IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.11.2023**

CORAM :

THE HON'BLE Ms. JUSTICE R.N. MANJULA

W.P.No.11501 of 2020
and
W.M.P.No.14053 of 2020

C.Banumathi ... Petitioner

Versus

1.The Government of Tamil Nadu,
Rep. by its Secretary, Finance (Salaries), Department,
Fort St. George,
Chennai 600 009.

2.The District Collector,
Office of the Collectorate,
Namakkal District.

3.MD India Health Insurance TPA Pvt. Ltd.,
Guna Complex,New Door No.443 and 445
Old Door No.304 and 305,
Annasalai Teynampet,
Chennai 600 018. … Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned order of denial of authorization letter dated 27.02.2019 on the file of the 3rd respondent herein and to quash the same and consequently directing the respondents to disburse the medical reimbursement amount of Rs.8,54,458/- (Rupees Eight Lakh and fifty Four Thousand and Four Hundred and fifty eight only) to the petitioner for medical expenses incurred for her husband, M.Shanmugamoorthi, within the time stipulated by this Court.

For Petitioner : M/s. P. Jessi Jeeva Priya

For Respondents : Mr. T. Chezhiyan, AGP for R1 & R2

: No Appearance, for R3.

O R D E R

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the impugned order of denial of authorization letter dated 27.02.2019 on the file of the third respondent herein and to quash the same and consequently directing the respondents to disburse the medical reimbursement amount of Rs.8,54,458/- (Rupees Eight Lakhs Fifty Four Thousand Four Hundred and Fifty Eight only) to the petitioner for medical expenses incurred for her husband, M.Shanmugamoorthi, within the time stipulated by this Court.

2.Heard Ms. P. Jessi Jeeva Priya, learned counsel for the petitioner and Mr. T. Chezhiyan, learned Additional Government Pleader appearing for the first and second respondents and None appeared on behalf of the third respondent.

3.The petitioner working as a Secondary Grade Teacher at Panchayat Union Elementary School, S.Mettupalayam, Nallasamuthiram Union, Tiruchengode Taluk, Namakkal District. The petitioner is a Government employee and he was under the Government of Tamil Nadu New Health Insurance Scheme - 2016 under the first respondent herein which covers the petitioner and the petitioner's family members viz., the petitioner's husband-M.Shanmugamoorthi, the petitioner's daughter namely E.S. Pavithra and the petitioner's son namely S.Varun in Policy No.010600/48/16/41/00000001 and MDI I.D.No.MD15-TNEHS -000089489. The petitioner's husband namely M. Shanmugamoorthi suddenly developed a cardiac problem on 26.02.2019 and was admitted to the Covai Medical Centre and Hospital Limited, which is an approved Hospital under the scheme. Various tests like E.C.G., Echo etc., were taken and the doctors advised to have CRT-D-IMPLANTATION (ST.JUDE-QUADRA ASSURA) immediately to save the life of the petitioner's husband. As per the above scheme, at the time of admitting employee, the approved hospitals have to inform the treatments to be undertaken so that pre-authorisation letter is given by the Insurance Company under the control of United India Insurance Limited, Chennai. As such the Hospital authority requested for an authorization letter from the

third respondent on 27.02.2019 through E-mail. On 27.02.2019 itself the third respondent denied to issue an Authorization letter through Email on the ground that "The diagnosis and the line of management not covered hence denied". Since the third respondent denied to issue an Authorization letter, because of the urgency CRT-D IMPLANTATION (ST.JUDE-QUADRA ASSURA) was done for the petitioner's husband on 27.02.2019. For the above said treatment, the petitioner has paid a sum of Rs.8,54,458/- (Rupees Eight Lakhs Fifty Four Thousand Four Hundred and Fifty Eight only) towards bill No.59240, dated 01.03.2019. The petitioner's husband was in hospital as an in-patient from 27.02.2019 to 01.03.2019 and discharged on 01.03.2019. Therefore, challenging the order dated 27.02.2019 issued by the third respondent, the petitioner has come up with the present Writ Petition.

4.The learned counsel for the petitioner submitted that the claim of the petitioner should not have been denied for the simple reason that the treatment taken by the petitioner is not covered under the line of management. Further, the learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in W.A(MD).No.1382 of 2017, dated 09.11.2017, wherein it is held as follows:-

"35.It is to be pertinently pointed out that -Right to Health- is an integral part of the Right to Life and the Government is under a Constitutional obligation to provide health welfare facilities. If a Government servant underwent a requisite treatment for his ailment and if necessary proof is produced, then it is the primordial duty of the State Government to bear the expenses incurred thereto and reimburse the same. Just because the Government servant had underwent the treatment at an unapproved Hospital, the expenses incurred thereto cannot be denied by the State Government notwithstanding the fact that the Government servant is a member of the scheme introduced by the Government. Also that the individual Government servant/patient or his family members is/are the proper persons to take a final decision as to where the treatment in question is to be provided, as opined by this Court.

36. It cannot be brushed aside that the State Government is to satisfy the Constitutional obligation to bear/refund the expenses incurred by a Government servant while in service or after retirement from service, of course, based on the policy of the Government. In emergency cases, the treatment that is required will be immediate/forthwith and if one has to comply with the procedure, ultimately, -waiting- in this regard may prove disastrous and fatal.

37.It is to be aptly pointed out that a human being is to take care of himself and in this regard, the individual concerned is the best Judge suited to take a final call/decision. In reality, the self preservation of one-s life is enjoined under Article 21 of the Constitution of India, as an inviolable right, in the considered opinion of this Court.

38.No doubt, a patient as a lay human being cannot pick and choose the method/mode of surgery. It

is for the Doctors/Medical experts to determine and suggest a right course of action as to what/which kind of surgery/treatment is suitable, of course, taking into consideration the nature of the ailment and the status/condition of the concerned patient.

39.Although financial resources are required for providing medical facilities to the needy, ultimately, the State Government has the constitutional obligation to provide enough medical services to the public. On account of financial constraints, the Constitutional obligation to provide medical services/facilities to the people cannot be avoided.

40.Be that as it may, in the present case, there is no dispute as to the factum of actual expenses incurred by the Respondent/Petitioner, which she claims in the Writ Petition. Undoubtedly, the human being is to take necessary precautionary and protective measure for his body. The payment/reimbursement of medical expenses spent by the Government servant concerned or his family is not -Bounty-, but it is an obligation of the State Government to pay/disburse the said amount in question without harping on either technicalities or hyper technicalities. As such, this Court is of the considered opinion that the Learned Single Judge was correct in directing the First Appellant/First Respondent to sanction the medical expenses incurred by the Respondent/Petitioner for her husband-s ailment, as per the eligibility criteria in terms of the amount under the scheme and the same is free from any flaw. However, this Court is of the considered view that the interest of 9% p.a. fixed by the Learned Single Judge is slightly on the higher side and to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court reduces the rate of interest from 9% p.a. to that of 6%.

> *41.In view of the forgoing discussions and reasons, this Court, directs the Appellant/First Respondent viz., the Director of Pension, Chennai ? 6, to sanction the medical expenses incurred by the Respondent/Petitioner/Employee-s wife, as per eligibility criteria as regards the amount under the scheme together with interest at 6% p.a. and release the eligible sum to the Respondent/Petitioner (wife of the Employee) after subjectively satisfying about her legal heirship within a period of four weeks from the date of receipt of a copy of this order.?"*

5.However, the learned Additional Government Pleader appearing for the first and second respondents has submitted that the petitioner is not without remedy and he can always make his claim under Tamil Nadu Medical Attendance Rules. Attention was drawn to the judgment of this Court held in the case of ***Star Health and Allied Insurance Co.Ltd Vs. A.Chokkar and Ors., dated 26.02.2010, reported in 2010 SCC OnLine Mad 2198,*** more particularly paragraph No.24 and 25. For the sake of convenience, the relevant portion of the said judgment is extracted hereunder:-

> *"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 makes the network hospitals as intrinsic. However, the petitioners/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."

6.The learned counsel for the petitioner has also relied upon the very same judgment, more particularly mentioning paragraphs Nos.26 to 29 and

submitted that as per the above said judgment the Government should not deny any claim which was made under the Scheme. For better appreciation the said judgment is extracted hereunder:-

> "*26. Before taking up the individual cases, we must record that there are certain situations which may arise and in fact which have arisen, for which the Government must issue clear guidelines. This the Government has to do, since it has made the Scheme obligatory for everyone and there is automatic deduction of premium to an extent of Rs. 25/- per month. The directions are as follows:*
>
> *(i) The State shall make it clear that if for some reason, which is satisfactory, the claimant is unable to take treatment in a network hospital but has been advised or had to go to a non-network hospital, then his claim would be considered under the Rules.*
>
> *(ii) If the claimant has been advised some procedure which is not covered by the Scheme, there again, it must be made clear that he can apply under the Rules.*
>
> *(iii) To safeguard duplication of payments, the Government can make sure and when they apply under the Rules, that the claimant himself certifies that he has not made claim under the Scheme or vice-versa.*
>
> *(iv) The State shall inform every network hospital that if it receives complaints from claimants that money was demanded for admission or for treatment, then that hospital will be removed from the network. This warning is necessary, since, at times of crisis, the claimants will not be in a position to argue with the hospital that this is a "cashless" Scheme. We are aware that there is an officer of the Star Health Insurance Company at every network hospital to*

ensure that hospitals adhere to the terms of the Scheme but, yet, it is better to make this position clear to the hospitals, since one of the questions that has arisen before us is that whether the claimants will be entitled to reimbursement if, by mistake, they pay cash.

27. Now coming to the individual cases, in all the case, whatever may be the category, the petitioners/claimants have paid the amount. The scheme is a 'cashless' one and, therefore, it is only the Government which have to make the payment under the Rules. The Redressal Committee is empowered to decide the following circumstances, namely, any difficulty in availing treatment, non-availability of facilities, bogus availment of treatment for ineligible individuals, etc. It is really not clear what other complaints would be covered under the umbrella "etc.". But, however, since the Paragraph relating to 'Redressal of Grievances' starts with the sentence "The Hospitals shall extend treatment to the beneficiaries under the Scheme on a cashless basis", it is evident that the Committee cannot direct payment of cash.

28. Therefore, if the claimants have made payments whether for a procedure not covered or whether at a non-network hospital or they have paid when they have been treated for a covered procedure in a network hospital, their only remedy is to approach the Government under the Rules. If, however, before they take treatment they are informed that a particular procedure is not covered, then at that stage, they may approach the Redressal Committee where the medical expert can decide whether that procedure is covered or not. The Redressal Committee may also go into the complaints regarding non-availability of facility at a network hospital, which may be available in favour of the claimant when he applies under the Rules.

Otherwise, we do not think that the Redressal Committee can do much in any one of these cases, since all the petitioners/claimants before us would have made payments. But, if there is a petitioner who has not settled the claim and has come before us, then, in the event, that it is for a procedure that is not covered, he may approach the Redressal Committee. In view of the fact that there are the above lacunae in the Scheme, the Government shall not deny any claim validly made under the Rules only because the claimant is a member of the Scheme."

7.In reply the learned counsel for the petitioner has submitted that the Tamil Nadu Government sponsored the New Health Insurance Scheme for Government servants only in the year 2008. Prior to that, the scheme was under the name "Employees Health Fund Scheme" between the year 1991 to 1995. As such, the State Government has been providing medical benefits under the said scheme to Government servants and pensioners by having tie up with Private Insurance Companies. The fact that the petitioner is also a member of such a scheme and he has been making contributions, was not denied. The one and only reason for denying the reimbursement is that though the petitioner had taken treatment in network hospital, the treatment is not covered under the approval treatment list.

8.The important facts that needs to be appreciated for providing medical reimbursement is whether the treatment alleged to have been undergone by the eligible Government servant or his family members had really taken the treatment or whether the medical reimbursement is permissible for the alleged medical management. The Government has worked out a list of hospitals and the treatments, but, in order to ensure better access and what to deprive them from getting the benefits.

9.It is defended that due to some major treatment required to the petitioner's husband, she admitted him at Covai Medical Centre and Hospital Limited. The larger purpose of providing medical treatment to the employees / pensioners is to ensure best medical service at the cost of the Government through any Insurance Schemes approved by the Government. Though it is advisable for the Government Servant / pensioners to take treatments at the list of accredited hospitals for any specific surgeries and treatments, the rules cannot be viewed to deny the reimbursement for the treatment taken for similar associated issues. It is better to the Government to refer the matter to an Expert Committee, assess the genuineness and necessity for the treatment on a case-to-case basis before passing an order of rejection.

10.It is further submitted by the learned counsel for the petitioner that the treatment which was given to the petitioner was “CRT-D Implantation” and it is nothing but “Cardiac Resynchronization Therapy-Defibrillator”. It is also one kind of Pacemaker Device and hence the same would fell under the “List of Diseases, Treatments and Surgeries Classified under The Board Based Specialities” in Annexure-II, under the category of “I. Cardiology and Cardio Thoracic Surgery”, in Serial No.6 (f) “Permanent and Temporary Pacemaker Implantation”.

11.Therefore, I feel it is appropriate that the Government has to reconsider the claim made by the petitioner in light of the above observations and more specifically on the basis of the observations made by the Hon'ble Division Bench in W.A(MD).No.1382 of 2017 dated 09.11.2017, and in the case of ***Star Health and Allied Insurance Co.Ltd Vs. A.Chokkar and Ors.,*** (cited supra).

12. In the result, the Writ Petition is allowed and the impugned order of denial of authorisation letter dated 27.02.2019 issued by the third respondent through the E-mail is set aside and the respondents are directed

to reconsider the claim of the petitioner and pass appropriate orders in a proactive manner, within a period of four weeks from the date of the receipt of a copy of the order, by taking into consideration of the object of the Scheme. No costs. Consequently, the connected miscellaneous petition is also closed.

01.11.2023

Index : Yes/No
Speaking / Non-Speaking order
Neutral Citation : Yes/No

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To:

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Government of Tamil Nadu,
Fort St. George,
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