

**(2011) 09 MAD CK 0344**  
**In the Madras High Court**  
**Case No : Writ Petition No. 11583 of 2011**

C. Ganesh

APPELLANT

Vs

The Central Administrative Tribunal and Others

RESPONDENT

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**Date of Decision :** 27-09-2011

**Acts Referred:**

Constitution of India, 1950 — Article 21, 39, 41, 47  
Evidence Act, 1872 — Section 101, 106  
International Covenant on Economic, Social and Cultural Rights, 1966 — Article 7  
Universal Declaration of Human Rights, 1948 — Article 25(2)

**Citation :** (2011) 09 MAD CK 0344

**Hon'ble Judges :** M.Venugopal, J; Elipe Dharma Rao, J

**Bench :** Division Bench

**Advocate :** V. Vijay Shankar, for the Appellant; E. Arasu, for R2 to R6, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.Venugopal, J.—The Petitioner has filed the instant Writ Petition praying for issuance of Writ of Certiorarified Mandamus, calling for the Proceedings of the 1st Respondent/Tribunal in O.A. No. 636 of 2007, dated 29.01.2009 and the order passed by the 3rd Respondent in his Proceedings No. CE/9329/28, dated 08.08.2006 and to quash the same. Resultantly, the Petitioner has sought for issuance of directions to the Respondents to reimburse a sum of Rs. 76, 331.45, being the disallowed portion, together with interest at 18% thereon.

2. The 1st Respondent/Central Administrative Tribunal, while passing the order on 29.01.2009 in O.A. No. 636 of 2007, has among other things observed that "the Applicant has filed an Appeal dated 11.03.2006 and the Respondents have passed an order No. CE/9329/28, dated 08.08.2006 and that the said order in Appeal is a speaking one etc. Further, the Respondents have already considered the request of the Applicant and settled the Bills as per the admissible rates of Government of India, paying a total sum of Rs. 80, 840/- and that the Applicant has not produced any new grounds other than what have already been decided

and consequently, dismissed the Original Application.

3. Being dissatisfied with the order of dismissal dated 29.01.2009 in O.A. No. 636 of 2007 passed by the 1st Respondent/Tribunal, the Writ Petitioner/Applicant has projected this Writ Petition before this Court.

#### 4. BACKGROUND FACTS:

(a) The Writ Petitioner in O.A. No. 636 of 2007 has averred that while working under the 3rd Respondent/Commanding Officer, INS Rajali, Arakkonam, he met with a road accident on 02.03.2000 culminating in breaking of his right side ribs, collar bone and right leg. Because of the serious injuries suffered by him, he could not be treated at the local General Hospital, Arakonam and he has been referred to the General Hospital, Chennai, on 03.03.2000 by the Local Doctors. Because of the Doctors strike at the Government Hospital and also because of his deteriorating condition, he has been shifted to a small private hospital in Tambaram on 04.03.2000. In the said private hospital, there is no availability of proper treatment. Hence, he has been shifted to Balaji Hospital Private Limited, Guindy, on 04.03.2000 and he has been kept in the intensive care for about 16 days.

(b) The Petitioner goes on to add that after treatment, he has been discharged and on receiving duties, he submitted a medical reimbursement claim for Rs. 1, 42, 494/- through his representation, dated 28.06.2000 and produced all the receipts, bills and other connected documents. Initially, his request has been rejected based on wrong reason on his Appeal to the 4th Respondent/Area Accounts Officer, CDA (Navy), Chennai, he has been granted the entire medical reimbursement as per communication dated 22.06.2001. Later, his claim has been disallowed and he has been granted only a sum of Rs. 37, 925/-.

(c) Earlier, the Petitioner filed O.A.891 of 2001, claiming full medical reimbursement, as per his claim dated 28.06.2000. However, the Tribunal observed that the sanction of only Rs. 37, 925/- is incorrect and directed the Department to re-examine the entire issues and allow the reimbursement on a realistic basis. He filed Contempt Application No. 19 of 2003 before the 1st Respondent/Tribunal for not implementing the direction issued in O.A. No. 891 of 2001, dated 15.03.2002. During the course of hearing of the Contempt Application on behalf of the Respondents, it has been informed that the Petitioner is entitled to an enhanced medical reimbursement and that he would be paid around Rs. 30, 000/- over and above the amount already paid to him. The said Contempt Application has been dismissed by an order dated 22.04.2003. However, he has been granted the liberty to challenge the action of the Respondents, if he has any grievance regarding the quantum of payment.

(d) The Petitioner has been paid a sum of Rs. 32, 915/-. The total amount paid to him thus comes to Rs. 80, 840/- as against his original claim of Rs. 1, 42, 494/-. He sent his representation on 22.10.2003, furnishing the details of the payments due to him as per his entitlements, because of the reason that the

Department has not appreciated his claim as per the relevant rules. His representation has been rejected on 25.05.2004 and he has also been advised to prefer an Appeal to the Competent Authority as per rules, if he is aggrieved against the rejection order. He filed an Appeal on 05.11.2004, which has been incorrectly addressed by him and hence, he has been directed to file another Appeal. Therefore, he submitted an Appeal to the 3rd Respondent (2nd Respondent in Original Application) on 14.12.2004. But, the said Appeal on 08.02.2005 has been rejected and he has been advised to prefer an Appeal to the Government.

(e) Again, the Petitioner/Applicant filed another O.A. No. 693 of 2005, praying for medical reimbursement of Rs. 76, 331.45, together with interest. The 1st Respondent/Tribunal, on 27.02.2006, disposed of the Original Application by directing him to submit an Appeal and the same to be disposed of, within a period of two months from the date of receipt of the Appeal. He submitted another detailed Appeal. Since no representation has been received by him, he filed another representation on 30.06.2006. On 08.08.2006, the impugned order has been passed rejecting his claim.

#### 5. COUNTER PLEAS:

(a) Before the 1st Respondent/Tribunal, the Respondents 2 to 5 have stated that the Petitioner has been admitted into the Government Hospital, Arakonam, when he met with a road accident on 02.03.2000 at about 17.45 hours and he has been treated on the spot at the said Government Hospital. Based on the advise of Government Hospital, Arakonam, he has been admitted into the Government General Hospital, Chennai, at night on 02.03.2000 and treated for two days. He has not produced any documentary evidence in regard to the admission in the Government Hospital, Arakonam and has not produced further advise of Government General Hospital, Arakonam Doctor for his treatment in Government General Hospital, Chennai. On 04.03.2000, at about 13.00 hours, he has been discharged on his own accord from the Government General Hospital, Chennai, after giving an undertaking against the advise of the Government General Hospital, Arakonam and has been admitted on his own in a Private hospital viz., A.G. Hospital, Tambaram, Chennai, with the help of his relatives. Finally, he has been admitted into Balaji Hospital Private Limited, Guindy, Chennai, on 04.03.2000. He submitted his claim for Rs. 1, 42, 494/- along with his representation dated 28.06.2000, after his discharge from the Balaji Hospital Private Limited, Guindy, Chennai.

(b) A sympathetic view has been taken on the Petitioner's claim and he has been issued with an Ex-post-facto sanction order, dated 22.06.2001, to reimburse the expenses incurred at the Balaji Hospital Private Limited, Guindy, at Central Government Health Scheme Rates. As a special case, a sum of Rs. 47, 925/- has been reimbursed to him at Central Government Health Scheme Rates, although he has not sought prior permission from the administration for receiving treatment at Balaji Hospital Private Limited, Guindy, Chennai, against the advise

of Government General Hospital, Chennai. Further, he has not furnished a copy of undertaking given to the Government General Hospital, Chennai.

(c) The Petitioner filed O.A. No. 891 of 2001 before the 1st Respondent/Tribunal for not satisfied with the amount reimbursed to him at Central Government Health Scheme Rates. The Government of India, Ministry of Health Service, has approved the relaxation of CS(MA) Rules to additionally reimburse of Rs. 32, 915/- against the disallowance in his original claim. Thus, a total sum of Rs. 80, 840/- has been reimbursed on his original claim with an additional reimbursement of Rs. 32, 915/-. If the Petitioner has received treatment at the Government General Hospital, Chennai, the total reimbursement amount should not have exceeded more than Rs. 40, 000/- as per the Tamil Nadu Health Service Department letter, dated 16.09.2002.

(d) The Petitioner's post accidental implant removal operation claim for Rs. 19, 661/- has been restricted to Central Government Health Scheme rates vide Sl. No. 31.49 and Rs. 4, 830/- has been paid to him as per CGHS rate applicability. Similar employees have been admitted in the recognised hospital for the emergency treatment in the event of accident/serious disease are allowed for reimbursement only at Central Government Health Scheme rates and not based on the full expenses incurred in the private hospital and not based on the Ex-post-facto sanction accorded by the appropriate authority.

(e) The Petitioner again filed O.A.693 of 2005 and the Tribunal by its order dated 27.02.2006 found that he has not filed any appeal against the order of the 2nd Respondent (1st Respondent) dated 08.02.2005, but he has been permitted to file an appeal regarding his grievance on the order dated 08.02.2005, within a period of two weeks from 27.06.2006 and directed the Respondents to dispose of the same in accordance with law, within a period of two months from the date of receipt of the appeal from him. The Appeal filed by the Petitioner dated 11.03.2006 has been considered carefully by the Appellate Authority, who found that his claim is not tenable and consequently, rejected the same. Again, the Petitioner has filed O.A. No. 636 of 2007, which is not maintainable in law.

(f) As seen from the Government General Hospital, Chennai, admission/discharge certificate, dated 26.12.2000, the Petitioner has been admitted in the Private Hospital viz., A.G. Hospital, Tambaram on his own accord as per CS(MA) Rules. The Petitioner ought to have been treated at the nearest Central Government Health Scheme Hospital which he failed to do so. He has not informed about the Doctors of the Government General Hospital have been on strike on 03.03.2000 and that he has been shifted to a small hospital in Tambaram on 04.03.2000 and later, shifted to the Balaji Hospital Private Limited, Guindy, Chennai, on 4th March 2000, till he submitted his medical reimbursement claim on 28.06.2000. There is no evidence in support of his contention of the Government General Hospital, Chennai, Doctors have been on strike on 03.03.2000. He submitted a photocopy of the Newspaper report dated 29.02.2000, whereas he met with a road accident on 02.03.2000 at 17.45 hours

and shifted from the Government Hospital, Arakonam and admitted in the Government General Hospital, Chennai, during night time of 02.03.2000. Also, the photocopy of the Newspaper report aforesaid shows that the strike has been done mainly by the Tamil Nadu Medical Students and CRRLs Senior House Surgeon, Dental and Post Graduate Doctors Association which affected three Medical College Hospitals of the City and not the Government General Hospital, Chennai. Therefore, the statement of the Petitioner is that due to the Doctors strike, he has not received treatment at Government General Hospital on 03.03.2000, is untenable and incorrect.

(g) The Petitioner's bill along with the relevant documents have been submitted by the Audit Authority for audit and payment. The 5th Respondent (4th Respondent) admitted the claim as per the Petitioner's entitlement at Central Government Health Scheme rates and passed for payment of Rs. 47, 925/- including advance of Rs. 10, 000/- paid to him during treatment period. But, Balaji Hospital Private Limited, Guindy, Chennai, has not been listed in the GOI letter dated 10.06.1997 and therefore, the Petitioner cannot rely on the instructions contained. As a special case by relaxing CS (MA) Rules, a sum of Rs. 47, 925/- has been reimbursed to the Petitioner within the power of Respondents 2 to 5.

(h) Being dissatisfied with the amount paid to the Petitioner, he filed O.A. No. 891 of 2001 and the 1st Respondent/ Tribunal on 15.03.2002 has directed to re-examine the medical reimbursement claim and to allow on a realistic basis. The 4th Respondent (3rd Respondent) informed the Petitioner that the claim has been referred by the Naval Headquarters to the Government and the Ministry of Health and Family Welfare carefully considered and felt that the reimbursement, as admissible under the rules has already been allowed and paid to him. The Petitioner has also been advised that if he desires to any specific relaxation, he may specify the extent and nature of relaxation on specific item and not in general. He submitted his representation on 14.10.2002 along with the statement showing 39 Serials based on his own perception, placed reliance upon the GOI letter dated 10.06.1997 as his entitlement which is not correct.

(i) The settlement of the claim cannot be reagitated and is barred by Res Judicata. The Petitioner submitted a medical reimbursement claim towards his post accident for implant removal operation amounting to Rs. 19, 661/- which he has undergone in the same private hospital and Rs. 4, 830/- has been reimbursed to him based on item wise as per the Central Government Health Scheme rates published by GOI. In the permission letter given to him for follow-up treatment in the same private hospital, it would clearly mention that the reimbursement would be as per the Central Government Health Scheme rates. The Central Government Health Scheme Package rates for "Removal of Nails, Wires and Screws" appearing in Item 31.49 for Chennai, is Rs. 4760/- only. As against the Central Government Health rate, the applicant has been reimbursed of Rs. 4830/- which is on the higher side of the CGHS rates. Likewise, a sum of Rs. 80,

840/- against the applicant's original claim of Rs. 1, 42, 494/-has been reimbursed at higher rates at CGHS rates by relaxation CS(MA) Rules and the approval of MOH Services. In short, the further reimbursement of expenses of the Petitioner is not feasible, since he has already been paid more than CGHS Package rates.

(j) The Petitioner submitted an Appeal on being dissatisfied with the amount so far reimbursed to him through representation dated 05.11.2004 and he has been preferred an Appeal to the appropriate Appellate Authority as per order dated 13.12.2004. On 14.12.2004, he submitted his representation and the same has been forwarded to the 3rd Respondent (2nd Respondent) for necessary directive. His representation dated 14.02.2004 has been examined and the status of his reimbursed amount has been communicated with an advise that if he files any appeal, the same will be forwarded to the Headquarters along with comments of Audit Authorities for examination and onward transmission to the 2nd Respondent (1st Respondent).

#### 6. PETITIONER'S CONTENTIONS:

(1)The Learned Counsel for the Petitioner (Applicant) submits that the action of the Respondents 2 to 6 in denying the medical reimbursement in full, is an improper one and as a matter of fact, the Tribunal has wrongly held that the order passed in Appeal, dated 08.08.2006, is a speaking one and that they have taken full care to consider all the admissible claims.

(2)According to the Learned Counsel for the Petitioner, the prime contention of the Respondents 2 to 6 before the 1st Respondent/Tribunal is that the Petitioner has taken treatment in a Private Hospital, which does not come within the category of approved Hospitals.

(3)The Learned Counsel for the Petitioner submits that the Respondents 2 to 6 have not denied the factum of accident and the treatment undergone by the Petitioner. It is the case of the Petitioner that because of the Government Doctors strike, he has been moved to a private Hospital, though he has been directed to be admitted in the General Hospital due to emergency. Also, the Petitioner has been forced to move to Balaji Hospital Private Limited, Guindy, Chennai, on the advise of persons at Chennai and he has been admitted in Intensive Care Unit for nearly 16 days.

(4)The Learned Counsel for the Petitioner projects an argument that even today, the Petitioner is forced to spend portion of his Salary for attending to after the effect of surgery that has been performed earlier and the releasing of disallowed sum would be of great help to him to drive over the financial crisis.

(5)The Learned Counsel for the Petitioner contends that as per the Official Memorandum, dated 10.06.1997, the Petitioner is entitled to full reimbursement and after giving credit to the amount already paid, he is entitled to the balance amount of Rs. 76, 331.45. Moreover, the plea of the Petitioner is that he has

submitted the original bills, receipt vouchers and other concerned documents, which have not been properly adverted to by the Respondents, because of non application of mind.

CONTENTIONS of Respondents 2 TO 6:

7. Per contra, it is the contention of the Learned Central Government Standing Counsel for the Respondents 2 to 6 that the Writ Petitioner's bills, as per admissible rates of Government of India, have been settled to a sum of Rs. 80, 840/- and the admissible claims have been considered, after obtaining necessary relaxation from the Government in making payments and as such, the order of the 1st Respondent/Tribunal in dismissing the O.A. No. 636 of 2007, dated 29.01.2009, does not suffer from any serious material irregularity or patent illegality in the eye of law.

8. The Learned Counsel for the Petitioner (Applicant) cites the decision in State of Punjab and others Vs. Mohinder Singh Chawala, etc., , at Page 84, whereby and whereunder, the Honourable Supreme Court has observed thus:

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.

9. He also relies on the decision of this Court in E.V. Kumar v. The Union of India, rep. by the Ministry of Health and Family Welfare (Department of Health), Nirman Bhavan, New Delhi and Ors. (2003 (4) CTC 29), at Page 31, wherein in Paragraphs 8 and 9, it is held hereunder:

8. A perusal of the bill submitted by the Petitioner shows that he has not made any claim towards any of the aforementioned prohibited items. The bill only deals with the surgery, room rent, professional charges, Doctors consultation charges, miscellaneous charges for the use of special dye(Maxima) in view of the condition of the patient and the total amount is shown as Rs. 1, 44, 019/-. Therefore, the bill does not include items which are disapproved by the Respondents. As stated earlier, there is no limitation or ceiling in the Rules. It is not possible for the Central Government to issue an Office Memorandum overriding the rule which is statutory in character.

9. With the result, I am inclined to hold that the Petitioner is entitled to the full amount as claimed by him, namely Rs. 1, 44, 019/-.

10. He seeks in aid of the decision of this Court in E. Ramalingam Vs. The Director of Collegiate Education and The Regional Joint Director of Collegiate Education, Tiruchirapalli Region, , at Page 1074, wherein it is held as follows:

In matters like this, the Government Orders should not be strictly construed as on the date when the Government Order was issued, the treatment viz., PTCA Stent could not have been invented or introduced. In recent days, the concept of treating ailments, has advanced so much, thanks not only to the Speciality Hospitals, Doctors specialized in the modern/advance treatments, but also the advanced techniques in method of treatment with use of sophisticated equipments. 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 expertised both on academic qualifications and experience gained. Very little scope is left to the patient or his relative to decide as to manner in which the ailment should be treated.

Court cannot brush aside the advancement in modern medical treatment. Speciality Hospitals are established for treatment for 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 the beneficial order of the Government, solely on the ground that the said Hospital is not included in the Government Order. It cannot be so, as the Government Order should be read keeping the purpose for which the same was issued. 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 as found in the impugned order. Writ Petition allowed.

11. However, the Learned Central Government Standing Counsel for Respondents 2 to 5 cites the decision of the Honourable Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , at Page 118 and 119 in Paragraphs 25 and 26, it is held as follows:

The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be.

It is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it

restricts reimbursement on account of its financial constraints.

Right of one person correlates to a duty upon another, individual, employer, Government or authority. The right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizens as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform this obligation with top priority including by way allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return, there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right, finances are an inherent requirement. Harnessing such resources needs top priority.

Further in the aforesaid decision, at Page 119 and 120, it is held as follows:

The Appellants have explained that earlier under the 1991 policy, bulk of the budget was being taken by a few elites for such treatment like Heart ailment etc. to the detriment of a large number of other employees who suffered. Hence the facility of reimbursement of full charges at designated hospitals was withdrawn even under the old policy. It has to be held that the Appellant's decision to exclude the designated hospitals is not violative of Article 21 of the Constitution.

No right could be absolute in a welfare State. Man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. Not every fundamental right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. It is however hoped that Government will give due consideration and priority to the health budget in future and render what is best possible.

12. The specific stand of the Respondents 2 to 5 is that the reimbursement of expenses incurred on treatment received in the Private Clinics/Nursing Homes of the authorised Medical Attendants would not be admissible and also in relaxation

of the CS(MA) Rules even in emergent cases. The action of the Respondents in allowing the reimbursement medical expenses admissible as per rates of Central Government Health Scheme and existing rules by GOI is valid and as such, the impugned order dated 08.08.2006 passed by the 3rd Respondent (2nd Respondent) is valid as per the existing rules.

#### DISCUSSIONS:

13. The Petitioner in his representation, dated 28.06.2000, addressed to the 3rd Respondent has among other things stated that he has been in a critical stage and saving his life become a paramount importance for his wife, who has not kept the bills and records for his payment till he has been admitted into the Balaji Hospital Private Limited, Guindy, Chennai, where she has been assured of saving his life and further stated that Ex-post-facto sanction for his treatment at Balaji Hospital Private Limited, Guindy, Chennai-32, due to the Doctors strike at General Hospital, Chennai, may please be accorded and that his claim may please be admitted in audit for payment as per his entitlement at the earliest.

14. The 3rd Respondent in proceedings, dated 22.06.2001, addressed to the 4th Respondent has accorded Ex-post-facto sanction under the provisions of Ministry of Health and family Welfare (Department of Health) O.M. Nos. 11016/1/92/CGHS/(P), dated 29 Oct. 92, S-14025/92-MS, dated 04.02.1993, Ministry of defence letter No. 13(1)/93/D(Civ.II), dated 13th Jan. 1994 and Government of India decision under Para (1) of Appendix-VIII of CS(MA) Rules, 1944 and Government of India, Ministry of Health and Family Welfare (Department of Health) Letter No. S-12020/4/97/CGS (P), dated 07 Mar. 2000, for reimbursement of medical expenditure of Rs. 1, 42, 494/- (Rupees one lakh forty two thousand four hundred and ninety four only) towards reimbursement of medical expenses for emergency medical treatment in a private hospital viz., Balaji Hospital, Guindy, Chennai, in respect of Shri.C. Ganesh, S/G(III) of INS Rajali, subject to the condition that the reimbursement is to be restricted to CGHS rates etc.

15. In the Discharge Summary, dated 29.03.2000, issued by Sri Balaji Hospital, Guindy, Chennai, in respect of the Petitioner, wherein it is mentioned below:

HISTORY: H/o fall from a two wheeler when he applied sudden break to avoid a street dog near Arakonam on 02.03.2000 at 05.30 pm. He was taken to Arakonam GH and then to Madras GH where he was treated for two days and transferred to AGH from where he was referred here for further management. H/o. LOC (+) no other sp.history. Patient became dyspnoeic in AGH and hence transferred here.

ON EXAMINATION: GC fair, Vitals stable CVS-NAD, P/A-SOFT, NAD, RS-A/E decreased on (RT)side, Diffuse Crepts (+), Surgical Emphysema (+), CNS-NFND.

TREATMENT GIVEN: -DIL, Monitor + 02, Head end elevation, inj.Deriphyllin 2 cc IV tds, Inj.Ketanov 1 amp im bd, Inj.Omnatax 1 gm IV bd, Inj.Rantae 50 mg IV

bd, Observation.

SURGERY: Open reduction and internal fixation of # upper 1/3 of (RT) Tibia involving articlarsurface. On 11.03.2000 under ETGA. Post op # Uneventful, inj.Amikacin 500 mg IV bd, Inj.Ciplox 200 mg IV bd, Inj.MVI in infusion, Inj.Deriphylline 1 amp IV bd, Ipravent Nebulisation tds, T. Vit C 500 mg od, C. Selace od, T. Betalac12.5mgbd Syp. Sucralfate 10 ml tds, Syp.Ozothine 10 ml tds, Deep breathing exercises Q 3rd hrly, Steam inhalation Q 3rd hrly, Spirometry exercises Q 3rd hrly.

CONDITION ON DISCHARGE: GC fair, vitals stable, CVS NAD, RS-NAD, P/A-soft, NAD, CNS-NFND. No other sp.complaints.

TREATMENT ADVISED:

T. Vit c 500 mg od x 15 days

T. Selace od x 15 days

T. Betaloc 12.5 mg bd X 15 days

T. Rantac 150 mg bd x 15 days

Syp.Ozathalin 10 ml tds X 15 days

Syp.Gelusil 10 ml tds X 15 days.

To review after 15 days with Dr. L. Subramanian.

16. As a matter of fact, in the Discharge Summary, a Diagnosis is mentioned thus:

ROAD TRAFFIC ACCIDENT 1) FRACTURE RIBS 2nd TO 6th of (RT) SIDE, 2) COMMINUTED FRACTURE (RT) TIBIAL CONDYLE. 3) SURGICAL EMPHYSEMA (RT) SIDE.

17. A perusal of the Admission and Discharge Certificate in respect of the Petitioner issued by the Government General Hospital, Chennai-3, shows that the Petitioner has been admitted as an inpatient from 02.03.2000 to 04.03.2000 and against the medical advise, he got discharged. The Dean of the Government General Hospital in the letter dated 13.09.2002, addressed to the Director Medical and Rural Health Services, Chennai, has stated that she is furnishing the report received from the Professor and Head of the Department of Orthopaedic, Government General Hospital, Chennai-3, about the treatment of Thiru.C. Ganesh, Steno Grade II and the said report stated about the treatment which runs below:

1. Emergency

2. Facilities are available in Govt. General Hospital, Chennai.3.

3. About treatment/surgery, Manor

and further, the said letter goes hereunder:

The probable expenditure that would have been incurred had the patient taken the treatment at Govt. General Hospital, Chennai.<sup>3</sup> as a paying patient is given below: Bed charges (A Class):

Bed charges (A Class)

: 150.00

ECG

: 40.00

USG

: 200.00

X-ray

: 20.00

Blood per unit

: 350.00

Echo

: 100.00

Physiotherapy

: 30.00 per sitting

Routine examination (Urine) PCV, ET culture, creatinine, urine culture and Sensitivity

: 50.00 each

DC, Blood grouping, RH typing, sugar, urea, sputum culture, ESR, HB, ABG

: 20.00 each

Operation charges

: 1000.00

HIV

: Free

The cost of medicines may be allowed as per Tamilnadu medical attendance rules.

No separate charges are collected for Doctor fees, ICCU, Medicare, nursing, Service charges, Ventilator, dressing, cylinder, television, oxygen, monitor, pulse oxymeter, theater charges, post operative ward, registration charges, Attendant room Rent, Anaesthetist charges.

Enclosures are returned herewith.

18. A perusal of payment receipt shows that the Petitioner has received a sum of Rs. 32, 915/- from the Commanding Officer, INS Rajali, being the additional reimbursement of medical expenses, passed by the DCDA (NAVY), Chennai, vide Cheque No. 178878, dated 05.05.2003.

19. According to the World Health Organisation, "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease." The Constitution directs the state to take measures to improve the condition of health care of the people. As per Article 47 of the directive Principle of State Policy and Health, it is the important duty of the State to improve public Health, securing of justice, human condition of works, extension of sickness, old age burden, disablement and maternity benefits. Indeed, Article 47 of the Constitution of India makes improvement of public health a primary duty of State. Article 41 of the Constitution of India provides right to assistance in case of sickness and disablement. A healthy body is the basic foundation of all Homo-Sapien's activities. Therefore, the Proverb rightly goes as "Sariramadyam Khalu Dharma Sadhanam"

20. At this stage, we aptly find out the decision of the Honourable Supreme Court in Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, , Wherein it is held that "the failure of Government Hospitals to provide timely emergency medical treatment to person in need, results in violation of his right to life.

21. In C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, , at Page 462, 463 and 464 in Paragraphs 30 to 32, the Honourable Supreme Court has observed as follows:

30. Article 25(2) of Universal Declaration of Human Rights, 1948, assures that everyone has the right to a standard of living adequate for the health and well being of himself and of his family....including medical care, sickness, disability... Article 7(b) of the International Convention on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions. Article 39(e) of the Constitution enjoins the State to direct its policies to secure the health and strength of workers. The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral fact of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers to the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers the civil and political right are "mere cosmetic" rights. Socio-economic and cultural rights

are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Conventions of Economic, Social and Cultural Rights recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of the right to life. Our Constitution in the Preamble and Part IV reinforce them compendiously as socioeconomic justice, a bed-rock to an egalitarian social order. The right to social and economic justice is thus fundamental right.

31. In World Labour Report - 2, at Chapter 9 (Safety and Health) it is stated that "in every three minutes somewhere in the world one worker dies and in every second that passes at least three workers are injured". In India on an average every day 1100 workers are injured and three are killed "in industrial establishments" vide (Lawyer October 1987 page 5). In 26th ILO Convention held in Philadelphia in April 1944, recommendation No. 69 laid down norms for medical care for workers. In October 1943, the Government of India appointed Health Survey and Development Committee known as Sir Joseph Bhore Committee which laid emphasis on "Preventive Schemes". I.L.O. Asian Regional Conference held in Delhi in 1947, resolved that in every scheme for medical care in any Asian country the need for the prevention of disease and the improvement of the general standard of health must be considered as of almost importance. The Act had culminated in its birth of these recommendations providing in a limited area social security to the employees from health and occupational hazards.

32. The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Arts. 22 to 25 of the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal whose realisation requires interaction by many social and economic factors. Just and favourable condition of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources. Prevention of occupational disabilities generates devotion and dedication to duty and enthuse the workmen

to render efficient service which is a valuable asset for greater productivity to the employer and national production to the State. Yet in the report of the Committee on Labour Welfare, 1969 in paragraph 5.77 of Chapter 5, reveals that, private employers generally feel that this burden shall not be cast upon them.

22. The 3rd Respondent in his order dated 08.08.2006 in Paragraph 3 has stated the following

3. and WHEREAS, the contentions raised by Shri C. Ganesh, S.G. III, have been considered carefully and after careful perusal of the documents, letters, Govt. orders on the subject the undersigned finds that the contentions raised by the Appellant are not tenable in view of the following:

(a) The Honourable Tribunal by their order dated 27 Feb 06 directed the applicant therein to file an appeal and the appeal has to be disposed of in accordance with the law.

(b) It is on record from discharge certificate dated 26 Dec 2000 that the Appellant was treated from 02 Mar 2000 to 04 Mar 2000 and was discharged against medical advice of Government General Hospital, Madras. However, in the circumstances, the contention of the Appellant has been considered and on consideration of his injury and subsequent admission into various hospitals has been taken into view while issuing the sanction by HQENC vide their sanction letter No. CE/0886/Med dated 22 Jun 01. The Appellant subsequently filed O.A.891/01. In deference to the directions of the Honourable Tribunal by their order dt. 15/03/02 in O.A. No. 891/01, the medical claim of the Appellant was carefully considered by NHQ in consultation with Ministry of Health and allowed additional reimbursement against the original claim passed for Rs. 47, 925/-. The Ministry of Health has approved relaxation of CSMA Rules to additionally reimburse Rs. 32, 915/- against the medical claim of the Appellant as a special case. The amount has since been paid and the Appellant has also acknowledged the receipt vide his representation dated 14 Dec 04. In compliance to the directions of the Honourable Tribunal the 2nd Respondent in OA referred the case to the 1st Respondent therein, i.e. NHQ. NHQ in turn referred the matter to the Ministry of health and Family Welfare, who are the nodal Ministry in the subject matter. The Ministry of Health and Family Welfare has carefully considered the claim and has felt that the reimbursement as admissible under the rules has already been allowed. However, if the individual desires any specific relaxation, he may specify the extent and the nature of relaxation on any specific item and not in general. The decision of Ministry of Health and Family Welfare was communicated to Sri.C. Ganesh. In pursuance to the above intimation, Shri Ganesh preferred a representation dated 14 Oct 2002. He has brought a statement of entitlement vis-a-vis discriminated amount passed by the audit authorities on the claim. The subsequent representation of the Appellant dated 27 Oct 2003 requesting for medical reimbursement of Rs. 76, 331/- along with enclosures have been forwarded to NHQ. NHQ considering the representation of the Appellant has disposed it of with the observation that "The Honourable

Tribunal vide their order dated 15 Mar 02 has directed to reexamination of the medical reimbursement claim of Rs. 1, 42, 494/- and to allow reimbursement on a realistic basis." In pursuance to the direction the reimbursement claim was reexamined in consultation of MOH and Rs. 32, 915/- was additionally reimbursed based on relaxation of rules as approved by MOH. With additional reimbursement of Rs. 32, 915/- the directions of tribunal in OA.891/01 stand complied as evidenced by order of the Hon'ble Tribunal judgment in CA.19/2003. As regards the claim related to 19, 661/- pertaining to post accidental implant removal operation the office of AAO, Chennai, has observed that the claim has been restricted as per the Ministry of Health and Family Welfare letter No. S/11011/16/94-CGHS-DSK-II/CMO(D/CGHS (P) dated 10 Jun 97. The disallowance was mainly on account of medicines and the X-Ray and room rent which were restricted as per CGHS. Procedure charges, theatre charges and doctors rate were admitted as per the said Govt. letter dated 10 Jun 1997.

(c) It is on record from the discharge certificate dated 26 Dec 2000 of Govt. General Hospital, Madras that the Appellant was discharged against medical advice. However, his subsequent admittance and treatment in other hospital was considered by the competent authority and passed amount as per provisions of CS(MA) Rules.

(d)

(i & ii) The contention is not correct as per Government letter dated 10 Jun 97 wherein the eligibility of semi private ward is entitled for personnel having pre-revised basic pay of Rs. 3, 501/- and upto Rs. 6000/- but the Appellant is not falling in that category of pay scale of Rs. 4, 000/- and it is also relevant that at present the entitlement for taking indoor treatment, the general ward is allowed with the basic pay upto Rs. 7, 500/- as such the Appellant is not entitled for the private ward-II as claimed. The audit rightly disallowed the amount under that category.

(iii and iv) The items which have been brought out at Para 7(b) of the representation have already been considered by NHQ in consultation with MOH and allowed additional reimbursement based on relaxation of the rules as approved by MOH and accordingly an additional reimbursement of Rs. 32, 915/- was paid to the Appellant.

(v) The description and surgeries carried out was already been considered by NHQ, MOH while admitting amount of reimbursement.

(vi) The expenditure involved for medi-care charges and mortar charges are not under the financial powers of Respondents 3 to 5. The MOH, GOI considered the request of the Appellant has allowed Rs. 6, 875/- in relaxation of CSMA Rules and paid to the Appellant on 07 May 2003.

(vii) The contention as regards his treatment and the days of hospitalization was considered by the MOH and paid the additional amount as brought out in the

preceding paragraphs.

(viii)The ventilator charges were paid as per CGHS rates by the audit and this has been concurred by MOH.

(ix and x)The contention of the Appellant was considered by NHQ and intimated to him vide NHQ letter No. CE/CC/ENC/26/CG, dated 07 Mar 03. NHQ intimated that it has observed from the certificate of Balaji Hospital, Chennai that Rs. 28, 433.95 was certified to have been incurred on treatment. The certificate further indicates that Rs. 63, 010/- was incurred on "X"-Ray, laboratory tests etc. on advice of Medical Officer-in-Charge of Hospital and further directed that no doctor was called for specialist consultation. However, name of three consultants have been indicated in discharge summary of hospital. Consultation charges with specialists are not admissible under CS(MA) Rules. However, the cost of surgical procedure is allowable but has not been indicated in the bill.

(xi)This contention of the Appellant was already considered and NHQ observed that rates charged in the Private Hospital are on higher side when compared to the rates admissible for similar treatment in Government General Hospital. Ministry of Health after considering the claim also opined that reimbursement as admissible under the rules had been allowed. Subsequently, an additional amount of Rs. 32, 915/- was reimbursed and paid to the Appellant.

(xii)The contentions are no longer tenable as the whole case was considered by the MOH and the additional amount of Rs. 32, 915/- as admissible under the relaxation of Rules was already considered and allowed. The case of the medical bill pertaining to Rs. 19, 661/- was allowed to the extent entitled and the claim was restricted as per MOH and FW letter dated 10 Jun 97.

(e)The treatment as brought out has been considered by the audit authorities and allowed to the extent as reimbursable under the MOH letter dated 10 Jun 97.

(f)The Appellant claimed Rs. 1, 62, 001.45. Out of the amount Rs. 47, 925/- has already been paid on 01 Sep 01 against his original claim of Rs. 1, 42, 494/- under the powers of Respondents 3 to 5. In deference to the Hon''ble Tribunal's order in OA.891/01, dated 15 Mar 02 his claim has been considered on realistic basis by GOI MOH and an additional amount of Rs. 32, 915/- was reimbursed to him order dated 07 May 2003. As against the claim of Rs. 19, 661/- towards the claim for implant removal operation etc, the audit authorities have admitted Rs. 4, 830/- and balance amount of Rs. 14, 831/- was not allowed since the same was not admissible under the said government letter dated 10 Jun 1997. Audit Authorities further confirmed that amount as admissible was allowed under CS(MA) Rules and paid to the Appellant.

(g)The amount as admissible was allowed under CSMA rules and paid to the Appellant.

and rejected the Appeal filed by the Petitioner dated 11.03.2006 by observing that the reimbursement has been made as per rules and therefore, the request

of the Petitioner praying for additional amount does not carry any merit.

23. In this connection, we pertinently worth recall the decision of the Honourable Supreme Court in *Suman Rakheja v. State of Haryana and Anr.* ((2004) 13 SCC 562), at Page 562 and 563, wherein at Paragraph 4, 5 and 6, it is held as follows:

Counsel for the Appellant submitted that in similar case (Annexure P-4) i.e. by the order of the High Court of Punjab and Haryana in *Sant Prakash v. State of Haryana* (CWP No. 588 of 1998 (P&H)), wherein in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the Appellant's husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in an emergency condition in the hospital. In the present case the discharge certificate also shows that the case was an emergency one. In *Sant Prakash* case the Division bench held that the Petitioner therein would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto.

5. In the result, in this appeal also, the Appellant herein would be entitled to get the refund of the amount of 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto.

6. In the result, the appeal is allowed. No costs.

24. Also, this Court in *Union of India (UOI) Vs. R. Rangarajan and The Registrar, Central Administrative Tribunal, Madras Bench*, , at Page 627, has among other things observed that "... All efforts should be made to fulfill such legitimate expectation, if not as a matter of absolute legal right, at least as a matter of grace.

Further, in Paragraph 32 at Page 628 has observed thus:

32. We have thought it fit to issue the aforesaid direction keeping in view the observation of the Supreme Court and other Courts in several cases that right to health care is a fundamental right recognised under Article 21 and also with a view to ensure equality between the retired employees, who are residing in and around the CGHS covered areas and those who are residing in places which are far-off from CGHS covered areas. Such appropriate decision should be taken as expeditiously as possible, preferably within a period of six months from the date of the present direction.

25. In *State of Punjab and others Vs. Mohinder Singh Chawala, etc.*, , at Page 86 and 87 in Paragraph 11, the Honourable Supreme Court has laid down as follows:

We are unable to agree with the stand taken by the Government. It is seen that the Government had decided in the proceedings dated 08.10.1991 to reimburse the medical expenditure incurred by the Punjab Government employees/pensioners and dependants on treatment taken abroad in private hospital. It is

stated in paragraphs 2 and 3 that the Government has prepared a list of those diseases for which the specialised treatment is not available in Punjab Government Hospitals but it is available in certain identified private hospitals, both within and outside the States. It was, therefore, decided to recognise these hospitals for treatment of the diseases mentioned against their names in the enclosed list for the Punjab Government employees/pensioners and their dependants. The terms and conditions contained in the letter under reference would remain applicable. The Government can, however, revise the list in future. The name of the disease for which the treatment is not available in Punjab Government hospitals is shown as Open Heart Surgery and the name of the private hospital is shown as Escorts Heart Institute, New Delhi as one of the approved hospital/institution. Thus, for open heart surgery or heart disease the Escort Heart Institute is authorised and recognised institution by the Government of Punjab. Consequently, when the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay in integral part of his expenditure incurred for the treatment. Consequently the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment. Under these circumstances, the contention of the State Government is obviously untenable and incongruous. We hold that the High Court was right in giving the direction for reimbursement of a sum of Rs. 20, 000/- incurred by the Respondent towards the room rent for his stay while undergoing treatment in Escorts Heart Institute, New Delhi.

26. As per the Ministry of Health and Family Welfare, Official Memorandum No. S-11012/1/91-CGHS (P) (Vol.I), dated 18.03.1992, (Annexure 12, III), under the caption "For treatment in unrecognised private hospitals", it is mentioned hereunder:

(a) No reimbursement is made in normal course for treatment taken from private unrecognised hospitals.

(b) However, in cases of emergency, where treatment had to be taken in private unrecognised hospitals, the claims preferred may be referred to CGHS concerned. Such proposals should be recommended by the Head of Departments. CGHS concerned, after examining each case on merits, will recommend the admissible amount for payment to the beneficiaries. The payment will, however, be made by the Department concerned from "Service Head.

Also, it is mentioned that treatment taken at Private Nursing Home will not be reimbursed.

27. Further, in the Text of Ministry of Health and Family Welfare, Official Memorandum No. S-11012/1/91-CGHS (P) (Vol.I), dated 18.03.1992, under the head of "Settlement of Claims of Unrecognised Private Hospitals", it is mentioned as follows:

Central Government Health Scheme does not reimburse treatment taken from private unrecognised hospitals. However, in cases where treatment had to be taken in private unrecognised hospitals in an emergency, the claims preferred may be referred to CGHS concerned, who after examining each case on merits, will recommend the admissible amount for payment to the beneficiaries. Such proposals should be recommended by the Heads of Departments. The payment will, however, be made by the Department concerned from "Service Head.

28. The stand of the Respondents 2 to 5 before the Tribunal is that the Petitioner after the road accident on 02.03.2000 at about 17.45 hours was admitted into the Government Hospital, Arakonam (1st Hospital) and later, he was admitted in the Government General Hospital, Chennai, at night on 02.03.2000 (2nd Hospital) on the advise of the Government Hospital, Arakonam, where he was treated for two days. But, on his own request, he got himself discharged from the Government General Hospital, Chennai, (2nd Hospital), after giving an undertaking contrary to the advise of the Government General Hospital, Chennai.

29. It is the further stand of the Petitioner on his own volition got himself admitted in the A.G. Hospital, Tambaram, Chennai (3rd Hospital), a Private Hospital. As per CS(MA) Rules, the Petitioner should have received the treatment nearest Central Government Health Scheme Hospital which he failed to do so. However, he treated to A.G. Hospital, Tambaram, Chennai, and later, shifted to Balaji Hospital Private Limited, Guindy, Chennai (4th Hospital) with the help of his wife and relatives.

30. Though the Respondents 2 to 5 took a stand that the photocopy of the Newspaper report, dated 29.02.2000, indicated that the strike was done mainly by the Tamil Nadu Medical Students and CRRLs Senior House Surgeon, Dental and Post Graduate Doctors Association which affected three Medical College Hospitals of the City and not the Government General Hospital, Chennai. Therefore, the version of the Petitioner is that due to the Doctors strike, he was not to be treated in the Government General Hospital, Chennai, on 03.03.2000, was an incorrect one.

31. In this connection, it is to be pointed out that burden of proof as per Section 101 of the Indian Evidence Act initially rests on the person, who substantially asserts the affirmative of the issue and not upon the person, who denies it until affirmative such benefit is discharged, the other side is not required to be called upon to prove his case. After the said burden being discharged in the initial place, then, it is open to the opposite side to rebut the fact. As per Section 106 of the Indian Evidence Act, when a fact is to be proved, (whether affirmative or negative) is peculiarly within the knowledge of a person, it is for him to prove the

same. In the instant case, nothing precluded the Respondents 2 to 5 to discharge the version projected by the Petitioner that because of the Doctors strike at General Hospital, the Petitioner could not be treated at Government General Hospital, Chennai, on 3rd March 2000.

32. As a matter of fact, the Petitioner in his affidavit in the Writ Petition had categorically stated that due to deterioration of his health, when the Doctors are on strike on 02.03.2000 at General Hospital, he moved to the private hospital at Tambaram on 04.03.2000. His movement to private hospital at Tambaram on 04.03.2000 against the advise of the Government General Hospital, Chennai, the same could not be put against him, in our considered opinion. It could not be denied that the Petitioner from the private Hospital at Tambaram, was shifted to Balaji Hospital Private Limited, Guindy (4th Hospital) on 04.03.2000 and he was admitted in the Intensive Care Unit for about 16 days. He was seriously injured in the road accident. He had multiple fractures and broken ribs and the fact that the General Hospital, Arakonam, could not treat him and he was removed to the General Hospital, Chennai, in the same night. Secondly, in the order in O.A. No. 891 of 2011, dated 15.03.2002, passed by the 1st Respondent/Central Administrative Tribunal, Chennai Bench, at Paragraph 7, it was among other things observed as follows:

The applicant (Writ Petitioner) has not only stated but has also filed a paper cutting which contains a report dated 29.02.2000 under the caption "Medicos Begin Indefinite Fast". The report states that the agitating medicos began their indefinite fast on 29.02.2000 even as the strike entered the 13th day with no solution in sight. The report also states inter alia that though the hospital administration in the city said that they had taken steps to overcome the shortage of hands caused by the striking medicos, a cursory look at the three Medical College Hospitals in the city provide a different picture. "Caught between adamant medicos and unyielding Government the patients flocking the Government hospital have been forced to turn to private ones." In this background, it is difficult to understand, even to imagine how seriously injured patient in a road accident with multiple fractures would undertake risk and continue in General Hospital, Chennai, on 03.03.2000 for further treatment. Assuming for a moment the Respondent's contention that the strike might have been called off by 04.03.2000, it is common knowledge that any institution whose employees were on strike for a long time will return to normalcy the moment the strike is called off. A Government hospital is no exception. On the contrary, the situation in hospital is such that there has to be lot of coordination among various categories of employees for giving effective treatment to a patient and it is no surprise that the applicant who was in a very serious condition chose not to risk his life and got discharged to take treatment in a private hospital. It should be understood that the General Hospital on its own will not discharge a patient who is in a serious condition. It is the patient who has to get discharged on his own if he wants to go for treatment elsewhere. Therefore, the Respondents cannot harp on the applicant's discharge on his own against

medical advice.

33. The aforesaid observation of the 1st Respondent/Tribunal in O.A. No. 891 of 2001, dated 15.03.2002, binds the Writ Petitioner and the Respondents 2 to 5 who are inter se parties to the proceedings. The said observation of the 1st Respondent/Tribunal is conclusive, final and finding between the parties in the considered opinion of this Court. As such, the action of the Petitioner could not be found fault with. When he got discharged from the Government Hospital, Chennai, he was in a very serious condition and opted not to risk his life and took treatment for two days in the A.G. Hospital, Tambaram and later, at the Balaji Hospital Private Limited, Guindy (4th Hospital). A holistic, a humanitarian and pragmatic common sense approach should be the guiding factor in a pragmatic manner in honouring the medical reimbursement claim made by the Petitioner.

34. It cannot be gainsaid that though the Respondents 2 to 5 mainly harp on the fact that reimbursement as per rules has been considered and allowed at the admissible rates of Government of India by settling the bills in total amount of Rs. 80, 840/-, yet the Petitioner in the Writ Petition claims for the balance sum of Rs. 76, 331.45 to be reimbursed to him, being the disallowed portion together with interest @ 18% thereon.

35. We deem it appropriate to state that the right to health and medical care is a fundamental right enshrined by Article 21 of the Constitution of India, inasmuch as the health is vital for making the life of an employee meaningful, purposeful and compatible with personal dignity. Therefore, in a welfare state, like ours the primary duty of the Government is to secure the welfare of the people and to provide adequate medical facilities is an obligation undertaken by the Government in a welfare state. The Government Hospitals run by the State are bound to provide Medicare to the persons who seek to make use of the available facilities. Failure on the part of the Government Hospital to provide timely medical treatment to a needy person or like the injured Petitioner may result in violation of his right to life, guaranteed under Article 21 of the Constitution of India. Indeed, the Medical Officers employed in the Government Hospitals are duty bound to extend medical assistance for preserving the human life. Article 21 of the Constitution of India enjoins that it is the obligation of the State to protect the life of every individual. The timely medical assistance/treatment rendered to an individual invigorates his health and also harness the human resource.

36. No wonder the Article 25(2) of Universal Declaration of Human Rights, 1948, provides an assurance that every person has the right to a standard of living adequate for health and well being of himself and family... including medical care, sickness, disability... Therefore, when our Constitution of India speaks of socio economic justice, undoubtedly right to health is a fundamental right to an employee like the Petitioner. The health and strength of the Petitioner is a part and parcel of the right to life, which floats from Article 21 of the Constitution.

37. Even the High Level Expert Group on Universal Health Coverage (UHC) has

strongly recommended a re-configuration of the entire health system where the Government will have a major role to play. Also, the Expert Group has proposed making the health care and entitlement to every citizen.

38. As far as the present case is concerned, the Petitioner after the accident, on 02.03.2000 at night, on the advise of the Government Hospital, Arakonam, he was admitted in the General Hospital, Chennai, and treated for two days and later, because of the Doctors strike (also against the medical advise of the Government General Hospital, Chennai), he got himself admitted in a private Hospital viz., A.G. Hospital, Tambaram, Chennai, with the help of his relatives and later, got himself in Balaji Hospital on 04.03.2000 and finally, got discharged. Since he was in a very serious condition not to risk his life, he got discharged from the Government General Hospital, Chennai (against medical advise) and took treatment in the A.G. Hospital, Tambaram initially for some days and later, got treatment at Balaji Hospital. Subsequently, he submitted his claim.

39. It is not in dispute that the Petitioner was reimbursed a sum of Rs. 80, 840/- to which sum he was entitled to, according to the Respondents 2 to 5. For Doctors strike in the Government General Hospital certainly the Petitioner can not be found fault with. One should bear in mind that the reimbursement of medical expenses ought to be given to the Petitioner for the treatment received by him in regard to the injuries sustained in the accident as a monetary measure. The said reimbursement amount needs to be paid to the Petitioner on equitable consideration too. Although the Respondents harp on technicalities of rules while disallowing the portion of the claim made by the Petitioner, this Court comes to an inevitable conclusion that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred for the Respondents 2 to 5 cannot claim to have vested right in injustice being done to the Petitioner. Further, it must be seen that the judiciary is respected not on account of its power to legalise injustice on technical grounds but, because it is capable of removing injustice and is expected to do so.

#### CONCLUSIONS:

For the foregoing reasons and in the light of the detailed qualitative and quantitative discussions mentioned supra, this Court allows the Writ Petition by setting aside the order of the 1st Respondent/Tribunal in O.A. No. 636 of 2007, dated 29.01.2009 and the order passed by the 3rd Respondent in Proceedings No. CE/9329/28, dated 08.08.2006. Consequently, this Court, in the interest of Fair Play, Good Conscience and even as a matter of prudence and also by adopting a liberal meaningful, pragmatic, rational and common sense approach, directs the Respondents 2 to 5 to reimburse the balance amount after ascertaining the same without interest (other than a sum of Rs. 80, 840/- already paid) (after looking into the original claim of the Petitioner) within a period of four weeks from the date of receipt of a copy of this order. No costs.