IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.336 of 2024
and
W.M.P.No. 400 of 2024

1.B.Srilatha
2.R.Anugraha ...Petitioners

-Vs-

1.The Secretary to Government,
Finance Department,
St.George Fort,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Treasury and Accounts,
Office of the Directorate of Treasuries and Accounts,
Amma Complex, 3rd Floor,
No.571, Anna Salai,
Nandanam, Chennai – 600 035.

3.The Director of Medical and Rural Health Services,
DMS Complex, No.361, Anna Salai,
Chennai.

4.The Chief Engineer (Agricultural Engineering),
Department of Agricultural Engineering,
No.487, Anna Salai, Nandanam,
Chennai – 600 035

5.The Divisional Manager,
United India Insurance Company,
Division Office – VI,
5th Floor, PLA Rathna Tower,
212, Anna Salai, Chennai – 600 006 ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent in O.Mu.No.36103/Pu.Ma.Ka.Thi-1/2020 dated 22.12.2020 and quash the same as illegal and arbitrary and in consequence thereof direct the respondents to consider the claims afresh of the 1st and 2nd petitioners herein in the light of the G.O.(Rt)No.712, dated 11th November 2020 – Finance (Salaries) Department and G.O.Ms.No.165 dated 1st June 2022 whereby sanctioning and reimbursing the medical expenses of the 1st and 2nd Petitioners aggregating to Rs.3,26,358/- (Rupees Three Lakhs Twenty Six Thousand Three Hundred Fifty Eight only) for COVID – 19 treatment in Dr.Rela Institute & Medical Care, Chrompet, Chennai – 600 044 along with 9% interest till the date of payment.

For Petitioner : M/s.Athiniveda

For R1 to R4 : Mr.U.Baranidharan
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 22.12.2020 in O.Mu.No.36103/Pu.Ma.Ka.Thi-1/2020 passed by the second respondent, thereby rejected the claim of reimbursement of medical expenses to the tune of Rs.3,26,358/- for COVID-19 treatment.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The first petitioner is working as a Superintendent in the office of the 4th respondent. She is a regular subscriber of Government of Tamil Nadu New Health Insurance Scheme. She had also included her family members comprising of her husband and two daughters as beneficiaries in the said scheme. During the first wave of COVID-19, the first petitioner suffered with COVID-19. The second petitioner, who is the daughter of the first petitioner, also suffered with COVID-19. Due to severity of COVID-19 Pandemic, they were unable to get admission in any hospital. Both the petitioners got admission in the Dr.Rela Institute and Medical Care, Chrompet, Chennai. They were discharged from the hospital on 23.06.2020 and they were adviced to observe home quarantine. They received bill for a sum of Rs.1,84,070/- for the first petitioner and a sum of Rs.1,42,288/- for the second petitioner towards the medical expenses of various Lab tests, Medicines, Consultation charges, Bed charges, etc., for the COVID-19 treatment. Thereafter, the first petitioner applied for reimbursement of the said amount. However, the claim of the first petitioner was rejected by the fifth respondent, by its communication dated

25.11.2020, on the ground that the first petitioner claimed bill under Criticial – Non Network Hospital. Therefore, the second respondent passed two orders rejecting their claim, by the proceedings dated 22.12.2020, citing the very same reason and directed the petitioners to approach DLEC under NHIS Scheme. Therefore, the first petitioner approached the third respondent by way of appeal as against the order passed by the second respondent. The third respondent also rejected the application submitted by the petitioner by its proceedings dated 22.06.2022. However, even till now the first petitioner is paying his subscription for herself and for her entire family members in the Government of Tamil Nadu New Health Insurance Scheme.

4. As per G.O.(Rt) No.712, dated 11.11.2020 Finance (Salaries) Department, Dr.Rela Institute and Medical Care, Chrompet, Chennai has been included in the additional list of hospitals approved under NHIS Scheme. However, the respondent rejected the claim on the ground that the petitioner was treated under the Non-Network Hospital. That apart, by G.O.Ms.No.165, dated 01.06.2022, the second respondent was directed to include the claims of eligible family members for Non-critical care for COVID-19. The relevant paragraph of G.O.Ms.No.165, dated 01.06.2022, is extracted here under :

"8(ii) Government Employees/Pensioners who have already taken treatment of Non-Critical COVID care in Non-empanelled Hospitals from 01.03.2020 to till date are directed to submit their claims for reimbursements by applying to the Commissioner of Treasuries and Accounts, Chennai. The Commissioner of Treasuries and Accounts shall forward the applications along with documents to the United India Insurance Company Limited to reimburse the eligible amount from the Corpus Fund provided by the Government as is followed as per the G.Os first and second read above without reference to the District Level Empowered Committee."

5. In respect of treatment taken for other ailments in the Non-Network Hospital, this Court in W.P.No.2708 of 2018 dated 26.09.2023 by referring the Judgment passed by the Hon'ble Division Bench of this Court reported in ***2019 2 Mad LJ 1 : (2019) 1 CWC 760, State Level Empowered Committee Represented by its Commissioner and others Vs. S. Paramasivam and another,*** concerned with treatment taken in an non-network hospital, had held as follows:

*"**3.** The rejection of the claim of the Petitioner for the medical reimbursement was impugned by the Petitioner in W.P. (MD) No. 23912 of 2016. The Writ Court by order dated 27.02.2017 in that Writ Petition, after referring to the decisions of the*

Division Benches of this Court in India Healthcare Services (TPA) Limited v. K. Parameshwari, reported in CDJ 2017 MHC 2213 and N. Raja v. Government of Tamil Nadu [2016 (3) CTC 394], held that in cases where the Insurance Company could not be held liable to reimburse the medical expenses incurred for having taken treatment in a non-network hospital, the Pensioner was entitled to his claim to be settled by the State Government under the Tamil Nadu Medical Attendance Rules. Accordingly, the order impugned in the Writ Petition was set aside and direction was issued to the Government of Tamil Nadu to sanction the medical expenses incurred by the Petitioner as per the eligibility criteria in terms of amount under the Scheme along with interest at the rate of 9% per annum without standing on technicalities and release the eligible amount within a period of two months from the date of receipt of copy of this order.

4. *We have heard Mr. K.K. Senthil, Learned Counsel for the Petitioner, Mr. D. Muruganantham, Learned Additional Government Pleader for the First to Sixth Respondents and Mr. A. Shajahan, Learned Counsel for the Seventh Respondent in this Appeal and perused the materials placed on record apart from the pleadings of the parties.*

5. *It is strenuously urged by the Learned Additional Government Pleader appearing on behalf of the First to Sixth Respondents that the Writ Court ought not to have fastened any liability on the State Government when the Insurance*

Company was not held to be liable under Health Insurance Scheme and the direction to the Government of Tamil Nadu to reimburse the medical expenses incurred by the Petitioner would lead to downfall in the implementation of that Scheme itself.

6. *We are unable to countenance any of the submissions made on behalf of the First to Sixth Respondents, particularly in view of the decision of the Division Bench of this Court in Star Health and Allied Insurance Company Limited v. A. Chokkar [(2010) 2 LW 90], which has been followed by other Division Benches of this Court in India Healthcare Services (TPA) Limited v. K. Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension v. 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, and suffice here to refer to para nos. 24 and 25 of the decision in Star Health and Allied Insurance Company Limited v. A. Chokkar [(2010) 2 LW 90], which reads 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."

7. The Hon'ble Supreme Court of India in Shiva Kant Jha v. Union of India [2018 (5) MLJ 317], 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, held in para nos. 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."

8. *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."*

9. *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.

10. *In the light of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. However, we are of the considered view that it would suffice to award interest at the rate of 7.5% per annum instead of 9% per annum that had been granted for the delay in medical reimbursement to the Petitioner."*

6. Thus, it is clear that the treatment of emergency basis even in Non-Network hospital could not be disqualified so far as obtaining reimbursement of the amounts incurred for the treatment are concerned. The case on hand is concerned, it is one step ahead since the petitioner suffered from COVID-19. In those days, it was very difficult to get admission in any of the hospital. Fortunately, the petitioner had got admission in Dr.Rela Institute and Medical Care, Chrompet, Chennai. Therefore, the respondents ought not to have rejected the claim of the petitioner for reimbursement of medical expenses.

7. In view of the above, the impugned order in O.Mu.No.36103/Pu.Ma.Ka.Thi-1/2020 dated 22.12.2020 passed by the second respondent in respect of both the petitioners is hereby quashed. The second

respondent is directed to reimburse the medical expenses of the petitioner aggregating to the tune of Rs.3,26,358/- for the treatment taken for COVID-19 in Dr.Rela Institute and Medical Care, Chrompet, Chennai, forthwith to the first petitioner.

8. In the result, this Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

11.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To

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G.K.ILANTHIRAIYAN. J,

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