



W.P. No.33137/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.03.2023	31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.33137 OF 2018
AND
W.M.P. NO.38437 OF 2018**

Meenakshi Mission Hospital
& Research Centre, rep. by
Its Trustee, G.SakthiSaravanan
S/o S.P. Gopalakrishnan
S.R.Trust, No.219
Anna Nagar, Madurai 625 020.

.. Petitioner

- Vs -

1. The Project Director
Tamil Nadu Health Systems Project
Government of Tamil Nadu
Teynampet, Chennai 600 018.
2. United India Insurance Co. Ltd.
Rep. by its Project Manager (CMCHIS)
Om Sakthi Towers
226, Kilpauk Garden Road
Kilpauk, Chennai 600 010.
3. VIDAL Health (TPA) Pvt. Ltd.



W.P. No.33137/2018

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Rep. by its Senior Manager
Om Sakthi Towers, 226, Kilpauk Garden Road
Kilpauk, Chennai 600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorari calling for the records of the 3rd
respondent dated 9.11.2018 in reference No.TNHSP Roc.
No.1773/TNHSP/Ins/2018 dated 29.10.2018 and quash the same.

For Petitioner : Mr. K.Subramanian, SC, for
Mr. S.Punniyakoti

For Respondents : Mr. K.M.D.Muhilan, AGP for R-1
Mr. S.Arunkumar for RR-2 & 3

ORDER

The levy of penalty by the 1st respondent vide the impugned order,
which has been acted upon by respondents 2 and 3 by calling upon the
petitioner to pay the penalty amount of Rs.2,14,520/- is put to challenge
before this Court in this writ petition.

2. The brief facts necessary for the disposal of this petition are as
under:-



W.P. No.33137/2018

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The petitioner/hospital is one of the network hospitals approved for the purpose of patients, who are covered under the Tamil Nadu Chief Minister Kalaighnar's Insurance Scheme for Life Saving Treatment to eligible members and their families in the State of Tamil Nadu. In this regard, a Memorandum of Understanding was entered into between the Tami Nadu Government, Start Health and Allied Insurance Company Ltd., who was entrusted with the said task of covering the families under the insurance scheme then and the petitioner on 06.11.2009 pursuant to the communication dated 18.7.2009.

3. It is the further case of the petitioner that change in Government in the year 2011, resulted in issuance of G.O. Ms. No.169 (EAP-II(2)) Health & Family Welfare Department dated 11.7.2011, wherein a new comprehensive health insurance scheme was formulated and the earlier scheme introduced in the year 2009 was terminated. In pursuance to the various Government Orders issued from time to time for approving an insurance company for implementing the scheme and also directing the 1st respondent to implement the said scheme, the 1st respondent framed the 'Chief Minister's



W.P. No.33137/2018

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comprehensive Health Insurance Scheme Guidelines, 2011' (for short 'CMCHIS'), wherein the scope and ambit of the scheme was spelt out.

4. It is the further case of the petitioner that a communication from the Vigilance Officer of the 3rd respondent, dated 9.2.2018 was received by the petitioner, wherein one of the patient, viz., Sethupathi, patient reference No.ID.7EH_1843114320701 had given a complaint that a sum of Rs.93,372/- was collected towards treatment and medicine charges by the petitioner for undergoing treatment under CMCHIS in addition to the approved package amount and explanation was called for from the petitioner. It is the further case of the petitioner that enquiry revealed that the said complaint was given by the patient at the instigation of the petitioner's father. Similarly another letter of even date was received from the Chief Vigilance Officer of the 3rd respondent stating that a patient Lakshmi with reference ID No.7EH_1843114183156 had given a complaint stating that a sum of Rs.97,081/- was received by the petitioner in violation of CMCHIS. The petitioner submitted its detailed explanation along with the documents stating that for the emergency procedure conducted, amount was received as



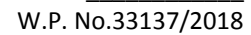
W.P. No.33137/2018

WEB COPY

at that point of time, the patients did not register under the CMCHIS and upon their registration under CMCHIS, no amount was collected from them and the amount collected from them were also refunded.

5. It is the further case of the petitioner that on the impugned communication of the 3rd respondent, the 1st respondent has imposed a total penalty of Rs.2,15,520/- in respect of the aforesaid two complaints. However, the said penalty was imposed inspite of the withdrawal of the complaints by the respective complainants, which were not taken into consideration while the impugned order was passed and the impugned order also failed to consider the reply mail sent by the petitioner, which clearly reveals arbitrary exercise of power and not following the procedure contemplated under the guidelines.

6. It is the further case of the petitioner that the 1st respondent has no jurisdiction to pass the order and as such the order is arbitrary and illegal and that no proper enquiry as contemplated under CMCHIS as well as the Memorandum of Understanding. Particular reference is drawn by the



7. It is the further case of the petitioner that since the inception of the Government Health Insurance Scheme, the petitioner has treated more than 15000 patients and that no complaint has ever emanated against the petitioner and that the petitioner, on its own, is rendering public service to the patients including free medical services. Therefore, there is no need for the petitioner to collect money for treatment from the two specified individuals and that the complaints are at the instigation of some persons to bring disrepute to the petitioner and is done with oblique motive.

8. It is the further averment of the petitioner that when no complaint has been forwarded to any of the authorities referred to in Guideline No.25



W.P. No.33137/2018

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(1) nor any complaint was forwarded to the District Level Grievances Committee, the act of the 1st respondent in passing the impugned order is in gross violation and contrary to the guidelines, which is wholly unsustainable.

9. It is the further averment of the petitioner that the 1st respondent could impose penalty based on the MoU dated 9.6.2012 only under the three situations, viz., (i) when the petitioner has failed to provide services as required by the terms of the scheme and agreement; (ii) when the petitioner has failed to submit pre-authorization immediately on admission and (iii) incomplete claim documents. In the case on hand, the complaint does not fall within the aforesaid three categories and, therefore, the impugned order is without jurisdiction and liable to be interfered with.

10. It is the further averment of the petitioner that before passing the order, the 1st respondent has not offered any opportunity to the petitioner to put forth its case, which is in stark violation of principles of natural justice and, therefore, the penalty imposed requires to be set aside. Therefore, for the reasons aforesaid, being aggrieved, the present petition has been preferred.



W.P. No.33137/2018

WEB COPY

11. Learned senior counsel appearing for the petitioner placed two-fold contentions. The primary contention of the learned senior counsel is that as per clause 26 of CMCHIS, for redressal of grievances, the Project Director is not the authority and it is only the District Collector, Deputy Director of Health Services and Joint Director of Medical and Rural Health Services, who are the competent authority, forming the District Monitoring Committee, to take any action, including levy penalty on any complaint. However, the 1st respondent has passed the impugned order, which authority, as per CMCHIS, is not the authority to deal with the complaint and, therefore, the order passed by the 1st respondent, on the report of the 2nd and 3rd respondents is wholly without jurisdiction and, therefore, deserves to be set aside.

12. Secondly, it is the contention of the learned senior counsel that barring the aspect of jurisdiction of the 1st respondent, even otherwise the impugned order is liable for interference on the simple ground that before passing the said order, the 1st respondent has not granted any opportunity to the petitioner to submit its explanation and only on the basis of the report of



W.P. No.33137/2018

the 2nd and 3rd respondents, the 1st respondent has imposed the penalty.

Therefore, there is clear violation of principles of natural justice and necessarily the impugned order deserves interference.

13. In support of his submissions, learned senior counsel placed reliance on the following decisions :-

- i) *Meenakshi Mission Hospital & Research Centre – Vs – The Project Director (W.P. No.40914 of 2016 dated 01.03.2017); and*
- ii) *S.MohamedThouffique – Vs – The Secretary to Government &Ors. (W.P. (MD) No.21315/2015 – Dated 09.11.2016)*

14. Per contra, the learned Addl. Government Pleader appearing for the 1st respondent submitted that based on the complaint received by the 3rd respondent, explanation was called for from the petitioner to which the petitioner has furnished reply by mail along with the letter of the complainant that the amount received from her was refunded, which was also confirmed by the beneficiary. The said materials were placed by the 3rd respondent, pointing out the breach along with all the documents before the 1st



W.P. No.33137/2018

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respondent and the 1st respondent, invoking Clause 4.7.6 of the MoU signed between the respondents and the petitioner, imposed the penalty vide the impugned order.

15. It is the further submission of the learned Addl. Government Pleader that the fact that the petitioner has not denied the collection of money and the bills produced by the patient and the further refund of the amount to the patient would go to show that the petitioner has not complied with the conditions of the MoU and that the refund of the amount to the patient is itself proof that the petitioner has violated the conditions of the MoU.

16. It is the further submission of the learned Addl. Government Pleader that clause 26 of the Tender Document, relating to redressal of grievances, which has been relied on by the petitioner is with regard to the tender document and the MoU for the period 2012, more particularly the MoU entered into between the petitioner and the respondents dated 9.6.2012, which was under consideration by this Court in the decisions



W.P. No.33137/2018

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referred to by the petitioner. However, the impugned order has been passed invoking the provisions of MoU 2017, which has been entered into between the petitioner and the respondents, which empower levy of penalty by the 1st respondent in certain circumstances.

17. It is the further submission of the learned Addl. Government Pleader that clause 7.3 of the MoU relating to cashless facilities clearly provides that in the event of not providing cashless treatment to the beneficiaries and money collection, the same is liable to refund and also payment of penalty. The petitioner having accepted the collection of money and refunded the same to the patient clearly reveals the violation of the conditions of MoU and, therefore, the 1st respondent, invoking the power under clause 4.7.6 has imposed the penalty on the petitioner, which cannot be said to be arbitrary or unreasonable.

18. It is the further submission of the learned Addl. Government Pleader that this is not the isolated instance where the petitioner was found to have contravened the conditions and undertaking given in the MoU. Even



W.P. No.33137/2018

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one of the decision relied on by the petitioner is its very own case, where similar violation was committed by the petitioner. Therefore, the petitioner, found to be a chronic violator, was dealt with in accordance with the provisions of MoU, 2017 and, therefore, the order impugned does not require any interference.

19. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the provisions, which were relied on by the respective parties in support of their stand.

20. Before proceeding to analyse the issue, it would not be out of context for this Court to state that the decisions relied on, on behalf of the petitioners cannot be taken in support of the present case, as in the said case, the guidelines pertained to the year 2012, however, in the case on hand, the guidelines of the year 2017 and the MoU of the year 2017 are the basis on which action has been taken by the respondents.



W.P. No.33137/2018

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21. The petitioner placed reliance on the Chief Minister's Comprehensive Health Insurance Scheme Guidelines, 2011, more particularly, clause 26, thereof, which pertains to Redressal of Grievance. Therein, complaint to be filed before the Project Director does not find place. However, the said guidelines stood substituted vide the Chief Minister's Comprehensive Health Insurance Scheme Guidelines, 2017, which is taken in aid of by the respondents.

22. In the aforesaid backdrop, as clause 26 was pressed into service, which provides for the mechanism for Redressal of Grievance, for better appreciation, the said clause is quoted hereunder :-

"26. Redressal of Grievances

- (1) *Any complaints about any difficulty in availing treatments, non-availability of facilities, bogus availing of treatment for ineligible individuals, etc., shall be submitted to the District Collector or any other health department officials related to the scheme, or to the call center established at Tamil Nadu Health Systems Project, insurance companies, TPAs and also can be submitted directly to the Project Director, Tamil Nadu Health Systems.*



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W.P. No.33137/2018

Project. This is in addition to the regular
grievances mechanism available in the
Government.

* * * * *

(Emphasis Supplied)

23. In continuation of the aforesaid Guidelines, 2017, MoU was entered into between the petitioner and the respondents on 2.5.2017. Clause 4.7 of the said Guidelines pertain to Redressal of grievances under the CMCHISTN for beneficiaries and hospitals and the relevant portion of the same is quoted hereunder :-

"4.7. Redressal of grievances under CMCHISTN for Beneficiaries and Hospitals :

1. Any complaints about any difficulty in availing
treatments, non-availability of facilities, bogus availing of
treatment for ineligible individuals, etc., shall be submitted
to the District Collector or any other health department
officials related to the scheme, or to the call centre
established at Tamil Nadu Health Systems Project,
Insurance companies, TPAs and also can be submitted
directly to the Project Director, Tamil Nadu Health Systems
Project. This is in addition to the regular grievances
mechanism available in the government.

* * * * *



W.P. No.33137/2018

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6. The Project Director, Tamil Nadu Health Systems Project is authorized to dispose directly the grievances received in Tamil Nadu Health Systems Project in certain circumstances."

(Emphasis Supplied)

24. From the above provision, it is evident that any complaint of the aforesaid nature, can be submitted to the aforesaid officials, which includes the Project Director, viz., the 1st respondent herein. Further the aforesaid clause is in addition to the mechanism available in the Government, viz., Clause 26 of the Guidelines, which also takes within its fold the Project Director as one of the persons to whom the complaint can be given.

25. Cashless Facility is provided for under clause 7 of the MoU, which reads as under :-

"7. Cashless Facility :

7.1. Hospital assures that services under the Scheme shall be provided by it on cashless basis without any demand or collection of payment for eligible person upto entitlement or available sum insured whichever is less.

7.2. Free food to patients : Hospital agrees to provide free food of good quality to the patients as envisaged in



W.P. No.33137/2018

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the Package Rates either through in-house pantry or by making alternate arrangements like supplying from nearby canteen.

7.3. If the empanelled hospital delays or denies treatment or provides poor quality treatment or insists on additional payments over and above the agreed package cost to the eligible beneficiary, then the hospital may be liable to pay a penalty of five times the money collected, which will be credited to Corpus Fund of CMCHIS in addition to refunding the collected money to the beneficiary. The hospital shall abide by the directions of TNHSP/Insurer/TPA to refund the collected money to the beneficiary and pay the penalty.”

(Emphasis Supplied)

26. Clause 18 of the MoU deals with penalty, which has been mutually agreed between the parties and the relevant clause reads as under :-

“18. Penalty :

18.1 Hospital agrees that penalty may be imposed without prejudice and without affecting its other obligations hereunder as per decision of Project Director in respect of

(i) Deficiency in services – Failure to provide services as required by terms of scheme in the tender document along with other guidelines, will attract penalty as may be



W.P. No.33137/2018

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determined by the Project Director, Tamil Nadu Health Systems Project, subject to a minimum of five times the amount of the expenditure incurred by the Government of Tamil Nadu Project Director, Tamil Nadu Health Systems Project, or beneficiary due to non-compliance.

(ii) If the empanelled hospital delays or denies treatment or provides poor quality treatment or insists on additional payments over and above the agreed package cost to the eligible beneficiary, then the hospital may be liable to pay a penalty of five times the money collected, which will be credited to Corpus Fund of CMCHIS in addition to refunding the collected money to the beneficiary. The hospital shall abide by the directions of TNHSP/Insurer/TPA to refund the collected money to the beneficiary and pay the penalty.

(iii) The decision of the Project Director shall be binding on the Hospital.

** * * * **

(Emphasis Supplied)

27. A careful perusal of clause 26 of the Guidelines, 2017, in conjunction with the MoU entered into between the petitioner and the respondents clearly reveal that complaints can be received by the 1st respondent or even the 2nd and 3rd respondents directly and in exceptional



W.P. No.33137/2018

WEB COPY

circumstances, as provided in the MoU, the 1st respondent is empowered to take appropriate action against the hospital on the aforesaid complaint. The complaint would take within its fold the denial of cashless facility in favour of any beneficiary and on receipt of the complaint, the 1st respondent could act upon it.

28. In the case on hand, the complaint has been received by the 3rd respondent, which has been forwarded to the 1st respondent calling for explanation. The receipt of the complaint by the 3rd respondent is in consonance with clause 26 of the Guidelines, 2017 as also clause 4.7 of the MoU entered into between the petitioner and the respondents. The records available before this Court further reveals that upon explanation being received, the same has been placed by the 3rd respondent before the 1st respondent, which has been looked into by the 1st respondent and the impugned order imposing penalty has come to be passed.

29. Though it is contended by the petitioner that the 1st respondent is not vested with jurisdiction, however, as stated above, the guidelines, on



W.P. No.33137/2018

which reliance has been placed by the petitioner pertains to 2012, whereas the guidelines, which has been taken in aid of by the respondents pertain to the period 2017. Further, the MoU signed between the petitioner and the respondents empower the 1st respondent to take action, including levy of penalty as provided under clause 18 of the MoU for any infraction of clause 17 of MoU.

30. On a holistic consideration of CMCHIS Guidelines, 2017 coupled with the MoU dated 2.5.2017 entered into between the petitioner and the respondents, it is explicitly clear that the jurisdiction of the 1st respondent does not stand ousted and the 1st respondent is fully clothed with power as well as jurisdiction not only to entertain the complaint, but also to deal with the said complaint, including imposition of penalty as provided for under clause 25 of the Guidelines, 2017 and MoU dated 2.5.2017, against the hospital, which has contravened the provisions of the MoU.

31. In the case on hand, as contended by the respondents, the petitioner itself has accepted that it had received monies from the patients,



W.P. No.33137/2018

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who had been treated under the Health Insurance Scheme, which stands proved by the repayment of the amount by the hospital to the patients, who had raised the complaints. The said fact having not been disputed by the petitioner, now the petitioner cannot turn back and claim that the patient had not informed about claim of insurance at the earliest point of time of admission in the hospital, which alone had prompted receipt of money by the hospital, when the complaint of the patients are otherwise. It is also to be pointed out that this is not an isolated case in which the petitioner had acted in this manner. Even in the decision relied on by the petitioner, which pertains to the petitioner itself with regard to a similar issue, the petitioner was allowed to wriggle out from the clutches of the respondents on similar ground. But while considering the said issue, the guidelines of the year 2012 were in vogue, which led to a result favourable to the petitioner, but which has since been revised and Guidelines, 2017 have come into place clothing the 1st respondent with the requisite powers to act upon the hospitals, which do not conform to the MoU.



W.P. No.33137/2018

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32. Such being the uncontroverted case, the petitioner cannot, under the guise of Guidelines, 2012, sought to nullify the act of the 1st respondent, when the said guidelines are no longer enforceable. When Guidelines, 2017 clearly empowers the 1st respondent to take appropriate action in particular circumstances on a complaint, even without reference to the Committee, the stand of the petitioner that the 1st respondent has gone beyond his jurisdiction is wholly misconceived and the same does not deserve acceptance at the hands of this Court. Accordingly, the contention of the petitioner with regard to the ouster of jurisdiction of the 1st respondent to impose the penalty stands negatived.

33. Insofar as the contention of the petitioner with regard to violation of principles of natural justice claiming that no opportunity has been granted to it, it is to be pointed out that clause 26 of the Guidelines, 2017, empowers the TPAs to receive the complaint. In the case on hand, the TPA, viz., the 3rd respondent has received the complaint and acted upon the same by calling for explanation from the petitioner. It is to be pointed out that the TPA has not taken action against the petitioner, except putting the petitioner on notice



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about the complaint and seeking explanation on the same. The act of the TPA to that extent cannot be said to be bad or erroneous. Thereafter, the TPA, viz., the 3rd respondent, has forwarded all the materials to the 1st respondent for necessary action, which has entailed imposition of penalty at the hands of the 1st respondent.

34. The petitioner has been asked to show cause by way of explanation on the complaint received by the TPA and explanation was also received. The MoU as well as the Guidelines, 2017 does not speak about affording of any opportunity of personal hearing to the hospital. However, what is more important to be noted here is the fact that the petitioner itself has accepted and refunded the amount to the patient, which is admitted. Therefore, for all purposes, it stands established that there has been contravention of the guidelines as also the provisions of the MoU and such being the case, even if an opportunity of personal hearing is granted, it would be nothing but an empty formality, as already the petitioner has accepted its delinquency and had refunded the amount to the patient. Notwithstanding the fact that an opportunity of personal hearing has to be granted, when a particular act



W.P. No.33137/2018

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stands established, which has been accepted by the petitioner itself, the non-grant of an opportunity of personal hearing would in no way alter the outcome and the grant of an opportunity would be nothing but an exercise in futility. Therefore, the contention of the petitioner that non-grant of an opportunity of personal hearing vitiates the order, is nothing but a fragile attempt on the part of the petitioner to clutch the last bit of straw to come out of the situation unscathed, which cannot be acceded to.

35. This Court is of the considered view that there are no merits in the writ petition and same deserves to be dismissed. Accordingly, the writ petition fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

31.03.2023

Index : Yes / No

GLN

To

The Project Director
Tamil Nadu Health Systems Project



W.P. No.33137/2018

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Government of Tamil Nadu
Teynampet
Chennai 600 018.



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W.P. No.33137/2018

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.33137 OF 2018**

Pronounced on

31.03.2023