IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM :

THE HONOURABLE DR. JUSTICE D.NAGARJUN

W.P.No.38861 of 2016

Mr.M.Thiyagarajah ....Petitioner

Vs.

1. Treasury Officer,
   District treasury,
   Dharmapuri District.

2. United Insurance company limited
   1st floor, Shastri Nagar Shopping Complex,
   Lattice Bridge Road, Adayar,
   Chennai, Tamil Nadu 600 020. ...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of certiorarified Mandamus to call for the records pertaining to R.C.No.3394/2016/E1, dated 2507.2016 passed by the first respondent and quash the same and further direct the respondents to reimburse the expenses incurred by him for undergoing acute diabetic treatment at Shri Balaji Diabetes Specialty Clinic and M.V.Hospital for Diabetes Pvt Ltd., Royapuram.

For petitioner : Ms.V.Sutharkar

For R1 : Mr.Vadivelu Deenadayalan
Additional Governement Pleader
For R2 : NA

O R D E R

The Writ petition is filed seeking for certiorified Mandamus to quash the proceedings dated 25.07.2016 in R.C.3394/2016/E1, dated 25.07.2016 directing the respondents to reimburse the expenses of the petitioner incurred by the him for his diabetes treatment undergone at Shri Balaji Diabetes Specialty Clinic and M.V.Hospital for diabetes Pvt. Ltd, Royapuram.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1 The petitioner is a retired Personal Assistant to the District Collector (Development Division) Dharmapuri District. During the period of October - December 2004, he suffered type 2 Diabetes mellitus, essential hyper tension and other connected health problems. Due to Diabetes mellitus, his body could not generate enough insulin. He undergone to take treatment for diabetes at Shri Balaji Clinic, Chennai and from there he was referred for further treatment at M.V. Hospital for Diabetes Pvt Ltd, Royapuram. He has

undergone treatment in the said hospital in the month of December 2014.

2.2. The petitioner has incurred an amount of Rs.23,259.44/- at Shri Balaji Diabetes Specialty Clinic and a sum of Rs.32,511/- at M.V Hospital for Diabetes Pvt Ltd, Royapuram. Thereby, he spent Rs.55,770.44/- for the treatment in these two hospitals. He has submitted the claim with the Treasury Officer, Dharmapuri, but it was rejected on the ground that the treatment taken by the petitioner was in Non-network Hospital and cannot be granted, as per G.O.No.171 dated 26.06.2014. Hence, this Writ Petition.

3. The first respondent filed counter affidavit stating that the Government of Tamil Nadu has implemented the procedure for New Health Insurance Scheme, 2014 for pensioners as per G.O.Ms.No.171, Fin (Pen) Dept, dated 26.02.2014 through United India Insurance Company Ltd, Chennai for the block period of 01.07.2014 to 30.06.2018.

4. The claim of the petitioner for the sum of Rs.55,770/- was submitted to the District Empowerment Committee headed by the District Collector with the Treasury Officer and Joint Director of Medical and Rural Health Services as members. The same has been forwarded to the United India Insurance company. The said proposal was returned by the Insurance company stating that as per G.O.Ms.No.171 dated 26.02.2014, no reimbursement is allowed.

Therefore the claim of the petitioner could not be processed.

5. The respondent 2/ Insurance company is not present. In spite of several notices and printing the name in the cause list, no counter was filed on behalf of the second respondent and the second respondent is not interested to defend the case.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the petitioner has submitted that in a similar circumstances, this Court has considered the writ petition and the claim of the petitioner in W.P.No.24524 of 2018 as held in Para 4 of the said judgment.

> *4. In identical circumstances, this Court, in the case of* ***M.Kavitha Vs The State of Tamil Nadu, Finance (Salaries) Department and others****, passed in* ***W.P.(MD) No.2540 of 2020 dated 28.02.2020****, had held that, rejection of a claim for reimbursement, on the ground that the treatment taken in a Non-network hospital, cannot be sustained. The relevant portion of the order reads as follows:-*
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> *"3. The proposition as to whether the authorities can reject the request of their employees for medical reimbursement of their treatment undertaken, on the ground that the hospital is a non-network /nonscheduled hospital under the Scheme, is no more res integra, in view of the various judicial pronouncements made. One such order passed in W.P.No.34466 of 2019 dated 11.12.2019 has dealt with this aspect, in the following manner:*
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> *'This writ petition has been filed challenging the*

impugned order passed by the 4th respondent rejecting the claim of medical reimbursement made by the petitioner and for a consequential direction to direct the respondents to pay the petitioner the medical reimbursement with interest.

2. It is seen from the records that the petitioner is a retired Head Master of the Panchayat Union School. The petitioner is a subscriber to the New Health Insurance scheme, which was introduced by the government in the year 2014. The subscription towards the insurance is being deducted regularly from the monthly pension. During May 2019, the wife of the petitioner underwent an operation and an emergency surgery was done on 17.05.2019. The petitioner was under the bonafide impression that he is covered by the scheme and he will be getting the medical reimbursement. The Hospital in which the operation was done, gave a final bill for a sum of Rs.95,925/-. The hospital authorities refused to take the medical insurance and left with no other option, the petitioner had to pay the entire bill amount.

3. The petitioner made a representation to the first respondent on 17.08.2019 and requested for reimbursement of the hospital expenses incurred by the petitioner. The impugned order came to be passed on 05.09.2019 by the 4th respondent wherein, the medical reimbursement was rejected on the ground that the hospital where the operation was done is not covered under the list of hospital that forms part of the scheme. Aggrieved by the same, the petitioner has approached this Court.

4. Heard Mrs.C.Anandha Ramani, learned counsel appearing on behalf of the petitioner and Mr.A.Zakir Hussain, learned Government Advocate appearing on

behalf of the respondents.

5. The issue that has been raised in this writ petition has already been settled by a series of judgments and the latest judgment on this issue was delivered in W.P.No.27504 of 2019, dated 17.09.2019. The relevant portion of the judgment is extracted hereunder :-

"4. Learned counsel for the petitioner submitted that amount has been deducted towards medical insurance from the monthly income of the petitioner and therefore, the petitioner is entitled to claim medical reimbursement. However, the same issue came up for consideration in the following judgments, wherein it is held that the pensioner,

who underwent treatment in a non network hospital, is also entitled for medical reimbursement.

(i) ***(2018) 16 SCC 187 (Shiva Kant Jha vs.Union of India);***

"17. It is a settled legal position that the Government employee during his lifetime 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. Specialty 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 Specialty 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 CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court."

(ii) ***Order of the Division Bench of this Court dated 04.02.2019 made in W.A.No.2749 of 2018 (The Government of Tamil Nadu, Rep. by its Secretary, Rural Development and Panchayat Department, Fort St. George, Secretariat, Chennai-600 009 and others vs.K.Rajendran and others)****;*

"7. We are unable to countenance the submissions made on behalf of the First, Second and Fourth Respondents, particularly in view of the ruling of the Division Bench of this Court in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which has been followed in India Healthcare Services (TPA) Limited -vs- K. Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension -vs- 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. It would suffice here to refer to paragraphs 24 and 25 of the decision in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which read

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."

8. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [2018 (5) MLJ 317], dealing with unfair treatment meted out to Government servants for medical reimbursement under similar provisions of the Central Government Health Scheme, held in paragraphs 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."

9. In view of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. Accordingly, we direct that the competent authority of the Government of Tamil Nadu to examine the claim made by the Petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and disburse the eligible amount towards the same along with interest thereon at the rate of 9% per annum from 16.03.2017 till date of payment and file report of such compliance before the Registrar (Judicial) of this Court by 18.02.2019.

10. It is made clear that the aforesaid direction issued to the First, Second and Fourth Respondents, to forthwith settle the claim made by the Petitioner for reimbursement of medical expenses under the Tamil Nadu Medical Attendance Rules at the first instance, would not preclude those Respondents from placing the matter before the High Level Committee constituted under the implementation procedure in clause 17 of Annexure 1 of G.O. Ms. No. 222, Finance (Pension) Department dated 30.06.2018 issued by the Government of Tamil Nadu for a decision on the question whether the Insurance Company would be liable to meet claims, like the present one, where the Hospital at which the Government Servant concerned had undergone treatment had not been included in the list of Network Hospital at that time, has been subsequently added for overage by the New

Health Insurance Scheme, 2016."

6. In the light of the above said judgments, I am inclined to allow this writ petition. Accordingly, the writ petition stands allowed and impugned order of the 4th respondent is hereby quashed. This Court directs the 4th respondent to examine the claim made by the petitioner for medical reimbursement and disburse the eligible amount towards the same. No costs. Consequently, connected Miscellaneous Petition is closed."

6. It is clear from the above judgment that the medical reimbursement cannot be rejected merely on the ground that the operation was done in a hospital which does not form part of the scheme. This Court had directed the medical reimbursement to be made by setting aside the order. The above judgment will clearly apply to the facts of the present case also.'

4. The aforesaid decision is self explanatory. As held in the aforesaid decision, wherein various other decisions were also relied upon, the respondents will not be entitled to reject the claim for medical reimbursement stating that the treatment taken by the petitioner's husband in non-network hospital, which is no more a permissible ground for rejection. Consequently, the respondents would be bound to reimburse the petitioner for the permissible medical expenditure incurred."

7. Considering the facts and circumstances of the case, the settlement of the issue by the hon'ble Apex Court of the judgment become final. The reimbursement of the Medical expenses incurred even in non-networking hospital required to be paid.

8. In view of the above, the Writ Petition is disposed of directing the

respondent to reimburse the petitioner's medical expenses to the tune of Rs.55,770.44/- and the Writ Petition is allowed with the above direction.

09.02.2024

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

To:

1. Treasury Officer,
   District treasury,
   Dharmapuri District.

2. United Insurance company limited
   1st floor, Shastri Nagar Shopping Complex,
   Lattice Bridge Road, Adayar,
   Chennai, Tamil Nadu 600 020.

DR. D.NAGARJUN,J.

shl

W.P.No.38861 of 2016

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