



W.P(MD)No.21984 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD). No.21984 of 2022 and
WMP(MD) No.16154 of 2022

V.Sukumaran.

... Petitioner

Vs

- 1.Finance Department,
The Government of Tamil Nadu,
Rep by its Secretary,
Department of Finance (Pension),
Fort St.George,
Chennai-600 009.
- 2.The District Level Empowered Committee,
Under the New Health Insurance Scheme,
For Government Employees,
Govt of Tamil Nadu,
Rep by the District Collector of Kanyakumari at Nagercoil.
- 3.The District Treasury Officer,
Nagercoil, Kanyakumari District.
- 4.The Joint Director of Medical and Rural Health Services,
Kanyakumari District, at Nagercoil,
Kanyakumari District.



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5. United India Insurance Co.Ltd.,
Divisional Office VI,
Rep by its Senior Divisional Manager.
V Floor, P.L.A Rathna Towers,
212 Anna Salai, Chennai-600 006.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to its order in its report of its meeting held on 23.8.2021 on its file, the records of the 4th respondent, pertaining to his consequential order in letter in Ref.no. 1926/E3/P/2021 dated 06.10.2021 on his file and the records of the 3rd respondent in his consequential order in letter in Rc.No. 21977/2015 (59-20) / L2 dated 03.02.2022 on his file quash the same, insofar as the rejection of the petitioner's claim for reimbursement of medical expense is concerned, directing the respondents to pay the petitioner Rs.4,27,931.41/- being the reimbursement of the amount of medical expenses incurred by him for the treatment of his wife, C.Ushakumari, along with interest thereon, at the rate of 9% per annum, within a time to be fixed by this Court.

For Petitioner	: Mr.Thampi.K.N.,
For R1 to R4	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For R5	: Mr.C.Karthick



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ORDER

The petitioner is a pensioner. His wife aged about 62 years, was diagnosed with "Pancreatic Neuroendocrine Tumor" in her left breast. Suspecting it to be a cancer, the petitioner has taken his wife to Kerala Institute of Medical Sciences at Thiruvananthapuram, which is a Specialty hospital for treating cancer and also situated nearby his residence. The petitioner has spent a sum of Rs. 4,27,931.41/- for her treatment. The petitioner is a member of the New Health Insurance Scheme 2018 for pensioners and therefore, the petitioner has submitted an application to the District Treasury Officer, Nagercoil /the third respondent herein, along with the medical records, for reimbursement of the amount spent by the petitioner for his wife's medical treatment. However, the third respondent has rejected the claim of this petitioner that this petitioner has taken treatment in a non-network hospital and also for a non-emergency treatment, therefore, he is not entitled for medical reimbursement, under the New Health Insurance Scheme 2018, by his proceedings in



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Rc.No.21977/2015(59-20) L2, dated 03.02.2022. Aggrieved over the same, the petitioner has approached this Court in the year 2022.

2.It appears that pending this writ petition, the claim of medical reimbursement has been placed before the District Level Committee and the District Level Committee by its order, dated 19.12.2024, has rejected the claim of this petitioner that this petitioner has taken treatment for his wife, in a non network hospital and also for non-emergency treatment.

3.The learned counsel appearing for the petitioner submits that the petitioner's wife at the age of 62 was diagnosed with "Pancreatic Neuroendocrine Tumor' on her left breast and the doctors, who have diagnosed her at the preliminary stage has suspected that it might be a cancer and therefore the petitioner has admitted his wife in the nearest cancer Specialty hospital, namely, Kerala Institute of Medical Sciences at Thiruvananthapuram and took treatment. The learned Counsel further submits that in the event, if the tumor has not



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been attended in time by doctors specialised in a particular discipline in a specialty hospital, then there is a possibility of spreading of cancer and also it would go to the next stage, which may cause fatal to his wife. Therefore, he has taken his wife for the treatment immediately in a nearby Cancer Specialty hospital. Hence, the respondents are not justified in rejecting the claim of this petitioner on the ground that he has taken treatment for his wife in a non-network hospital. On the stand of the respondents that the petitioner's wife has been treated in a non network hospital, the learned counsel has relied on the order of the Honourable Supreme Court in ***Shiva Kant Jha Vs. Union of India***, reported in ***(2018) 16 SCC 187*** and submits that the Honourable Supreme Court has held that 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.



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4.The learned Additional Government Pleader appearing for the respondents 1 to 4 submits that as against the order of the District Level Committee, the petitioner is having a remedy before the State Level Committee and in the event, if any appeal is filed by the petitioner, it would be considered as per the terms of the agreement and it would be disbursed within a stipulated time. According to him, this petitioner has not filed any appeal as provided under the contract and has also taken treatment for his wife, in a non-network hospital and therefore, he is not eligible to maintain this writ petition.

5.The learned counsel appearing for the fifth respondent Insurance Company submits that they are bound by the contract. The Government has entered into a contract with the United India Insurance Company and they can disburse the amount of medical claim only as per the terms of the contract. He further submits that this petitioner has taken treatment for his wife in a non-network hospital and that too for non-emergency case, when there is a specific condition that the medical expenses can be reimbursed only when



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treatment is taken in a network hospital. According to the learned counsel, there are more than 20 specialty hospitals, however, the petitioner has opted for Kerala Institute of Medical Sciences at Thiruvananthapuram. Therefore, according to the learned counsel, the petitioner is not entitled to maintain this writ petition. The learned counsel, by re-iterating the stand taken by the learned Additional Government Pleader submits that this petitioner is having an appeal remedy before the State level Committee. According to the learned Counsel, the State Level Committee consists of medical experts and they can take a decision, whether the ailment suffered by the petitioner's wife is that of an emergency one, which needs an emergency treatment from a non-network hospital.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.Admittedly, this petitioner, a retired Special Sub Inspector of Police in the Department of Police. He is a member of the



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New Health Insurance Scheme 2018 and paying premium for his wife also. The petitioner's wife, who was aged about 62 years, was diagnosed with ""Pancreatic Neuroendocrine Tumor" in her left breast. The petitioner claims that it was suspected that it might be cancer and therefore he has immediately taken his wife to Kerala Institute of Medical Sciences at Thiruvananthapuram for immediate treatment, in order to prevent further complications. He further claims that if any delay in diagnosis and treatment, it would be dangerous to her life. Therefore, according to the learned counsel for the petitioner, the treatment taken for his wife for the tumor has to be treated only as an emergent.

8. This Court in a similar writ petition filed in W.P. No. 40892 of 2015, dated 11.01.2022, has taken a stand that the insurance Company cannot deny the claim merely the treatment was taken in a non-network hospital. This order has been passed by this Court, following the order of the Honourable Supreme Court in *Shiva Kant Jha Vs. Union of India, 2018 (5) MLH 317* and the



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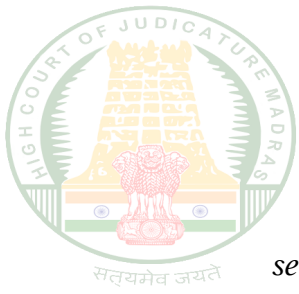
relevant paragraph of the above order is extracted as under:

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8. *The Hon'ble Supreme Court of India in Shiva Kant Jha vs. Union of India [MANU/SC/0369/2018: 2018 (5) MLJ 317], dealing with unfair treatment meted out to Government servants for medical reimbursement under similar provisions of the Central Government Health Scheme, held in paragraphs 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

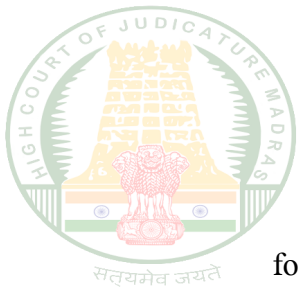


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services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on 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 implanted 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



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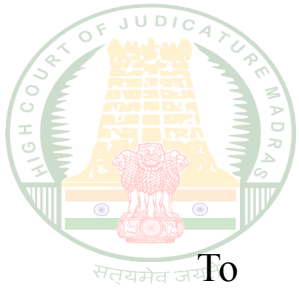
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following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."

9. Considering the above cited judgment of this Court, following the order of the Honourable Supreme Court in ***Shiva Kant Jha Vs. Union of India***, reported in ***(2018) 16 SCC 187***, this writ petition is allowed and the impugned order is set aside. The first respondent is directed to pay the eligible amount to the petitioner towards medical reimbursement, after consulting with the State Level Committee, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC:Yes/No
Index:Yes
vrn



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Finance Department,
Department of Finance (Pension),
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Chennai-600 009.
- 2.The District Level Empowered Committee,
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Rep by its Senior Divisional Manager.
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B.PUGALENDHI, J.

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Order made in
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