
(2009) 10 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 21891 of 2009 and M.P. No. 1 of 2009

B.R. Devarajan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 10 MAD CK 0138

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : A.R. Nixon, for the Appellant; S. Siva Shanmugam Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Heard the learned Counsel for the petitioner. Mr. S. Sivashanmugam, learned Government Advocate takes notice for the respondents. By consent, the writ petition is taken up for final disposal.

2. This writ petition is filed challenging the order of the second respondent dated 02.08.2009 and for a consequential direction to the respondents to sanction the medical reimbursement eligible to the petitioner as per the Government Order for the surgery conducted on the petitioner on 16.07.2007.

3.The petitioner worked as Secondary Grade Teacher at Panchayat Union Middle School, Pernampet, Vellore District and retired from service and is receiving pension from the Government of Tamil Nadu. He suffered pain at knee joint and underwent treatment at Peoples Nursing Home, Aminjikarai, Chennai between 15.07.2007 and 03.08.2007. The doctor diagnosed that he suffered severe Osteoarthritis Both Knees and gave treatment. He incurred an expenditure of Rs. 2,66,410/-. Since the petitioner is the subscriber to the Tamil Nadu Pensioner's Health Fund, he claims medical reimbursement of the above expenditure. In that regard, he made a representation to the second respondent on 12.02.2008. The

second respondent rejected the said claim on the basis that (1) the Hospital in which treatment/surgery undergone is not found in the accredited list of the references cited and (2) the surgery/treatment undergone is not found in the list of specialised surgery/treatment of the references cited.

4. The issue involved in this writ petition viz., the treatment undergone by a pensioner from a hospital which is not accredited or the nature of treatment not enlisted, has been decided by this Court on many occasions by holding that such a refusal is an arbitrary exercise of powers apart from holding that the nature of treatment to a patient to be decided by the Doctor and that cannot be curtailed by any condition that only a certain type of treatment should be taken. In a decision reported in *E. Ramalingam Vs. The Director of Collegiate Education and The Regional Joint Director of Collegiate Education, Tiruchirapalli Region*, it was held that the medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be a factum of treatment before the medical claim is honoured. The same was followed subsequently in a decision reported in 2006 (3) L.W. 529 in the case of *C. Nagamuthu v. State of Tamil Nadu and Ors.*

5. In respect of payment of reimbursement of such medical claims, it is not bounty, but it is an obligation of the Government, especially, when the petitioner being the pensioner, subscribing to the Health Fund and it is also a constitutional mandate. With reference to right to life under Article 21 of the Constitution of India, it was held by the Supreme Court in *Consumer Education and Research center and others Vs. Union of India and others*, that right to health to a worker is an integral facet of meaningful right to life. The Government has constitutional obligation to provide health facilities. If the Government servant has suffered an ailment which requires treatment, it is the duty of the State to provide and bear the expenditure.

6. In view of the settled legal position, the impugned order of the second respondent dated 02.08.2009 is set aside and the writ petition stands allowed with a direction to the respondents to reimburse the amount of medical expenses incurred by the petitioner, expeditiously, in any event, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.