai-9.

2. The Director of Treasuries & Accounts,
Saidapet, Chennai-15.

3. The Secretary,
Tamilnadu Generation and Distribution Corporation Ltd.,
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4. The Chairman-cum-Managing Director
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Chennai-4.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.

+1cc to Government Pleader SR. No. 12360
+1cc to Mr.P.Sankara Narayanan, Advocate SR. No. 12576

W.P. No. 14151 of 2017

PVS (CO)
PR (25/05/2022)