



W.P.(MD)No.897 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2024

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.897 of 2018

and

W.M.P.(MD)No.923 of 2018

Dharmaraj

... Petitioner

/Vs./

1. The State of Tamil Nadu,
represented by its Secretary,
Home Department,
Secretariate, Fort St.George,
Chennai.
2. The Secretary,
Finance (Salaries) Department,
Secretariat,
Chennai.
3. United India Insurance Co.Ltd.,
Divisional Office VI,
PLA Rathina towers, 5th floor,
212, Annasalai,
Chennai – 600 004.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records connected with the communication dated 09.11.2017 on the file of the



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third respondent and quash the same as illegal, consequently, direct the third respondent to reimburse the medical expenses within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani
For R-1 & R-2 : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

The writ petition has been filed challenging the order passed by the third respondent dated 09.11.2017, thereby rejected the reimbursement of medical expenses incurred by the petitioner.

2. The petitioner is working as Chief Head Warden in the Madurai Central Prison. He is a member of New Health Insurance Scheme, 2012 (Including spouse and two sons). While doing so, his wife suffered with Menorrhagia lack of blood due to low hemoglobin. Immediately she was taken to the hospital and then she was given first aid and referred to the Joseph Hospital, Virudhunagar, for better treatment. In the course of treatment, the petitioner had spent Rs.46,962/- .Thereafter, the petitioner claimed reimbursement of medical expenses by way of claim petition.



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However, the third respondent, vide order dated 09.11.2017, rejected his claim on the ground that the petitioner's wife had not taken treatment under the approved procedure. However, the hospital in which she had taken treatment is not listed in G.O.No.202, dated 30.06.2016.

3. The learned Counsel for the petitioner pointed out that the petitioner's wife's haemoglobin level drastically reduced to 5.2. Therefore, she required emergency treatment and immediately she was treated by the approved procedure in the private hospital, namely, Joseph Hospital, Virudhunagar. Therefore, in case of emergency situation, treatment can be taken even in the non-network hospital. This issue has already been settled by the Hon'ble Division Bench of this Court in W.P. (MD)No.25304 of 2018 and followed by the Hon'ble Single Bench of this Court.

4. The issue of settlement of medical claim and no more *res integra* in respect of the treatment undergone in the non-network hospital. However, the genuineness of the treatment taken by the petitioner's wife has not been disputed by the third respondent. Once the



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treatment is found to be genuine and correct procedure is followed, there is no reason to reject the medical claim of the petitioner. The Hon'ble Supreme Court of India in the case of ***Shiva Kant Jha vs. Union of India*** reported in **(2018) 5 Mad 317** is held as under:

"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



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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."



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5. Therefore, emergency treatment that has been rendered in a non-network hospital in this regard are liable to be settled not withdrawing anything to the contrary in the scheme.

6. In view of the above, the impugned order is liable to be quashed and the petitioner is entitled to full reimbursement of medical expenses with interest of 6% till the date of claim. The third respondent is directed to settle the medical claim with interest of 6% within a period of four (4) weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
jbr

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