BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14572 of 2020

Murugan ... Petitioner

Vs.

1.The Principal Secretary,
Health and Family Welfare,
State of Tamilnadu,
Secretariat,
Chennai – 600 009.

2.The Plan Director,
Tamilnadu Health Plan,
Medical and Village Welfare Work Department,
Directorate, Thenampet,
Chennai – 600 006.

3.The District Collector,
Tirunelveli District.

4.The Joint Director,
Welfare Department,
Tirunelveli (In charge),
Tenkasi. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to quash the

impugned order O.Mu.no.5115/ThaNaSuThi/Kappittu/2019 dated 20.12.2019 and consequently direct the respondents to reimburse the medical expenses a sum of Rs.3,65,658 to the petitioner was talking treatment for his son under The Tamil Nadu Chief Minister comprehensive health Insurance Scheme.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.K.S.Selvaganeshan,
Addl. Government Pleader.

ORDER

Heard both sides.

2.The writ petitioner is an agriculturist. His son namely, Ramselvakumar had serious urological issues. The petitioner was advised that Vedanayagam Urology Hospital, Coimbatore is a well-known hospital for treating such cases. The petitioner admitted his son in the said hospital on 01.07.2019. Surgery was done on 03.07.2019. The petitioner incurred a sum of Rs.3,65,658/-. The petitioner states that he borrowed said amount from his relative on exorbitant interest. Since the petitioner had enrolled himself as a member of Chief Minister Comprehensive Health Insurance Scheme, the petitioner claimed

reimbursement. The petitioner's request was rejected vide communication dated 20.12.2019. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on the order dated 14.02.2020 made in W.P.(MD)No.611 of 2020 (A.Shanmugam Vs. The Principal Secretary to Government and Others) for the proposition that when the member of scheme has to take emergent medical treatment, his claim for reimbursement cannot be denied by citing a provision in the scheme. The learned counsel for the petitioner called upon this Court to set aside the impugned communication and grant relief as prayed for.

4.The second respondent has filed counter affidavit and the learned Additional Government Pleader took me through the same and contended that the impugned communication does not call for interference. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is not in dispute that the petitioner is an agriculturist and

he is a member of Chief Minister Comprehensive Health Insurance Scheme (CMCHIS). It is seen from the averments set out in the counter affidavit that the said scheme enables the beneficiary to take cashless treatment for approved procedures in empaneled hospitals. In this case, the petitioner had already made the payment to the hospital where his son had undergone surgery. When the scheme provides only for cashless treatment and there is no scope for reimbursing the expenses incurred, it is not open to the Writ Court to issue any Writ of Mandamus. The learned Additional Government Pleader relied on the decision of the Hon'ble Division of the Madras High Court reported in *2010-2-LW.90 (Star Health and Allied Insurance Co.Ltd. & Others Vs A.Chokkar & Others)*. The Hon'ble Division Bench held 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 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."

6.It is also seen that the hospital in which treatment was taken is also not an empaneled hospital. Therefore, I am not in a position to interfere with the impugned communication. Of course, a learned Judge of this Court had held that if treatment had to be provided on emergent basis, the member of the

scheme cannot be expected to make any enquiry if the hospital in question an empaneled one. As rightly pointed out by the learned Additional Government Pleader, the averments in the petitioner's representation belie the said claim. The petitioner's son / Ramselvakumar was having urological issue for quite a long time. It was not case of urgency. The petitioner is a resident in Tirunelveli District. But the treatment was taken in Coimbatore District. Therefore, the aforesaid ruling will not come to the petitioner's rescue.

7.This writ petition is dismissed. No costs.

12.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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2.The Plan Director,
Tamilnadu Health Plan,
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G.R.SWAMINATHAN, J.

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