

(2009) 03 MAD CK 0136
In the Madras High Court
Case No : Writ Petition No. 496 of 2005

A. Arul

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 5 MLJ 220

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Judgement

K.N. Basha, J.—The petitioner has come forward with this writ petition seeking for the relief of a direction in particular a writ of Mandamus directing the third respondent to reimburse the medical expenses as per G.O.Ms. No. 18, Finance (Allowance-1) Department, dated 9.1.1992, G.O.Ms. No. 141, Finance (Salaries) Department, dated 26.2.1996 and circular dated 6.10.1999 read with letter dated 30.11.1998, along with penal interest of 18% from 19.3.1996 to till date.

2. The case of the petitioner, as seen from the affidavit of the petitioner, is that he was working as the Record Clerk in the Public Works Department under the control of the third respondent herein.

3. It is submitted that the employees of the said Department are governed by G.O.Ms. No. 18, Finance (Allowance-1) Department, dated 9.1.1992 regarding the medical aid. The scheme was formulated for constitution of fund to grant assistance to Government employees for surgery. For this purpose, a special corpus fund, namely, "Government Employees Health Fund" was created.

4. It is stated that such fund was sought to be utilised to extend the grants for major remedies, namely, the surgeries which cannot be undertaken in the Government Hospitals. Under the said scheme, the Government employee as

well as the Government should make their respective contribution. It is further submitted that the Government would extend a contribution of Rs. 40,00,000/- per annum to build up the fund and the annual subscription is to be recovered from the salary of the employees. It is stated by the petitioner that in respect of the implementation of the said scheme, the employees seeking assistance shall apply to the Administrative Department through their Head of the Department by enclosing the necessary evidence and records to establish the need for the proposed special treatment for which the assistance is sought. The Head of the Department shall process the application in consultation with the Director of Medical Education or the Director of Medical and Rural Health Services and forward them along with the recommendation to the Director of Treasury and Accounts. The Director of Treasury and Accounts shall, in turn, sanction the amount covered therein and forward it to the Administrative Department and the Secretariat. Thereafter, in consultation with the Finance Department, orders will be issued to the Director of Treasuries and Accounts to release the sanctioned amount.

5. It is further submitted by the petitioner that under G.O.Ms. No. 141, Finance (Salaries) Department, dated 26.2.1996, the power to sanction financial assistance in respect of the employees belonging to the other Departments in District was delegated to the respective District Officers. It is further clarified by the letter dated 6.10.1999 vide O.Mu. No. 14775/P2/99 that 75 % of the total expenditure incurred can be reimbursed at the District level itself.

6. The case of the petitioner is that his wife Tmt. A. Shanthi suffered from acute stomach ache and she was admitted in Krishna Hospital, Cuddalore and underwent a surgery and as a result, he had incurred an expenditure of Rs. 19,000/- towards the surgery and as such, he had sought for the medical reimbursement of Rs. 15,000/- by submitting the relevant details along with his representation dated 20.5.1996 to the third respondent herein. The third respondent, in turn, forwarded the same to the Deputy Director, the Government Hospital, Cuddalore through his letter dated 27.6.1996, by marking the copy to the petitioner. The Deputy Director, in turn, by his letter dated 25.2.1998, had given a report, after the medical board examination of the wife of the petitioner with the findings that the wife of the petitioner in unavoidable circumstances for life saving purpose had undergone surgery on 19.3.1996 for "Ruptured Ectopic Gastation under G.A. Laporotomy". The Deputy Director with the above said findings recommended that the petitioner is entitled to the medical reimbursement under the Government Employees Health Fund Scheme. It is stated that the said recommendation was given to the Superintending Engineer, Vellore and he, in turn, had written a letter to the second respondent, namely, the Chief Engineer, Public Works Department, through his letter dated 30.11.1998, that the petitioner was eligible for Rs. 11,211/- towards the medical expenditure incurred and that the cheque for the said amount should be issued in favour of the petitioner. The second respondent, in turn, forwarded the same to the third respondent through his letter dated 1.6.2001 with the direction to

take further action.

7. It is contended by the petitioner that in spite of several representations, no action was taken for sanctioning the above said amount towards the medical expenditure. It is submitted that the petitioner lastly sent the representation dated 13.3.2003 to the second and third respondents to sanction the amount at the earliest possible, but no action was taken. Therefore, it is submitted that the petitioner has been constrained to prefer a petition in C.O.P. No. 71 of 2003 before the District Consumer Redressal Forum, Cuddalore praying for the medical reimbursement but the same was dismissed by the order dated 22.7.2004 on the ground that the Government servants stand excluded from the provisions of the Consumer Protection Act and given liberty to the petitioner to approach any competent forum for such relief. Thereafter, the petitioner has come forward with this present writ petition seeking for the above said relief.

8. Heard the learned Government Advocate appearing for the respondents in respect of the claim of the petitioner.

9. I have carefully considered the submissions of the learned Government Advocate appearing for the respondents and perused the affidavit of the petitioner and other relevant materials available on record.

10. The fact remains that the wife of the petitioner Tmt. A. Shanthi underwent surgery for "Ruptured Ectopic Gestation under G.A. Laparotomy" in Krishna Hospital, Cuddalore. The materials available on record disclose that a scheme was formulated for constitution of fund to render assistance to the Government Employees for surgery. Pursuant to G.O.Ms. No. 18, Finance (Allowance-1) Department, dated 9.1.1992, the special corpus fund, namely, "the Government Employees Health Fund" was created. It is not disputed that the petitioner has contributed the required amount for the said scheme as a Government employee apart from the contribution of the Government. It is seen that by G.O.Ms. No. 141, Finance (Salaries) Department, dated 26.2.1996, the power to sanction financial assistance in respect of the employees belonging to other Departments in District was delegated to the respective District Officers. By letter dated 6.10.1999, vide O.Mu. No. 14775/P2/99, it was clarified that 75% of the total expenditure incurred can be reimbursed at the District level itself. Therefore, the petitioner rightly submitted his representation dated 20.5.1996 to the third respondent namely, the Executive Engineer, Building Construction and Maintenance, Public Works Department, Cuddalore, claiming medical reimbursement of Rs. 15,000/- from the expenditure incurred by the petitioner for the surgery of his wife amounting to a sum of Rs. 19,000/-.

11. The third respondent, in turn, forwarded the said representation to the Deputy Director, the Government Hospital, Cuddalore through his letter dated 27.6.1999 and the Deputy Director, in turn, had given a report after the medical Board Examination of the wife of the petitioner giving a finding that "in unavoidable circumstances for life saving purpose, the petitioner's wife had

undergone a surgery on 19.3.1996 for "Ruptured Ectopic Gastation under G.A. Laporotomy" and further recommended that the petitioner is entitled to the medical reimbursement under the Government Employees Health Fund Scheme.

12. It is seen that the Superintending Engineer, Vellore, had written a letter to the second respondent dated 30.11.1998, that the petitioner was eligible for an amount of Rs. 11,211/- towards the medical expenditure incurred and that the cheque for the said amount should be issued in favour of the petitioner. In the said letter a reference was made in respect of the Government letter No. 2053/Salary/95.1/Finance/dated 20.06.1995 to the effect that the medical reimbursement should be sanctioned even in respect of the surgery undertaken by the patient from the recognized and standard private hospitals. It is also clearly stated in the said letter that the wife of the petitioner/patient appeared before the medial committee on 24.03.1998 with relevant records in respect of the surgery underwent by her on 19.03.1996 for "Ruptured Ectopic Gastation under G.A.Laporotomy" at Krishna Hospital, Cuddalore and further it is stated in the said letter that the medical committee President and the Joint Director, Government Headquarters Hospital, Cuddalore, also certified in their letter dated 25.03.1998 that as per G.O. No. 490/Finance (Salary) dated 19.06.1996 and the G.O. No. 846/Finance (Salary) dated 14.12.1993, the petitioner is entitled to get the medical reimbursement in respect of the surgery underwent by his wife. It is seen that the Superintending Engineer, in the letter, dated 30.11.1998, further requested the second respondent herein to issue a cheque for an amount of Rs. 11,211/- in favour of the petitioner after obtaining the amount from the Director of Treasuries. But, unfortunately, the said letter sent along with connected documents has been kept under cold storage and no action whatsoever taken by the second respondent in spite of the repeated representations of the petitioner.

13. The last representation given by the petitioner dated 13.03.2007 to the second respondent also proved to be futile. As a result, the petitioner has been constrained to file a petition before the District Consumer Redressal Forum, Cuddalore and the same was also dismissed by order dated 22.7.2004 on the ground that the claim of the petitioner stands excluded from the provisions of the Consumer Protection Act and the liberty was given to the petitioner to take appropriate action. The petitioner, having left with no other effective alternative remedy, has been constrained to approach this Court with the present writ petition.

14. As already pointed out, it is heartening and shocking to note that the genuine and bonafide claim of the petitioner for the medical reimbursement in respect of the surgery underwent by his wife was kept under cold storage for more than a decade. At the risk of repetition, it is to be reiterated that the petitioner's wife underwent the surgery on 19.03.1996 and after the surgery, the petitioner submitted his representation for claiming the medical reimbursement on 20.05.1996 and the petitioner's wife appeared before the medical committee on 24.03.1998 and the medical committee sent its report holding that the petitioner

is entitled to get the medical reimbursement by the letter dated 25.03.1998 to the Superintending Engineer, Public Works Department, Vellore, and ultimately, the Superintending Engineer, Vellore, sent a letter dated 30.11.1998 to the second respondent enclosing the relevant records and referring the relevant Government Orders and letters in respect of the medical reimbursement and requested the second respondent to pay the medical reimbursement to the tune of Rs. 11,211/- after obtaining the amount from the Director of Treasuries. It is most unfortunate to note that even after the observance of all formalities and procedures culminating into the request of the Superintending Engineer to the second respondent to pay the amount, the said records were kept under cold storage without any action even after the lapse of more than a decade. The petitioner has been driven from pillar to post and suffered mental torture and agony in order to get the genuine and bonafide claim of medical reimbursement.

15. It is well settled by a catena of decisions of the Hon'ble Apex Court that the right to health is a fundamental right under Article 21 of the Constitution of India. The Hon'ble Apex Court in *Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another*, has held that it is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.

16. In yet another decision in *Suman Rakheja V. State of Haryana* reported in 2004 (13) SCC 562, the Hon'ble Apex Court has held that the husband of the petitioner who had developed paralytic stroke on the left side of the body due to blood clotting on the right side of the brain, was admitted in an emergent condition in a private hospital. The Hon'ble Apex Court, taking note of the emergent nature of the treatment, granted medical reimbursement to the petitioner therein.

17. This Court also granted the similar relief to the Government servants in the cases reported in *G. Elanvazhagan v. Commissioner of Treasuries and Accounts, Chennai-15* and *Ors. 2006 (4) MLJ 627* and *C. Nagamuthu Vs. State of Tamil Nadu and Others*, .

18. In the light of the above settled principle of law as laid down by the Hon'ble Apex Court and this Court and in the light of the materials available on record and for the aforesaid reasons, this Court has no hesitation to direct the second and third respondents to reimburse the medical expenditure of Rs. 11,211/-, as per G.O.Ms. No. 18, Finance (Allowance-1) Department, dated 9.1.1992, G.O.Ms. No. 141, Finance (Salaries) Department, dated 26.2.1996 and circular dated 6.10.1999 read with letter dated 30.11.1998, with 12% interest from 20.5.1996 till the date of payment. The second and third respondents are further directed to

make such payment within a period of two months from the date of receipt of a copy of this order of this Court. The writ petition is ordered accordingly. No costs.