IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

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THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.12174 of 2020

R.Chellamani ... Petitioner

Vs.

1.The State of Tamil Nadu \
Rep.by its Secretary
Finance Department,
Secretariat, (Pension)
St.George Fort,
Chennai 600 009.

2. The PrincipalSecretary/Commissioner of
Treasuries and Accounts,
Integrated Office Complex for Finance Department,
II Floor, Nandanam, Anna Salai,
Chennai 600 015.

3.The Joint Director,
O/o.District Treasury,
Kanchipuram.

4.The Director,
Directorate of Medical and Rural Health Services,
SLEC for NHIS, DMS Compound,
Chennai 600 006.

5.United India Insurance Company,
Divisional Office- 010 600,
5th Floor, Rathna Towers,
No.212, Anna Salai, Chennai 600 006. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 4th respondent in O.M.No.16701/KP1/3/2017 dated 02.04.2018 and quash the same and consequently direct the 1 to 4 respondents to disburse the sum of Rs.2,60,000/- together with interest at 18% p.a.within the time fixed by this Court.

For Petitioner : Mr.M.Vijayaraghavan

For R1 : Mr.M.Rajendiran
Addl.Govt.Pleader

For R5 : Mr.P.Sankararayanan

ORDER

The present writ petition has been filed challenging the impugned order passed by the fourth respondent dated 02.04.2018 and quash the same and consequently direct the respondents 1 to 4 to disburse the sum of Rs.2,60,000/- together with interest at 18% p.a.within a time limit fixed by this Court.

2. The brief facts of the case are as follows:-

The petitioner, who is a retired employee from the Department of Regional Joint Director of Treasuries and Accounts, he is eligible for Tamil Nadu New Health Insurance Scheme, 2014 and had been deducted for the said scheme. The petitioner is eligible along with his wife to receive a sum of Rs.2,00,000/- towards medical benefits under the above said scheme. The petitioner's wife viz., Tmt.Shyamala, aged about 61 years, had severe pain in both her knees with diabetes, hypertension and morbid obesity. They went to MIOT Hospital for treatment, the doctor diagnosed that the pain was caused by an " early Arthritis" due to morbid obesity and advised his wife to undergo a Laparoscopic sleeve Gastrectomy surgery to reduce her weight to extend her life span and thereafter they would conduct knees replacement surgery.

3. It is further the case of the petitioner that as per the Surgeon advised, they approached Life Line Rigid Hospitals, which is a listed hospital for Gastroenterology surgery. The said hospital sent mail to MDIndia Health Care Service about the surgery which is a life saving surgery and that it was not a cosmetic surgery on 28.01.2017 for preauthorization. Thereafter, his wife was admitted in Life Line Rigid Hospitals and underwent Bariatric Surgery on

10.02.2017 and the petitioner spent Rs.2,60,000/-. Since there was no pain in her knees, the doctors advised her not to opt for knee surgery. The petitioner applied for reimbursement of the medical expenses undergone for the treatment. He received a reply from the third respondent dated 02.08.2013 stating that his application for reimbursement was referred to the District Empowered Committee under the Chairmanship of the District Collector, Joint Director of Medical and Rural Health Service, District Treasury Officer concerned. Thereafter, the fourth respondent, United India Insurance Company Limited has passed the impugned order dated 02.04.2018 stating that the Empowering Committee has rejected the claim on the ground that the surgery was not covered and approached the High Level Empowering Committee for further remedy. Hence, the petitioner sent several representations dated 27.04.2018, 30.04.2018 and on 20.08.2018 to the High Level Empowering Committee. But, till date, no action has been taken by the respondents 1, 2 and 4. Hence, the petitioner has come forward with the present writ petition.

4. The learned counsel appearing for the petitioner submitted that the writ petition has been filed for claiming medical reimbursement for the treatment taken for weight loss as the same is not covered in the list of medical

treatment offered by the hospital. The learned counsel for the petitioner further submitted that during the treatment of the petitioner's wife, the petitioner asked for preauthorization for undergoing surgery and he has paid the entire cost of Rs.2,60,000/- to the Life Line Rigid Hospitals, Chennai.

5. The learned counsel further submitted that he has placed reliance on the order passed by this Court in ***S.Marimuth vs. The Government of Tamil Nadu, rep. By its Secretary, Department of Health and Family Welfare, Fort St.George, Chennai and two Others*** in W.P.(MD)No.13429 of 2013 and etc., batch, dated 28.05.2019. Relevant portion of the said order reads as under :-

> 57. No such exercise seems to have been taken either by the District Level Committee or by the State Level Committee and they merely echoed or amplified the tecnical reason of non-network hospital, non-listed quoted by the Insurance Company, as a mouth piece of the Insurance Company, therefore which practice on the part of the State authorities, in the opinion of this Court, is not appreciable.
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> 58. Since the State(Government) is the welfare State and though it has duty to protect the well being of every individual/citizen of the State, atleast the Government must be so vigilant and shall take all possible efforts to protect the well being, especially

the health conditions of its employees and former employees

6. The learned counsel appearing for the petitioner further submitted that he has also placed reliance on the following decisions of this Court :-

i) ***S.Karunanithi vs State of Tamil nadu Rep.by its Secretary to Government and 4 Others*** in W.P.No.6893 of 2017
ii) ***K.Lakshmi vs. The District Collector, Rajaji Salai, Chennai 600 001 and 4 Others*** in W.P.No.10173 of 2018,

7. In the above orders, this Court has held that the petitioner is entitled for medical reimbursement even though the treatment has not been mentioned in the list of treatments to be taken in the hospital and the respondent challenged the said order by way of Writ Appeal in W.A.No.62 of 2018 and the Hon'ble Division Bench of this Court vide order dated 16.02.2018 has confirmed the order passed by the learned Single Judge of this Court in the case of ***S.Karunanithi vs. The State of Tamil Nadu rep.by its Secretary to Government, Department of Finance, Secretariat, Fort St.George, Chennai 600 009 and 4 Others*** in W.P.No.6893 of 2017 dated 13.07.2017. Relevant portion of the said writ petition is extracted hereunder :-

12. In the present case, the writ petitioner is a state pension. The bipartite agreement between the Government and the Insurance Company cannot violate or cannot take away the right of the petitioner from receiving the medical reimbursement in time. In other words, it is between the Government an the Insurance Company to settle the disputes in this regard, and under this pretext, neither the Insurance Company nor the Government shall take furthermore time, so as to deny the medical claim to the pensioners. Thus, this Court is of the firm opinion that the denial of medical reimbursement to the petitioner is certainly a constitutional violation and the attitude of the respondents both the Government and the Insurance Company are not to be appreciated.

13. The officials concerned have got a public duty to see that such claims are settled in time and without further delay. The Court, time and again, repeatedly rendered judgments to settle all such claims in time irrespective of Court' orders. The authorities concerned are portraying insensitiveness in settling the medical reimbursement/acident claims. Therefore, the order of rejection cannot be sustained and the Insurance Company cannot plead that they are not liable and it is the joint liability of the Government as well as the Insurance Company and the internal differences or controversy are to be sorted out between the Government and the Insurance Companies and because of that, the right of medical reiimbursement can never and ever be delayed to the victims, who had undergone the treatments. In this view of the matter, the impugned

order, is quashed and the Insurance Company/the 5th respondent, the United India Insurance Company Ltd, Divisional Office 010 600 5th Floor, P.L.A.Rathina Towers, No.212, Anna Salai, Chennai 600 006 is directed to settle the medical reimbursement claim of the writ petitioner within a perio of two weeks from the date of receipt of a copy of this order and if there is any controversy in this regard with regard to the settlement of this money, the Insurance Compamy is at liberty to take the matter to the Government for appropriate remedy.

8. The learned Additional Government Pleader appearing for the respondents 1 to 4 has filed a counter affidavit on behalf of the second respondent. Relevant portion of the said counter affidavit, reads as under :-

14. Further, it is submitted that as per the provisions contemplated in NHIS, 2014 the petitioner is not entitled for any kind of reimbursement of medical expenses incurred by him towards the unapproved treatment undergone in Non-network hospitals. In this connection, it is pertinent to submit that only with a noble intention to provide a better health care to the Government Pensioner the Government launched the NHIS 2014 by entering into an agreement with the United India Insurance Company Limited/Third Party administrator and so may Surgery/procedures have been approved to get the "Cashles" treatment and more than 989 hospitals have been empanelled in the list of network hospitals under the said Scheme. But still certain

Government Pensioners after taking medical treatment/surgery in a non-network hospital have sought for reimbursement of the medical expenditure incurred by them under the NHIS, 2014 which is not admissible as per the provisions of the said Insurance Scheme. If these claims are allowed on any ground whatsoever, it would certainly defeat the very purpose of the said Scheme itself.

15. It is further submitted that the petitioner is enrlled as subscriber under the NHIS, 2014, for pensioner (including Spouse)/Family Pensioners. For the proper implementation of the said Insurance Scheme certain procedures and conditions were prescribed in G.O.(Ms.)No.171, Finance (Pension) Department, dated 26.06.2014. It is submitted that , had the petitioner followed the procedures prescribed in the said Scheme, then he would have automatically got the benefit of cashless treatment under the sai Scheme. Whereas, the petitioner had failed to do so and hence he is not entitled for any reimbursement of medical expenses incurred by the petitioner in contravention of the procedures prescribed under the said Insurance Scheme is allowed it would certainly dilute the efficacy of the Schee and consequently nullify the main objective of the Scheme namely, providing better Health Insurance coverage at affordable premium.

9. The learned counsel appearing for the fifth respondent submitted that as per G.O.Ms.No.171, Finance (Pension) Department, dated 26.06.2014, Clause 12(d) of the Implementation Procedure for New Health Insurance

Scheme, 2014 for Pensioners (including spouse/Family Pensioners in Annexure-1, it reads as under :-

> 12(d) Any dispute arising out of the implementation of this Scheme which remain unresolved at the State Level Empowered Committee shall be referred within fifteen days of award of State Level Empowered Committee to a High Level Committee, comprising of the Secretary to Government (Expenditure), Finance (Pension) Department, the Secretary to Government, Health and Family Welfare Department and the representative of the United India Insurance Company nominated for the purpose.

10. Heard the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 4 and also perused the material evidence available on record.

11. In the present case, the petitioner's wife has undergone treatment for weight loss surgery, the doctor advised the petitioner's wife for knee replacement surgery, since his wife has already been overweight. The surgery is a life saving surgery and it was not a cosmetic surgery, but the 4th respondent

has summarily rejected the claim on the ground that the surgery was not covered.

12. In view of the ratio laid down by the Hon'ble Division Bench of this Court as well as the learned Single Judge of this Court, the petitioner is directed to approach the High Level Empowering Committee for claiming medical reimbursement and he has already made a representation dated 02.08.2018. However, there is no acknowledgment receipt of the representation enclosed in the typed set of papers by the petitioner. Hence, the petitioner is also directed to give a fresh representation to the first respondent. On such receipt of the same, if the petitioner is eligible for medical reimbursement, the first respondent, High Level Empowering Committee shall pass orders directing/recommending to the fifth respondent, United India Insurance Company Limited, Chennai 600 006 to reimburse the claim under Medical Attendance Rules. On such receipt of the same, the fifth respondent, United India Insurance Company Limited, Chennai 600 006 is directed to settle the claim of medical reimbursement of the petitioner, along with 6% p.a. from the date of due till the date of payment/settlement, within a period of eight weeks from the date of receipt of a copy of this order.

13. In the result, this writ petition stands disposed of with the above observation and directions. No costs.

12.12.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking : Non-speaking Order
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To

1.The Secretary
Finance Department,
Secretariat, (Pension)
St.George Fort,
Chennai 600 009.

2. The PrincipalSecretary/Commissioner of
Treasuries and Accounts,
Integrated Office Complex for Finance Department,
II Floor, Nandanam, Anna Salai,
Chennai 600 015.

3.The Joint Director,
O/o.District Treasury,
Kanchipuram.

4.The Director,
Directorate of Medical and Rural Health Services,
SLEC for NHIS, DMS Compound,
Chennai 600 006.

5.United India Insurance Company,
Divisional Office- 010 600,
5th Floor, Rathna Towers,
No.212, Anna Salai, Chennai 600 006.

J.SATHYA NARAYANA PRASAD, J.

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