IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.5266 of 2021

Ramasamy .. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to Government,
Directorate of Health and Family Welfare,
Fort St.George,
Chennai – 600 009.

2.The Director of Public Health and
Preventive Medicine,
Chennai – 6.

3.The Director of Medical and Rural Health
Services,
Chennai – 6.

4.Prime Indian Hospital,
No.1051, Poonamallee High Road,
Arumbakkam,
Chennai – 600 106. . Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to

consider the representation of the petitioner dated 05.11.2020 against the 4th respondent and consequently direct the respondent 1 to 3 to take appropriate action against the 4th respondent for not following Government Order dated 05.06.2020 in connection with COVID-19 treatment fee and to direct the respondents 1 to 3 to issue a direction to the 4th respondent to refund the excess amount collected from the petitioner by the 4th respondent in violation to the Government Order dated 05.06.2020 in connection with COVID-19 treatment fee.

For Petitioner .. Mr.K.Nirmal Kumar

For Respondents
For R1 to R3 .. Mr.T.Seenivasan
Special Government Pleader

For R4 .. Mr.P.Rathnavel

ORDER

The writ petition has been filed in the nature of Mandamus, seeking a direction to the first respondent / State of Tamil Nadu, represented by the Secretary to Government, Directorate of Health and Family Welfare, the second respondent / Director of Public Health and Preventive Medicine, Chennai and the third respondent / Director of Medical and Rural Health Services, Chennai, to consider the representation given by the petitioner

dated 05.11.2020 against the 4th respondent / Prime Indian Hospital at Poonamallee High Road, Arumbakkam, Chennai, for, according to the petitioner, the 4th respondent, not following the Government Order dated 05.06.2020, in connection with COVID-19 treatment fees. A further direction is sought to refund alleged excess amount collected from the petitioner by the 4th respondent.

2. In the affidavit filed in support of this writ petition, the petitioner, who is a senior citizen, aged about 72 years, had stated that he suffered from some illness and went to the 4th respondent / Hospital and was admitted on 28.09.2020. He stated that the 4th respondent had charged a sum of Rs.46,000/- and thereafter, on 29.09.2020 he was informed that he had tested positive for COVID-19. He was treated as non-critical COVID-19 patient in the hospital. Thereafter, it is alleged that further amounts had been collected from the petitioner herein.

3. The petitioner had questioned the amounts so collected since he was neither kept in Intensive Care Unit nor placed on Ventilator support. Thereafter, the petitioner was discharged on 05.10.2020 and the hospital

authorities informed him that he had recovered from COVID-19. The 4th respondent / Prime Indian Hospital had charged him a total sum of Rs.1,91,226/-. The petitioner had paid the entire amount. Claiming that the said charge was in violation of G.O.(MS).No.240, Health and Family Welfare (EAP-1) Department, dated 05.06.2020 and seeking a direction for necessary action to be taken against the 4th respondent, for charging an exorbitant amount for the treatment offered, the writ petition has been filed.

3. On behalf of the 2nd and 3rd respondents, a counter affidavit had been filed by the Director of Medical and Rural Health Services, Chennai. In the counter affidavit, it had been stated that the Government had taken into consideration the grievances received regarding private hospitals charging exorbitant amount of money for treating patients, who had been affected with COVID-19, and the Government had issued G.O.(MS).No.240 dated 05.06.2020 fixing a ceiling rate for private hospitals.

4. It is stated that a Committee had also been formed and they would inspect the hospitals and also scrutinise the records and bills. If there were violations, action would be taken against the hospitals. It had been stated

that instructions had been sent to the 4th respondent to refund the excess amount collected from the petitioner and to raise the bill in conformity with G.O.(Ms).No.240 referred above.

5. The 4th respondent also entered appearance and the learned counsel had produced documents and stated that some time may be granted for filing counter affidavit, but since the arguments had been advanced, an order is passed.

6. The specific case of the petitioner is that he had been admitted in the 4th respondent / Hospital on 28.09.2020 and on 29.09.2020, he was informed that he had been tested positive for COVID-19. However, he stated that he was neither placed in ICU, nor was he given ventilator support. On 05.10.2020, the hospital authorities of 4th respondent informed him that he had recovered from COVID-19 and they discharged him. At the time of discharge, they had raised a bill for a sum of Rs.1,91,226/-. The petitioner had paid that amount.

7. Later, he preferred a complaint before the 1st, 2nd and 3rd respondents who had also directed the 4th respondent to comply with the stipulations as given in G.O.Ms.No.240, dated 05.06.2020.

8. In view of complaints received from private individuals about exorbitant charges being levied by private hospitals for treating patients who had been infected with COVID-19 Virus, the Government had passed G.O.(Ms).No.240, Health and Family Welfare (EAPI-1) Department on 05.06.2020.

9. The Government of Tamil Nadu had launched the Chief Minister's Comprehensive Health Insurance Scheme, (CMCHIS) to provide affordable and quality health services to the people to achieve the objective of universal health care in fulfilling public aspirations. The National Health Protection Scheme launched by the Government of India had been implemented in Tamil Nadu by integrating it with CMCHIS. To combat the existence of COVID-19 pandemic, the Government of Tamil Nadu had taken several measures and to address the grievances of the general public relating to exorbitant charges charged by the private hospitals, the following order had been passed by the Government of Tamil Nadu:

" 6. The Government after careful examination of the proposal of the project Director, Tamil Nadu Health Systems Project have decided to accept the same and accordingly issue the following orders:

i. for non-critical Covid 19 cases, a package to be enabled under AB-PMJAY. The expenditure towards this to be reimburse only for empanelled private hospitals. Whenever AB-PMJAY Corpus reaches a base of Rs.20 Crore (Rupees Twenty Crore) after such claim payments, the PD-TNHSP is authorised to replenish it with upto Rs.50 Crore. (Rupees Fifty Crore) and permit the Tamil Nadu State Health Agency to address the National Health Agency for fund reimbursement, when necessary.

ii. The core committee is directed to relook the charge applicable per day after a period of 3 months.

iii. CMCHIS beneficiaries requiring critical care for COVID-19 shall be admitted directly to any of the empanelled Private hospitals designated / notified for COVID-19 cases to empanelled Private Hospitals will be done only by the Deans /

authorized representatives / Greater Chennai Corporation and referrals in other Districts will be done by the Dean of the Medical College and Medical Superintendent / Chief Medical Officer of Government Hospital or COVID-19 Care Centers.

iv. The District Level Committee constituted for CMCHIS in each district is directed to decide on the priority list of empanelled private hospitals to which such non-critical COVID-19 patients to be referred from various Government institutions and care centers.

v. The Project Director, Tamil Nadu Health Systems Project is permitted to settle an additional 10% of the total claim to be paid for empanelled private hospitals for all non COVID-19 treatment packages, considering the increase in costs.

vi. The Core Committee is directed to evaluate the above decisions after a period of 3 months.

vii. The Project Director, Tamil Nadu Health Systems Project is permitted to reimburse the complete excess amount to the insurer owing to the additional costs involved in COVID-19 and non

COVID-19 claim payments, if CMCHIS ICR exceeds 95%.

viii. The following package cost is fixed for the treatment for Non Critical and Critical Care COVID-19 for CMCHIS beneficiaries.

TOTAL COST PER DAY FOR NON CRITICAL & CRITICAL CARE COVID-19 CASES *#			
TYPE OF STAY WITH TREATMENT AND INVESTIGATIONS *(Incl. MEDICAL PERSONNEL, PPE, DISINFECTION etc) FOR COVID-19 PATIENTS*		*HOSPITAL GRADE & RATE (In Rs.) PER DAY*	
		A1, A2	*A3-A6 (10% lesser than A1, A2)*
Non-Critical Covid 19 cases	*Non Critical Covid 19 treatment per day (Hospital Grade not applicable)*	*5000*	*5000*
Critical Care Covid 19 cases	*ICU without Ventilatore per day*	*10000*	*9000*
	ICU with Ventilator per day	*14000*	*12600*
	SEPSIS without Ventilator per day	*11000*	*9900*
	SEPSIS with Ventilator per day	*15000*	*13500*
	MODS with Ventilator	*15000*	*13500*

TOTAL COST PER DAY FOR NON CRITICAL & CRITICAL CARE COVID-19 CASES *#			
	per day		

** The break up details for the above cost worked out is annexed to this Government order.*

 # A COVID-19 RTPCR test may be paid additionally, if performed.

ix. An amount of Rs.2,500/- is fixed as cost of RT-PCR testing under CMCHIS and an amount of Rs.500/- has to be paid as an additional cost towards home visit.

x. The Project Director, Tamil Nadu Health System Project is permitted to decide upon the packages to be utilized by the empanelled Private hospitals for COVID-19 treatment.

xi. The Private hospitals are instructed to earmark a minimum of 25% of their bed capacity towards the patients referred by government for non-critical care. No earmarking would be mandated for critical care and the Director of Medical and Rural Health Services is instructed to monitor the Private Hospitals to adhere the above

instruction.

Xii. The cost per day for treatment of non critical COVID-19 cases for General Public at A1 and A2 grade private hospitals and A3 to A6 private hospitals is fixed at Rs.7,500/- and Rs.5,000/- respectively and for critical care COVID-19 cases at A1 to A6 private hospitals as Rs.15,000/-.

Xiii. An amount of Rs.3,000/- is fixed as cost of RT-PCR testing for General Public and an amount of Rs.500/- has to be paid as an additional cost towards home visit.

Xiv. The Finance Department is requested to fix the ceiling for treatment charges for COVID-19 positive cases of beneficiaries of New Health Insurance Scheme (NHIS) / Government of Tamil Nadu Pensioners' Health Insurance Scheme."

10. Pointing out the above, the learned Special Government Pleader stated that the Government Order is binding on private hospitals and they must confirm to the stipulations given therein.

11. The learned counsel for the 4th respondent however stated that, the

scheme would apply only to those who come under the Health Insurance Scheme of the Chief Minister and that the petitioner would not be covered under the said Government order. It was specifically stated that the Government order is not applicable to the 4th respondent or to the facts of the present case.

12. Among the documents filed by the 4th respondent, it is seen that the petitioner had also claimed insurance, specifically for his treatment in the 4th respondent / Hospital. His claim had been approved on 18.11.2020 by the Oriental Insurance Company Limited. The son of the petitioner had an existing policy which commenced on 01.10.2019 and was still in force. The Claim Number is DEL-1020-CL-0003466, Claim Settlement Number is DEL-1120-CR-0001921, the Policy Number is 124500/48/2020/321, the Policy Type is Corporate, the corporate was HCL Technologies Limited and the claimant was the petitioner herein S.Ramasamy. The name of the payee was his son Jeeva Arun Kumar. The hospital was the 4th respondent / Prime Indian Hospitals Private Limited, Poonamallee High Road, Chennai. The amount which was settled was Rs.1,49,640/-. The amounts denied were those for which, the bills were not payable or for which the insurance was

not applicable, namely Registration Fees of Rs.200/-, Special Procedure Charges of Rs.300/- and Rs.3,676/-. The other amounts had been settled in favour of the son of the petitioner herein.

13. This settlement in favour of the son of the petitioner, was on 18.11.2020. This was for the very treatment taken by the petitioner in the 4th respondent / Hospital. This fact has not been stated by the petitioner in his affidavit. He had not disclosed that his son who had an insurance policy in view of his employment at HCL Technologies Limited. He had not disclosed that his son had laid an insurance claim for the treatment of the petitioner herein at the 4th respondent / Hospital. He had never stated that the Insurance Company, namely the Oriental Insurance Company Limited had processed the claim and had paid a sum of Rs.1,49,640/- to the son of the petitioner herein. A substantial claim had been honoured, and the only amounts as stated, which had not paid were for those which the said insurance policy was not applicable or ones for which the bills were not produced.

14. The petitioner therefore, has been reimbursed with the amount

which he had already incurred. He cannot expect a double payment or claim bounty from the 4th respondent. No doubt, the Government order is applicable, but the petitioner had already been settled with the expenditure incurred by him. He had received the amount from the Insurance Company. Taking an Insurance policy is for reimbursement for circumstances of being treated at a hospital.

15. I hold that no further orders are required, since the petitioner had already received the amounts under the insurance policy. It would be appreciable had the petitioner disclosed that particular fact in the affidavit in support of the writ petition. It was a fact known exclusively to the petitioner and for reasons only known to him, he had taken a conscious decision to suppress that particular fact from this Court. That cannot be appreciatted and the petitioner cannot be granted the relief which he seeks in the writ petition.

16. The writ petition stands dismissed. No costs.

02.03.2023

Index:Yes/No
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C.V.KARTHIKEYAN,J.

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