IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.14217 of 2020
and W.M.P.No.17689 of 2020

S.Jagajothi ... Petitioner

versus

1.The Director of Medical and Rural Health Services,
D.M.S.Compound,
Teynampet,
Chennai - 600 006.

2.The Joint Director of Medical and Rural Health & Family Welfare,
Cuddalore,
Cuddalore District.

3.The District Collector,
Cuddalore District,
Cuddalore.

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

5.The Assistant Treasury Officer,
Tittagudi,

Cuddalore District. ... 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 1st impugned order passed by the 4th respondent in Proceeding No.'Nil' dated 03.01.2020 and the consequential 2nd impugned order issued by the 2nd respondent in proceeding Na.Ka.No.9086/Ka7/2019 dated 12.03.2020 and quash these orders and consequently direct the respondents to pay the petitioner a sum of Rs.2,69,631/- towards the reimbursement of medical expenses incurred by her deceased husband P.Seetharaman with interest at the rate of 12% per annum.

For Petitioner : Mr.R.Prem Narayan

For Respondent Nos.1 to 3 & 5 : Mr.G.Ameedius
Government Advocate

For Respondent No.4 : Mr.P.Sankaranarayanan

O R D E R

Heard Mr.R.Prem Narayan, learned counsel for the petitioner and Mr.G.Ameedius, learned Government Advocate for the respondents 1 to 3 & 5 and Mr.P.Sankaranarayanan, learned counsel for the 4th respondent and perused the materials available on record.

2.The petitioner's husband was working as Junior Assistant at Government Higher Secondary School, Tholudur, Cuddalore District and had retired from service on attaining the age of superannuation on 30.06.2002. During July 2019, he was diagnosed with 'Sepsis Syndrome and

Necrotising Fascitis Right Lower Limb' for which, he had taken treatment in ABC Hospital, Trichy. For the above said treatment, the petitioner has spent a sum of Rs.2,69,631/-. Being an employee in a Government office, paying monthly premiums directly from his salary for the State Health Insurance Scheme, he sought reimbursement for the amount incurred for the medical expenses before the 2nd respondent. The 2nd respondent summarily rejected the request of the petitioner by stating that the treatment which was undergone by the petitioner's husband is not covered under the Scheme. But subsequently the petitioner's husband died on 30.08.2019. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. Mr.R.Prem Narayan, learned counsel for the petitioner submitted that the claim of the petitioner's husband should not have been denied for the simple reason that the treatment taken by the petitioner's husband is not covered under the line of management. 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.*

***40.**Be that as it may, in the present case, there is no dispute as to the factum of actual expenses incurred by the Respondent/Petitioner, which she claims in the Writ Petition. Undoubtedly, the human being is to take necessary precautionary and protective measure for his body. The payment/reimbursement of medical expenses spent by the Government servant concerned or his family is not -Bounty-, but it is an obligation of the State Government to pay/disburse the said amount in question without harping on either technicalities or hyper technicalities. As such,*

this Court is of the considered opinion that the Learned Single Judge was correct in directing the First Appellant/First Respondent to sanction the medical expenses incurred by the Respondent/Petitioner for her husband's ailment, as per the eligibility criteria in terms of the amount under the scheme and the same is free from any flaw. However, this Court is of the considered view that the interest of 9% p.a. fixed by the Learned Single Judge is slightly on the higher side and to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court reduces the rate of interest from 9% p.a. to that of 6%.

***41**.In view of the forgoing discussions and reasons, this Court, directs the Appellant/First Respondent viz., the Director of Pension, Chennai - 6, to sanction the medical expenses incurred by the Respondent/Petitioner/Employee-s wife, as per eligibility criteria as regards the amount under the scheme together with interest at 6% p.a. and release the eligible sum to the Respondent/Petitioner (wife of the Employee) after subjectively satisfying about her legal heirship within a period of four weeks from the date of receipt of a copy of this order."*

4. Mr.G.Ameedius, learned Government Advocate for the respondents 1 to 3 & 5 submitted that the petitioner can always make her claim under the Tamil Nadu Medical Attendance Rules. Attention was

drawn to the judgment of this Court held in the case of ***Star Health and Allied Insurance Co. Ltd. Vs. A.Chokkar and Ors.*** reported in ***2010 SCC OnLine Mad 2198***, more particularly paragraph No.24 and 25. 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."

5. Mr.R.Prem Narayan, learned counsel for the petitioner has also relied upon the very same judgment, more particularly mentioning paragraphs Nos.26 to 29 and submitted that as per the above said judgment, the Government should not deny any claim which was made under the Scheme. For better appreciation, the said judgment is extracted hereunder:-

*"**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. In reply, Mr.R.Prem Narayan, learned counsel for the petitioner submitted that the Tamil Nadu Government sponsored the New Health Insurance Scheme for Government servants only in the year 2008. Prior to that, the scheme was under the name "Employees Health Fund Scheme" between the year 1991 to 1995. As such, the State Government has been providing medical benefits under the said scheme to Government servants

and pensioners by having a tie up with Private Insurance Companies. The fact that the petitioner is also a member of such a scheme and he has been making contributions, was not denied. The one and only reason for denying the reimbursement is that the petitioner had taken treatment in a network hospital and the treatment is not covered under the approved list of treatment.

7. The important facts that need to be appreciated for providing medical reimbursement is whether the treatment alleged to have been undergone by the eligible Government servant or his family members had really taken the treatment or whether the medical reimbursement is permissible for the alleged medical management. The Scheme provides a list of hospitals and type of disease / treatment in order to ensure better access and not to deprive them from getting the benefits.

8. It is submitted that due to some major treatment required to the petitioner's husband, she admitted him at the Assured Best Care Hospital, Trichy. The very object of providing Health Insurance to the employees / pensioners is to ensure best medical service at the cost of the Government through any Insurance Schemes approved by the Government. Though it is

advisable for the Government Servant / pensioners to take treatments at the list of accredited hospitals for any specific surgeries and treatments, the rules cannot be viewed stringently to deny the reimbursement for the treatment taken for a similar or an associated mental issue. It is better for the Department to refer the matter to an Expert Committee / High Level Committee to assess the genuineness and necessity for the treatment on a case-to-case basis in similar such cases before passing an order of rejection.

9. Therefore, I feel it is appropriate that the Government has to reconsider the claim made by the petitioner in light of the above observations and more specifically on the basis of the observations made by the Hon'ble Division Bench in ***W.A.(MD).No.1382 of 2017 dated 09.11.2017*** and in the case of ***Star Health and Allied Insurance Co. Ltd. Vs. A.Chokkar and Ors.*** (cited supra).

In the result, this Writ Petition is **allowed** and the impugned orders passed by the 4th respondent dated 03.01.2020 and 2nd respondent dated 12.03.2020 are set aside and the respondents are directed to reconsider the claim of the petitioner and pass appropriate orders in a proactive manner,

within a period of four weeks from the date of the receipt of a copy of the order, by taking into consideration of the object of the Scheme. No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2024

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

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R.N.MANJULA, J.

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