



WEB COPY



W.P.No.7733 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2024

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7733 of 2017

Krishna Chetty

... Petitioner

Vs.

1. The State of Tamilnadu

Rep. By the Special Commissioner & Secretary,
to Government, Home Department,
Fort St.George, Chennai – 9

2. The Director General of Police,
Kamarajar Salai,
Chennai

3. The Joint Director of Medical Service
Krishnagiri District
Krishnagiri

4. The Superintendent of Police,
Krishnagiri District
Krishnagiri.

... Respondents

Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents to disburse the medical claim amount of Rs.1,10,178/- to the petitioner based on the representation dated 23.08.2016 on the basis of recommendation of the 4th respondent dated 20.01.2010 and pass further orders.



WEB COPY



W.P.No.7733 of 2017

For Petitioner : Mr.K.Gandhikumar

For Respondents : Mr.Muthusamy for R1 to R4
Government Pleader

ORDER

The present Writ Petition is filed for issuance of a Writ of Mandamus directing the respondents to disburse the medical claim amount of Rs.1,10,178/- to the petitioner based on the representation dated 23.08.2016 on the basis of recommendation of the 4th respondent dated 20.01.2010 and pass further orders.

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

(i) The petitioner was initially joined as a Junior Assistant in the Police Department on 30.09.1976 and rendered his service without any remarks and he was given promotion periodically based on his performance and also length of service and finally he worked as a P.A. Admin to Superintendent of Police.

(ii) While the petitioner was in service, on 28.01.2008, he was admitted in 'Appollo Hospital' at Chennai for Paralysis and he was discharged on 13.02.2008 and he spent a sum of Rs.1,10,178/- as a



W.P.No.7733 of 2017

medical expenditure and thereafter, he made an application on 03.03.2008 through 4th respondent for reimbursement of his medical expenditure from the respondents 1 and 2. The said application was returned on 19.04.2008 by stating that the hospital which he took treatment was not on the approved list. Thereafter, on receipt of clarification letter and the necessary documents, the 2nd respondent was requested to get suitable action for reimbursement of petitioner's medical account.

(iii) Further, the 2nd respondent forwarded the letter requesting the 1st respondent to sanction the petitioner's medical reimbursement. The petitioner has also paid the monthly subscription properly and also sufficient amount is available in Tamilnadu Police Medical Scheme, but, thereafter, the 1st respondent did not paid the amount.

(iv) That apart, a representation dated 03.09.2012 was sent to the District Collector by requesting to direct the 4th respondent to get the petitioner's medical claim amount from the 1st respondent and stated the inability of the petitioner to maintain day today life, however, the medical reimbursement has not been received till date, hence this petition.

3. The learned counsel for the petitioner submits that though several



W.P.No.7733 of 2017

representations were sent to the respondents, no action has been taken till date and the petitioner is fighting for the money, which he has actually spent on account of his ill health. Further is suffering to maintain his day today activities, thereby pleaded to allow the present petition.

4. Per contra, the learned Government Advocate appearing for the respondents would contend that since the treatment undergone by the petitioner does not fall under G.O.377 dated 13.10.2005, the 1st respondent had reimbursed under Rule 10(c) of Tamilnadu Medical Attendance Rules, as amended in G.O.Ms.1023 Health and Family Welfare Department dated 17.06.1980 to the petitioner. As per the Rules and letter of Dean, Rajiv Gandhi Govt., General Hospital dated 16.09.2015, a sum of Rs.4,287/- was sanctioned to the petitioner for his medical reimbursement and passed the G.O.(D) No.984 dated 17.10.2016. Since the said amount was sent to the petitioner vide registered post dated 15.06.2017, the letter requesting the amount was returned as refused, thereby pleaded to dismiss the petition.

5. Heard the learned counsels on either side and perused the documents placed on record carefully.



W.P.No.7733 of 2017

WEB COPY

6. Admittedly, the Petitioner has taken treatment in a non-approved Hospital on account of emergent situation, which ultimately resulted in rejection of petitioner's claim. It is not in dispute that if the claim is approved, the Petitioner would be paid the medical benefits based on Tamil Nadu Medical Attendance Rules. The benefit of scheme, namely, the contract cannot be rewritten and it is only the Government to pay the amount incurred by the Petitioner/Employee/ patient/pensioner irrespective of constitution of the Committee. It is pertinent to mention here that the patient cannot search for an approved Hospital for getting admitted or for taking treatment during emergency. Earlier, this Court in the case of N.Raja vs. The Government of Tamil Nadu, rep. by its Secretary, Chennai and others, reported in 2016 (3) CTC 394, has clearly held that when the Insurance Company is not liable on account of the violation of the terms and conditions of the contract, it is the duty of the Government to reimburse the medical expenses incurred. Further, the Hon'ble Division Bench of this Court also, by order dated 16.12.2016 in W.A.(MD) No.1579 of 2016 [MD India Healthcare Services (TPA) Ltd., rep. by the Branch Manager, Chennai, Chennai vs. K.Parameshwari and others], directed the Government to reimburse the medical expenditure.



WEB COPY

7. It is relevant to point out that the above Judgments / orders cited supra has been duly followed by this Court in W.P.(MD) No.125 of 2017, wherein by order dated 27.02.2017 allowed the petition filed by the petitioner / patient by directing the Government to reimburse the amount as claimed by the petitioner therein and the said judgment was challenged before the Hon'ble Division Bench of this Court in W.A.(MD)No.1382 of 2017 and by an order dated 09.11.2017, the Hon'ble Division Bench had dismissed the Writ Appeal and upheld the order passed by the Learned Single Judge. The operative portion is hereby extracted as follows:-

“34.It is to be noted that Article 47 of the Constitution of India speaks of 'Duty of the State to raise the level of nutrition and the standard of living and to improve public health'. In this connection, this Court points out that in the decision of the Hon'ble Supreme Court PASCHIM BANGA KHET MAZDOOR SAMITY AND OTHERS v. STATE OF WEST BENGAL AND ANOTHER, reported in (1996) 4 SCC 37, it is observed that 'in a welfare State, the primary duty of the Government is to secure the welfare of the people. It cannot be gainsaid that a failure to provide timely medical treatment to an individual, who is in need of such treatment is a violation of his right to life enshrined under Article 21 of the Constitution of India'.

35.It is to be pertinently pointed out that 'Right to Health' is anintegral part of the Right to Life and the Government is under aConstitutional obligation to provide health welfare facilities. If aGovernment servant underwent a requisite treatment for his ailment and if necessary proof is produced, then it is the primordial duty of the StateGovernment to bear the expenses incurred thereto and reimburse the same. Just because the Government servant had



WEB COPY

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 of 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, ofcourse, 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



W.P.No.7733 of 2017

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%."

8. It is pertinent to point out that Article 47 of the Constitution of India speaks of 'Duty of the State to raise the level of nutrition and the standard of living and to improve public health'. In this connection, this Court points out that in the decision of the Hon'ble Supreme Court **PASCHIM BANGA KHET MAZDOOR SAMITY AND OTHERS v. STATE OF WEST BENGAL AND ANOTHER**, reported in (1996) 4 SCC 37, it is observed that 'in a welfare State, the primary duty of the Government is to secure the welfare of the people. It cannot be gainsaid that a failure to provide timely medical treatment to an individual, who is in need of such treatment is a violation of his right to life enshrined under Article 21 of the Constitution of India', **as per decision laid down by the Hon'ble Division Bench of this Court in W.A.No.1382 of 2017 dated 09.11.2017.**



W.P.No.7733 of 2017

9. Considering the abovesaid facts and circumstances of the case and the citations referred supra and fact that in the present case, there is no dispute as to the factum of actual expenses incurred by the petitioner, which he claims in the Writ Petition and taking note of the fact that when the insurance company is not liable on account of the violation of terms and conditions of the contract, it is the duty of the Government to reimburse the medical expenses incurred, as per decision of Hon'ble Division Bench of this Court in W.A.(MD) No.1579 of 2016 [MD, India Healthcare services (TPA) Ltd., rep. By the Branch Manager, Chennai Vs. K.Parameshwari and Others], this Court hereby directs the respondents concerned to sanction the medical expenses incurred by the petitioner, as per the eligibility criteria in terms of the amount under the scheme together with 6% interest per annum without standing on technicalities and release the amount within a period of eight weeks from the date of a receipt of copy of this order.

In result, the present Writ Petition is allowed. No costs.

03.01.2024

Index : Yes/No;
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

9/11



WEB COPY



W.P.No.7733 of 2017

To

1. The State of Tamilnadu
Rep. By the Special Commissioner & Secretary,
to Government,
Home Department,
Fort St.George,
Chennai – 9
2. The Director General of Police,
Kamarajar Salai,
Chennai
3. The Joint Director of Medical Service
Krishnagiri District
Krishnagiri
4. The Superintendent of Police,
Krishnagiri District
Krishnagiri.



WEB COPY



W.P.No.7733 of 2017

V.BHAVANI SUBBAROYAN, J.,

ssd

W.P.No.7733 of 2017

03.01.2024