BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.6423 of 2018
and
W.M.P(MD)No.6230 of 2018

R.Suresh Kumar ... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Blackward Classes,
Most Backward Classes and Minorities
Welfare Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

2.The Commissioner/Director,
Most Backward Classes and De-notified
Communities Welfare Department,
Elizagam,
Chepauk,
Chennai – 600 005.

3.The Joint Director,
Kallar Reclamation,
Madurai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter issued by the first respondent in No.6212/PiNa3(1)/2016-2, dated 25.04.2017 and the consequential letter issued by the second respondent in letter

No.A2/4321/2016, dated 11.05.2017 and also the intimation letter issued by the third respondent in letter No.H7/24018/2016, dated 21.06.2017 and quash the same and consequently directing the first respondent to reimburse a sum of Rs.2,16,896/- to the petitioner towards the medical expenses incurred by the petitioner towards the medical expenses incurred by the petitioner for the petitioner's daughter medical treatment with 6% interest within the time stipulated by this Court.

For Petitioner : Mr.M.Muthugeethayan

For Respondents : Mr.D.Gandhi Raj
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the letter issued by the first respondent, dated 25.04.2017 and consequential letter issued by the second respondent, dated 11.05.2017 and the intimation letter issued by the third respondent, dated 21.06.2017, thereby rejected the claim of the petitioner for medical reimbursement.

2.The petitioner is working as a Superintendent in the third respondent's office. He is covered by the New Health Insurance Scheme, 2012 being in the service of the Government of

Tamil Nadu. The subscription of the premium is also deducted from the petitioner's salary. It is covered for himself and his family members to avail of medical treatment. His daughter suffered with congenital deformity namely maxillary and mandibular (lower jaw) set back with the nose. Therefore, she had suffered from biting the food, unbalanced facial appearance from the front and side, an inability to make the lips meet without straining, chronic mouth breathing and sleep apnea (breathing problems while sleeping). Therefore, she was advised to correct the functional problems by surgery. At this juncture, she was aged about 12 years and she was admitted in Balaji Dental and Craniofacial Hospital which is exclusively for facial and dental surgery in Chennai on 08.05.2016. She had undergone facial surgery namely maxillary and mandibular set back with nose correction by administering general anesthesia. Thereafter, she was discharged from the hospital on 11.05.2016. The petitioner had paid a sum of Rs.2,16,896/- for the surgery expenses, medical bills, tests, scans and for incidental expenditures due to surgery. Therefore, the petitioner had made a claim as per the New Health Insurance Scheme, 2012 for the treatment undergone by her daughter. On receipt of the same, the third respondent by proceedings dated 18.07.2016 recommended the medical reimbursement claim to the second respondent. In turn, the

second respondent by its communication dated 06.10.2016 forwarded to the first respondent. However, the first respondent by its communication dated 25.04.2017 rejected the claim made by the petitioner on the ground that the scheme is on a cashless basis and pre-authorization for taking treatment from the approved network hospital. It was communicated through the second respondent. In turn, the second respondent communicated the same to the third respondent, by communication, dated 11.05.2017. It was informed by the third respondent by its communication dated 21.06.2017.

3.On perusal of the counter-affidavit filed by the respondents and on the submissions made by Mr.D.Gandhi Raj, learned Special Government Pleader appearing for the respondents would reveal that on scrutinization of the claim made by the petitioner found that the treatment and the hospital in which the petitioner's daughter was treated are not classified in the Government Order in G.O(Ms)No.243, Finance (Salaries) Department, dated 29.06.2012. Further, pre-approval is required and as such, reimbursement is not available in the scheme. Therefore, the claim of the petitioner was rejected.

4.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5.In respect of treatment taken for other ailments in the Non-Network Hospital is concerned, already the Hon'ble Division Bench of this Court reported in 2019 2 Mad LJ 1 : (2019) 1 CWC 760, State Level Empowered Committee Represented by its Commissioner and others Vs. S. Paramasivam and another, has held as follows:

> *"3. The rejection of the claim of the Petitioner for the medical reimbursement was impugned by the Petitioner in W.P. (MD) No. 23912 of 2016. The Writ Court by order dated 27.02.2017 in that Writ Petition, after referring to the decisions of the Division Benches of this Court in India Healthcare Services (TPA) Limited v. K. Parameshwari, reported in CDJ 2017 MHC 2213 and N. Raja v. Government of Tamil Nadu [2016 (3) CTC 394], held that in cases where the Insurance Company could not be held liable to reimburse the medical expenses incurred for having taken treatment in a non-network hospital, the Pensioner was entitled to his claim to be settled by the State Government under the Tamil Nadu Medical Attendance Rules. Accordingly, the order impugned in the Writ Petition was set aside and direction was issued to the Government of Tamil Nadu to sanction the medical expenses incurred by the Petitioner as per the eligibility criteria in terms of amount under the Scheme along with interest at the rate of 9% per annum without standing on technicalities and release*

the eligible amount within a period of two months from the date of receipt of copy of this order.

4. We have heard Mr. K.K. Senthil, Learned Counsel for the Petitioner, Mr. D. Muruganantham, Learned Additional Government Pleader for the First to Sixth Respondents and Mr. A. Shajahan, Learned Counsel for the Seventh Respondent in this Appeal and perused the materials placed on record apart from the pleadings of the parties.

5. It is strenuously urged by the Learned Additional Government Pleader appearing on behalf of the First to Sixth Respondents that the Writ Court ought not to have fastened any liability on the State Government when the Insurance Company was not held to be liable under Health Insurance Scheme and the direction to the Government of Tamil Nadu to reimburse the medical expenses incurred by the Petitioner would lead to downfall in the implementation of that Scheme itself.

6. We are unable to countenance any of the submissions made on behalf of the First to Sixth Respondents, particularly in view of the decision of the Division Bench of this Court in Star Health and Allied Insurance Company Limited v. A. Chokkar [(2010) 2 LW 90], which has been followed by other Division Benches of this Court in India Healthcare Services (TPA) Limited v. K. Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension v. 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, and suffice here to refer to para nos. 24 and 25 of the decision in Star Health and Allied Insurance Company Limited v. A. Chokkar [(2010) 2 LW 90], which reads 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."

7. The Hon'ble Supreme Court of India in Shiva Kant Jha v. Union of India [2018 (5) MLJ 317], dealing with unfair treatment meted out to several retired Government servants in their old age for medical reimbursement under similar provisions of the Central Government Health Scheme, held in para nos. 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."

8. In this context, it would also be useful to refer to clause 14(4) of the Guidelines for Implementation of New Health Insurance Scheme, 2018, for Pensioners (including Spouse)/Family Pensioners in the Appendix to G.O. Ms. No. 222, Finance (Pension) Department, dated 30.06.2018 issued by the Government of Tamil Nadu, which is extracted below:

> *"14.(4) In case, a Pensioner/Family Pensioner undergoes emergency treatments/surgeries not covered under this Scheme in either Network Hospital or Non-Network Hospital, no claim can be filed under the Health Insurance Scheme. However, they shall be eligible for claim to the extent permissible under the Tamil Nadu Medical Attendance Rules and the G.O. Ms. No. 1023, Health and Family Welfare Department, dated 17.06.1980. It may be noted that the Tamil Nadu Medical Attendance Rules requires that treatment in private hospitals should not be resorted to except in case of emergencies. Clause 2(3) of the aforesaid Government Order states that in genuine cases of emergency, the claims will be restricted to the expenditure that would have been incurred had the patient taken treatment in a Government hospital excepting diet charges. For claims under Tamil Nadu Medical Attendance Rules, the Beneficiaries may apply to the authority in the department in which the Government employee last served who is competent to process and forward pension proposal to the Accountant General, Tamil Nadu. The Head of Office shall process the claims and pay the eligible claims under the Tamil Nadu Medical Attendance Rules."*

9. Though that Governmental Order has been issued after the claim has been made in this case, the aforesaid guidelines, which are based upon the instructions provided in the earlier Government orders and the Tamil Nadu Medical Attendance Rules, are obviously clarificatory in nature and would apply to past cases as well.

10. In the light of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. However, we are of the considered view that it would suffice to award interest at the rate of 7.5% per annum instead of 9% per annum that had been granted for the delay in medical reimbursement to the Petitioner."

6.Therefore, the treatment on an emergency basis even in a non-network hospital could not be disqualified so far as obtaining reimbursement of the medical expenses incurred for the treatment. Further, in annexure II of G.O(Ms)No.243, Finance (Salaries) Department, dated 29.06.2012 with regard to XIII under the head of General: other surgeries wherein Sl.No.57(f) says all surgeries for correction of congenital deformities and management of subsequent problems is also covered under the Insurance Scheme.

7.On perusal of the photographs of the petitioner's daughter before operation and post operation would clearly reveal that she suffered a lot even for her breathing, biting food and other essential activities. It may cause death during her sleep. Therefore, it was an emergency to undergo surgery as advised by the experts. She expert from the Balaji Dental and Craniofacial Hospital (exclusively to facial and dental surgery), Chennai. Further, facial surgery is not available in the approved/network hospital and as such, it cannot be a ground for rejection of a medical reimbursement claim.

8.This Court repeatedly held against the stand taken by the respondents that the scheme is on a cashless basis and no payment is to be paid to the petitioner to the approved hospital and payment will be made to the network hospitals only for approved treatment procedure list, as contemplated under the Government Order, this Court directed the authorities to pay the medical expenses spent by the beneficiaries for the treatment for the employee as well as the employee's family members and the employer shall not be compelled to take treatment in the network hospital listed in the Government Order.

9.In view of the above, the rejection of medi-claim reimbursement of the petitioner cannot be sustained and the same is liable to be quashed.

10.Accordingly, the impugned letter issued by the first respondent, dated 25.04.2017, consequential letter issued by the second respondent, dated 11.05.2017 and the intimation letter issued by the third respondent, dated 21.06.2017 are quashed. The first respondent is directed to reimburse the medical claim of Rs.2,16,896/- to the petitioner towards his daughter's medical treatment along with interest at the rate of 6% per annum, from the date of application till the date of realization, within a period of four weeks from the date of receipt of a copy of this order.

11.With the above directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

08.11.2024

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

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Welfare Department,
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G.K.ILANTHIRAIYAN, J.

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Order made in
W.P(MD)No.6423 of 2018

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