**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 01.03.2024**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**W.P.No.3148 of 2021**

M.Sadasivam ... Petitioner

***versus***

1.The Additional Chief Secretary to Government,
Finance Department,
Fort St.George,
Chennai - 600 009.

2.The Director of Medical and Rural Health Services,
D.M.S.Compound,
Teynampet, Chennai - 600 018.

3.The District Collector of Coimbatore District /
Chairman, District Level Empowered Committee,
Coimbatore.

4.The Joint Director of Medical and Rural Health Services,
Coimbatore - 641 018.

5.The Treasury Officer,
District Treasury,
Coimbatore.

6.The Sub Treasury Officer,
Pollachi.

7.The Divisional Manager,
United India Insurance Company Limited,
Divisional Office VI,
PLA Rathna Towers,
5th Floor, No.212,
Anna Salai, Chennai - 600 006. ... Respondents

**Prayer**: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order of rejection issued by the 5th respondent in Proceeding Na.Ka.No.015205/2020/Q3 dated 14.12.2020 and quash the same and consequently direct the respondents to pay a sum of Rs.3,90,164/-/- (Rupees Three Lakhs Ninety Thousand One Hundred and Sixty Four Only) towards the reimbursement of the medical expenses incurred by petitioner for the treatment of his wife interest at the rate of 12% per annum.

For Petitioner : Mr.R.Prem Narayan

For Respondent Nos.1 to 6 : Mr.K.H.Ravikumar
Government Advocate

For Respondent No.7 : Mr.P.Sankaranarayanan

***O R D E R***

Heard Mr.R.Prem Narayan, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for the respondents 1 to 6 and Mr.P.Sankaranarayanan, learned counsel for the 7th respondent and perused the materials available on record.

**2**.The case of the petitioner is that he was working as Head Draughting Officer in the Public Works Department and retired from

service on attaining the age of superannuation on 31.12.2003. During September 2019, the petitioner's wife got severe chest pain and was admitted at G.Kuppusamy Naidu Memorial Hospital, Coimbatore. Thereafter, she was diagnosed with "Left Main+Tripple Vessel Coronary Artery Disease". She was admitted in the same Hospital for undergoing an emergent Coronary Artery Bypass Surgery. The petitioner has spent a huge sum of money for the said treatment. The petitioner who had paid the subscription directly from his salary to the State Health Insurance Scheme, 2018, sought reimbursement for the amount incurred for the medical expenses before the 4th respondent. But the 4th respondent forwarded the petitioner's application to the 3rd respondent and the 3rd respondent also recommended for medical reimbursement to the 7th respondent. But the 7th respondent summarily rejected the request of the petitioner stating that the treatment which was undergone by the petitioner's wife is a non accredited hospital and hence the claim is not covered under the scheme. Hence, the petitioner has come up with the present Writ Petition.

**3**. Mr.R.Prem Narayan, learned counsel for the petitioner submitted that the claim of the petitioner should not have been denied for

the simple reason that the petitioner's wife took the treatment outside the network hospital. 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 under:-

> *"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 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."*

**4**. Mr.K.H.Ravikumar, learned Government Advocate for the respondents 1 to 6 and Mr.P.Sankaranarayanan, learned counsel for the 7th respondent submitted that the petitioner's wife had taken treatment in the hospital which does not fall under the accredited list of hospitals. Nothing will prevent the petitioner for claiming reimbursement under the Tamil Nadu Medical Attendance Rules.

**5**. Mr.P.Sankaranarayanan, learned counsel for the 7th respondent has also relied on the judgment of this Court held in ***Star Health and Allied Insurance Co. Ltd. Vs. A.Chokkar and Ors.*** reported in ***2010 SCC OnLine Mad 2198***, in support of rejecting the claim of the petitioner. 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.*

*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.*

*29. With the above directions and observations, all the writ petitions are disposed of. W.A.No. 480/2009 is allowed and the order of the learned Single Judge is set aside. No order as to costs. Connected M.Ps. are closed."*

**6**. The Tamil Nadu Government had sponsored the New Health Insurance Scheme for Government servants only in the year 2008. The erstwhile scheme was called as the "Employees Health Fund Scheme" and it was in force from 1991 to 1995. Under this, the State Government provided

free medical treatment in Government Medical Institutions to Government servants and pensioners by having tie up with a Private Insurance Companies. The petitioner is also a member of such a scheme and he has been making contributions and the said fact was not denied. The only reason for denying the reimbursement claim of the petitioner is that the hospital in which the petitioner's wife had taken treatment is not under the accredited list of hospitals.

**7**. The essential facts which have to be appreciated are whether the treatment alleged to have been undergone by the Government servant or his family members who are eligible for reimbursement was genuine or whether the medical reimbursement is allowed for the alleged treatment. The list of accredited hospitals are to the benefit of the Government servants and it can be a first line information about the best hospitals where they can have a better facility and treatment. But that can not be made too cumbersome to deny the benefit, if the beneficiary chooses to take treatment at a hospital for a disease or type of a treatment for which reimbursement is permitted. Referring the matter each time to a Special Committee on this score would delay the process and eventually the timely settlement of the claims. Hence, the Government can have a better negotiation with the

Insurance Companies in future while joining with them while formulating Health Insurance Scheme for Government Servants.

**8**. In the case in hand, Mr.R.Prem Narayan, learned counsel for the petitioner submitted that the petitioner's wife needed an emergency treatment and she had taken immediate treatment at G.Kuppusamy Naidu Memorial Hospital, Coimbatore. If the opted hospital does not find place in the accredited list, that can be viewed, at the worst an irregularity.

**9**. The object of the scheme is to ensure availability of better medical facility and service to the employees/pensioners covered through any Insurance Schemes sponsored by the Government or directly by the Government itself. It is advisable for a beneficiary to take treatment in the accredited hospitals to avoid future confusion. However, the said rule cannot be viewed so narrowly to deny the reimbursement for the treatment taken outside the purview of the listed hospitals. It is always open to the Department to refer the medical papers to the Expert Committee and give proper recommendation to the 7th respondent for reimbursement.

**10**. So in my considered view, the Government has to reconsider the claim made by the petitioner in the light of the above observation and also in the light of the observations made by the Division Bench of this Court held in ***W.A.(MD).No.1382 of 2017*** (cited supra).

**11.** In the result, this Writ Petition is **allowed** and the impugned order passed by the 5th respondent dated 14.12.2020 is set aside and respondents 1 to 6 are directed to consider the claim of the petitioner by taking into consideration of the object of the Scheme and give appropriate recommendation within a period of two weeks to the 7th respondent and on receipt of the same, the 7th respondent shall pass necessary orders regarding reimbursement of medical expenses, within a period of two weeks from the date of order of receipt of the recommendation. No costs.

**01.03.2024**

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

To

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**R.N.MANJULA, J.**

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