(2006) 04 MAD CK 0232

In the Madras High Court

Case No : Writ Petition No. 848 of 2006

C. Nagamuthu APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2006) 3 LW 529 : (2006) 2 MLJ 747

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : V. Selvaraj, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—In this writ petition, petitioner seeks a direction to the respondents to pay a sum of Rs.60,039/- as

reimbursement towards the medical expenses of the petitioner''s son, who underwent heart surgery in the Sree Chitra Tirunal Institute for Medical

Sciences & Technology, Thiruvananthapuram, Kerala State.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit in support of the writ petition are as follows.

(a) Petitioner joined as a Head Messenger in the Public Works Department on 3.7.1971 and retired from the service on 28.2.2005 as Works

Inspector. The petitioner is a native of Muthalakurichi in Kanyakumari District. In the year 1998, while he was working as Works Inspector under

the Executive Engineer, Public Works Department, Building Construction and Maintenance Division, Nagercoil, viz., the 5th respondent herein

petitioner''s son Saravanan suddenly fell sick and he had to undergo an urgent heart surgery during April, 1998. Petitioner''s son was aged 11 years

at that time and he underwent heart surgery on 2.4.1998 at Sree Chitra Tirunal Institute for Medical Science & Technology, Thiruvananthapuram,

which is about 60 Kms away from the petitioner''s place of residence.

(b) The 5th respondent by his proceedings dated 22.10.1998 passed an order to reimburse a sum of Rs.48,749/- to the petitioner. The said order

was cancelled subsequently by the 5th respondent by proceeding dated 17.12.1998 due to the objections raised by the audit department. It is

further stated that the petitioner was required to submit a petition before the Government for medical reimbursement since the hospital in which

petitioner''s son underwent operation is situated in Kerala State. Accordingly petitioner submitted a petition on 24.2.1998 before the third

respondent along with the case summery, discharge record relating to the treatment, copy of G.O.Ms. No. 739 Finance Department dated

21.9.1995, etc.

(c) Petitioner further states that by G.O.(D)Ms.40 Agriculture Department, dated 23.3.1999 the Government sanctioned a sum of Rs.49,033/- to

one T.Narayani, a Junior Assistant working in the Agricultural Department, who underwent heart surgery in the very same hospital at

Thiruvananthapuram, where petitioner''s son underwent surgery. Petitioner subsequently produced the said Government order before the first

respondent. According to the petitioner, respondents 3 to 5 recommended to the first respondent to consider petitioner''s request for medical

reimbursement. The second respondent by letter dated 7.2.2003 addressed to the third respondent stated that the medical reimbursement

expenses cannot be granted since the petitioner''s son underwent heart surgery in a hospital outside the State. The Government has not passed any

order till date sanctioning the medical reimbursement in favour of the petitioner. Hence the writ petition is filed with the above said prayer.

3. The 5th respondent filed a counter affidavit in which it is stated that the hospital in which surgery was performed does not find a place in the

approved list of hospitals and therefore the request for sanction of the medical reimbursement cannot be entertained.

4. The learned counsel appearing for the petitioner argued that the scheme for medical reimbursement was introduced to help the Government

Servants and their near relatives to meet 75% of the actual amount spent or Rs.1,00,000/- whichever is less, towards medical expenses, provided

the Government servant paid contribution to the Government Employees Health Fund Scheme. The petitioner having contributed to the scheme, is

entitled to get reimbursement since his son underwent heart surgery and the petitioner was forced to perform heart surgery at Sree Chitra Tirunal

Institute for Medical Science & Technology, Thiruvananthapuram on 2.4.1998 since his son suddenly developed the illness. According to the

learned counsel, under the above circumstances, petitioner was left with no other option but to admit his son for treatment at Thiruvananthapuram,

which is one of the reputed and nearby hospital for the people residing in Kanyakumari District and Thiruvananthapuram District of Kerala State.

The learned counsel also argued that the said hospital gave medical certificate certifying that the petitioner''s son underwent surgery of VSD

Closure with Dacron patch on 2.4.1998. The learned counsel further stated that the Executive Engineer, PWD, Nagercoil, by his proceedings

dated 22.10.1998 sanctioned an amount of Rs.46,749/- on the recommendations of the Joint Director of Health Services, Kanyakumari District at

Nagercoil as per the Government Order as the petitioner is a regular subscriber to the Health Fund from its inception i.e, from 1991-1992

onwards. The Director of Treasuries and Accounts, Madras, was authorised to issue a crossed cheque/draft for the said amount. However, the

said sanction order was cancelled without any notice to the petitioner on 17.12.1998. The learned counsel further stated that the Government by

G.O.(D) No. 40 dated 23.3.1999 sanctioned Rs. 36,774/- to one T.Narayani, Junior Assistant of the Agricultural department, towards medical

reimbursement, who also took treatment in the very same hospital. Therefore, according to the learned counsel for the petitioner, petitioner cannot

be discriminated and prevented from getting the medical reimbursement.

5. The learned Government Advocate pointed out the statements contained in the counter and argued that the hospital in which the petitioner''s son

underwent treatment having not been approved in the list of hospitals, petitioner cannot be granted medical reimbursement.

6. I have considered the rival submissions of the learned counsel appearing for the petitioner as well as the learned Government Advocate.

7. As rightly contended by the learned counsel appearing for the petitioner, it is not disputed that the petitioner paid contribution towards the

Health Fund from the inception i.e., from 1991-1992 onwards and therefore he is entitled to get medical assistance under the Tamil Nadu

Government Employees Health Fund Scheme as ordered in G.O.Ms. No. 846 dated 14.12.1993. The Joint Director of Health Services,

Kanyakumari District at Nagercoil certified that the petitioner''s son underwent the surgery and the petitioner spent a huge amount towards medical

expenses. It is pertinent to note that the Government in G.O.(D) No. 40, dated 22.3.1999, sanctioned medical reimbursement to one T.Nayarani,

Junior Assistant, Office of the Joint Director of Agriculture, Nagercoil, who underwent heart surgery at Sree Chitra Tirunal Institute for Medical

Science & Technology, Thiruvananthapuram, Kerala State. In paragaraph 2 of the said order it is stated that the proposal of the Director of

Agriculture has been examined by the Government and since the surgery performed to T.Narayani is included in the specialised surgery/treatment,

Government have decided to sanction the amount incurred by T.Narayan and accordingly Rs.36,774/-was sanctioned, even though it is stated ''as

a special case'' and the said amount was paid.

8. While sanctioning medical reimbursement to T.Narayani, who underwent similar operation in the very same hospital, the action of the

Government in not sanctioning medical reimbursement to the petitioner towards his son''s surgery, cannot be justified. The fact that the petitioner

has paid contributions to the Health Fund is admitted. The treatment taken by the petitioner''s son and the surgery he underwent are not also not in

dispute. When both T.Narayani and petitioner''s son underwent surgery in the very same hospital, the non-sanctioning of medical reimbursement to

the petitioner alone is violative of Article 14 of the Constitution of India. As contended by the learned counsel for the petitioner, the object of the

Scheme is to give financial support to the deserving persons, who contributed towards the Health Fund Scheme. Such being the object of the

scheme, it is not open to the respondents to deny the benefit given under the scheme on the ground that the treatment should be taken only in the

listed hospitals.

9. I have also perused G.O.Ms. No. 400 Finance (Salaries) Department, dated

29.8.2000 listing the hospitals authorised to give treatment for the

purpose of getting medical reimbursement. As per Schedule-II in Annexure-II to the said Government Order, the nearest hospital is ''Getwell

Private Hospital, Tirunelveli'', having specialisation in cardiology and there is no approved hospital in the whole of Kanyakumari District. Therefore

there is every justification on the pat of the petitioner to get his son treated in the Sree Chitra Tirunal Institute for Medical Science and Technology,

Thiruvananthapuram. In the absence of listed hospital in the whole of Kanyakumari District, the respondents cannot deny medical reimbursement to

the petitioner on the ground that his son did not get treatment in the approved hospital as per the Government Order.

10. Viewing the matter in that angle, I hold that the action of the respondents in not sanctioning the medical reimbursement claim of the petitioner to

the tune of 75% of the actual expenses incurred, cannot be considered as valid and therefore the petitioner is entitled to get a direction for sanction

and payment of 75% of the actual expenses incurred by the him towards treatment of his son.

11. The writ petition is allowed with a direction to the respondents to pay the sum of Rs.48,749/- already sanctioned by the 5th respondent by his

proceedings dated 22.10.1998 along with 12% interest from 17.12.1998 till the date of payment. The respondents shall pay the amount to the

petitioner within a period of four weeks from the date of receipt of copy of this order. No costs.