(2012) 04 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 9096 of 2012 and M.P. No. 1 of 2012

A. Balamurugan — APPELLANT

Vs

State of Tamil Nadu and Others — RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2012) 5 CTC 308

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Balu, for the Appellant; S. Gunasekaran, GA for RR 1, 2 and Mr. S. Muthuraj for TASMAC R-3, for the Respondent

Judgement

Honourable Mr. Justice K. Chandru

1. This writ petition is filed by the petitioner seeking to challenge an order dated 12.03.2012 and after setting aside the same seeks for a

consequential direction to permit the petitioner to undergo the renal transplantation in the fifth respondent hospital. By the impugned order, the

General Manager of the respondent TASMAC informed the petitioner that for the purpose of undergoing renal transplantation, under the

provisions of Health Fund, maximum only Rs. 1 lakh can be given. Therefore, the petitioner was directed to undergo treatment and thereafter,

claim the amount as per the rules.

2. The petitioner contended that he is having salary of only Rs. 5000/- per month and it will be difficult for him to mobilize such an huge amount.

The Doctors have examined him and found that he is suffering from chronic kidney disease end stage Renal disease. The petitioner was advised to

undergo renal transplantation. The approximate cost for the said surgical

procedure would be around Rs. 5 lakhs. The petitioner is already paying

Rs. 80/- per month to become the member of the health fund. Since the respondent establishment had obtained exemption from being the member

of the ESI, it was prayed that a direction should be given to the respondent TASMAC to provide medical assistance for undergoing treatment.

3. On notice from this court, Mr.S.Muthuraj, the Standing Counsel for TASMAC obtained a counter affidavit, dated 19.04.2012 from the third

respondent. In the counter affidavit, in paragraphs 7 to 9, it was averred as follows:

7....The petitioner in his representation dated 11.01.2012 has requested TASMAC to give a letter of undertaking to the 5th respondent Hospital

agreeing to pay the expenses of the charges for Renal transplantation. Since there is no provision in the scheme to pay for the treatment of the

petitioner in advance and the medical expenditure incurred can only be reimbursed after incurring the expenses, a letter No. R2/0434/2012 dated

12.03.2012 was sent to the petitioner.

8. It is respectfully submitted that the averments in Ground A are denied as false and untenable. Based on the various medical schemes available to

both regular employees and temporary employees, TASMAC extends most of the benefits which are available to regular employees to the

temporary employees. Recently Government vide G.O.Rt.No.65 dated 9th January, 2008 implemented New Health Insurance Scheme to the

regular employees of TASMAC. The temporary employees are covered under free treatment in Government hospitals (this is also available to

regular employees), Health Fund Scheme (this is not available to regular employees since New Health Insurance Scheme was introduced by

Government), Accident / Injury / Disablement Relief Fund Scheme (this is not available to regular employees). It may be seen from the above that,

the temporary employees are given equivalent or better medical benefits that the regular employees. Hence there is no discrimination in extending

Medical benefits between regular employees and temporary employees.

9. It is respectfully submitted that the averments in Ground B are denied as false and untenable. The petitioner could have availed Renal

Transplantation in reputed Government Hospitals in Chennai without paying any fee / Charges (since TASMAC pays Rs. 600/- per annum per

employee) instead of proposed to undergo in the 5th respondent Hospital. If the petitioner is insisting on to take the treatment in the 5th respondent

hospital he can reimburse his medical expenses bill to the extent of Rs. 1.00 lakh on production of bill.

4. The respondents have agreed that the petitioner is covered by the health fund and his is eligible for reimbursement. The contention that the

money will be paid after surgical procedure may sound attractive, but the practical difficulty is that the petitioner, who is drawing only Rs. 5000/- in

the adhoc employment cannot be asked to shell out the money in advance and later claim for reimbursement. Therefore, Mr.K.Balu, learned

counsel for the petitioner contended that if the respondent TASMAC gives an undertaking to reimburse the amount, then he can undergo the

surgical procedure. The other contention of the respondent TASMAC was that the petitioner should take treatment only from the Government

hospital and not in the fifth respondent hospital. The said argument is only sated to be rejected. So long as the fifth respondent hospital also comes

under the purview of reimbursement for having undergone the treatment, it is not for the respondent to suggest as to which hospital the petitioner

should undergo treatment.

5. In this context, it is necessary to refer to a judgment of this court in K. Mani Vs. The Secretary to Government, Health and Famiy Welfare

Department, The Director of medical and Rural Health Services, The Joint Director of Medical Services, Government Headquarters Hospital and

The Superintendent of Police, and after referring to the decisions of the Supreme Court, this Court had summarised the following propositions laid

therein in matters relating to medical reimbursement scheme for government servants:

(i) It is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. (see Mr. Cooper on Vincent

Panikurlangara v. Union of India and Ors., (1987) 2 SCC 165

(ii) Article 21 of the Constitution of India casts the obligation on the State to preserve life. (See Pt. Parmanand Katara Vs. Union of India (UOI)

and Others,

(iii) Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. (See

Chameli Singh and others etc. Vs. State of U.P. and another,

(iv) The right to health to a worker is an integral facet of meaningful right to life. (See Consumer Education and Research center and others Vs.

Union of India and others,

(v) Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires

treatment at a specialised approved hospital..... it is but the duty of the State to bear the expenditure.

(vi) No State of any country can have unlimited resources to spend on any of its project. (See State of Punjab and Others Vs. Ram Lubhaya

Bagga Etc. Etc.,

6. Therefore, a direction is given to the third respondent to furnish a letter of authorization and undertaking to the fifth respondent hospital so as to

enable the petitioner to undergo the treatment and thereafter if the bills are raised by the fifth respondent hospital, to honour the same. The third

respondent''s annual turnover is more than Rs. 16000 crores. They are also responsible for selling liquors to the citizens, which indirectly may

cause both liver and renal failure. It is for the third respondent to provide funds for their own employees. They cannot plead resource crunch or

hide themselves by quoting any rules.

7. Therefore, the following directions are issued :

(i) The third respondent is directed to furnish a letter of authorization and undertaking addressed to the fifth respondent hospital authorizing the

petitioner to undergo renal transplantation and also to undertake the reimbursement of the entire expenses subject to legal scrutiny of the bills raised

by the hospital. The authorization letter should be delivered to the fifth respondent after due notice to the petitioner.

(ii) The ceiling fixed by the third respondent, i.e., the petitioner can only get Rs. 1 lakh is unrealistic. It goes without saying that renal transplantation

surgery procedure costs much more. Therefore, the undertaking should not be subjected to any ceiling limit on the surgery to be undertaken by the

petitioner.

(iii) This exercise shall be undertaken within a period of one week from the date of receipt of copy of this order.

With the above directions, the writ petition will stand disposed of. No costs. Consequently connected miscellaneous petition stands closed.

