
(2014) 09 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 13594 and 29192 of 2013

K. Srinivasan

APPELLANT

Vs

State Government of Tamil Nadu

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 4 LW 650

Hon'ble Judges : N. Paul Vasantha Kumar, J

Bench : Single Bench

Judgement

N. Paul Vasanthakumar, J.—W.P. No. 13584 of 2013 is filed praying to quash the order dated 8.1.2013 issued by the United India Insurance Company Limited and direct the second respondent to consider the application made by the petitioner seeking medical reimbursement to the tune of Rs. 2,91,887/- with interest at 12% per annum. W.P. No. 29192 of 2013 is filed to quash the proceedings of the second respondent therein, viz., the District Collector, Nagapattinam District, and for a direction to reimburse the amount of Rs. 2,50,000/- spent by the petitioner towards surgery of her husband with interest at 12% per annum.

2. The case of the petitioner in W.P. No. 13594 of 2013 are as follows:

"(a) Petitioner entered into the service of this High Court on 5.3.2008 at Typist and was promoted as Assistant with effect from 24.8.2011 and he is now working as Assistant in the Establishment Section of High Court, Madras. He has enrolled himself under the New Health Insurance Scheme, 2012 introduced vide G.O.Ms. No. 243 Finance Department, dated 29.6.2012. The Registrar General of this Court has issued a certificate, by which the petitioner is eligible to get medical reimbursement for himself and for his family members.

(b) Under the Scheme, health care assistance is provided to the employees of Government Departments, Public Sector Undertakings, Statutory Boards, Local Bodies, Universities and other State Government Organisations and Institutions to give medical assistance upto Rs. 4 lakhs in a block period of four years

commencing from 1.7.2012 to 30.6.2016 from the approved hospitals for listed treatments and surgeries.

(c) Petitioner's elder son S. Aravind, aged about six years was diagnosed for cancer and initially he was admitted in M/s. Metha Hospital, Chetpet, Chennai. He was further treated at Kanchi Kamakodi Child Trust Hospital, and then at M.S. Adyar Cancer Institute. In spite of giving treatments in the above said hospitals, petitioner's son S. Aravind died due to cancer on 22.11.2012.

(d) Petitioner, being a subscriber and eligible member under the New Health Insurance Scheme, 2012, to get cashless treatment for his son, produced necessary documents before the Hospital. However, the Hospital authorities pressurised the petitioner for payment in advance totalling a sum of Rs. 2,91,887/- towards medical expenses. According to the petitioner, totally he incurred more than Rs. 3,50,000/-, however, he is having receipt only for Rs. 2,91,887/-.

(e) After demise of his son, petitioner submitted an application to the second respondent on 7.1.2013 for reimbursement of Rs. 2,91,887/- enclosing payment receipts. The second respondent by its proceedings dated 8.1.2013 returned the application by stating that as per G.O.Ms. No. 243 Finance Department Dated 29.6.2012, no payment is to be made by the employer to the approved hospital (network hospital) and payment will be made only after pre-authorisation approval obtained from the Network Hospitals and any claim in deviation of the above procedure for reimbursement is liable to be rejected. As per the said Government order if there is any grievance in respect of claim, the shall be referred to the District Level Empowered Committee for redressal, and therefore the request of the petitioner was returned.

(f) The said order, returning the claim of the petitioner by the second respondent, is challenged in this writ petition contending that the petitioner being a Government Servant, even prior to the introduction of the New Health Insurance Scheme, he has opted for the Tamil Nadu Government Servants Health Fund Scheme and under the said Scheme, which was in vogue prior to the introduction of the New Health Insurance Scheme, 2012, reimbursement was permissible for the actual expenses made by the Claimants/dependants of the claimants. Petitioner's son having suffered with cancer, petitioner was not in a position to obtain pre-authorisation approval from the second respondent in advance for getting treatment in the network hospitals and the same cannot be put against the petitioner as it is only a procedure and if the eligibility of the petitioner to get medical reimbursement and treatment taken by the petitioner's son are not disputed, and the bills submitted by the petitioner for the expenses are genuine, the respondents are not justified in rejecting the claim for medical reimbursement as he continued to be a subscriber under the scheme, which was in vogue prior to introduction of New Health Insurance Scheme, 2012, and even now he is paying premium under the Scheme. Hence the petitioner has prayed for setting aside the said order and for direction to the respondents to sanction

and pay medical reimbursement claimed to the tune of Rs. 2,91,887/-."

3. The case of the petitioner in W.P. No. 29192 of 2013 is that she working as a Secondary Grade Teacher at Government Aided A.V. Elementary School, Komal, Kuttalam Taluk, Nagapattinam District and she is subscribing to New Health Insurance Scheme, 2012, introduced vide G.O.Ms. No. 243 Finance (Salaries) Department, dated 29.6.2013. Petitioner's husband was suddenly hospitalised in 4th respondent hospital and he was diagnosed as "Large Bronchopleural Fistula and Pyopneuma Thorax" and was advised to undergo surgery for recovery. Petitioner produced the documents relating to cashless treatment under the New Health Insurance Scheme, 2012 before the 4th respondent hospital, but the hospital authorities insisted for payment of entire expenditure towards surgery. Left with no option petitioner paid the entire sum of Rs. 2,50,000/- by availing personal loan. Only after such payment, surgery was performed to petitioner's husband at right lower lobectomy and decoritication on 31.7.2012. Petitioner submitted application claiming reimbursement of the said amount enclosing the original bills and vouchers and all necessary particulars in the prescribed format. Respondents 2 and 3 by proceedings dated 5.7.2013 and 25.7.2013 intimated that the 5th respondent refused to reimburse the expenses on the ground that the scheme provides for cashless treatment alone, but petitioner has already paid the amount to the hospital. Hence the petitioner filed this writ petition seeking reimbursement of Rs. 2,50,000/-.

4. The United India Insurance Company/2nd respondent in W.P. No. 13594/2013 and 5th respondent in W.P. No. 29192/2013 filed separate counter affidavits opposing the above said prayer and contending that the Scheme itself is a cashless model, which means no reimbursement is permissible and the Insurance Company will pay the claim to the hospital concerned, and therefore being procedural violation and the scheme nowhere states about reimbursement by the beneficiary, the second respondent cannot be ordered to pay the said amount towards medical reimbursement, and if at all the petitioners are eligible to get any amount, it would be only from the Government.

5. In W.P. No. 13594 of 2013, even though the first respondent was served on 13.6.2013, till date no counter affidavit is filed in spite of granting several opportunities on 21.3.2014, 28.3.2014, 11.4.2014, 6.6.2014, 13.6.2014, 20.6.2014, 27.6.2014, 4.7.2014 and 8.8.2014.

6. Mr. A. Prabhakaran and Mr. M. Vijayakumar, learned counsels appearing for the petitioners argued that the petitioners being Subscribers to the Tamil Nadu Health Benefit Fund and made their contributions, merely because the scheme was modified through G.O.Ms. No. 243, dated 26.9.2012, petitioners rightful claim to reimburse the amount spent for giving treatment t" their dependants cannot be denied, particularly when the hospitals where the petitioner's son/ husband took treatment refused to extent treatment without depositing the money/expenses and the disease of the petitioners" dependants, treatment taken in the listed hospitals having been established and not disputed, either the

second respondent or the first respondent is bound to reimburse the amount spent by the petitioners to the tune of Rs. 2,91,887/- and Rs. 2,50,000/-. The learned counsels also submitted that similar issue was considered by the Division Bench of this Court in the decision reported in *Star Health and Allied Insurance Co. Ltd. Vs. A. Chokkar and The Special Secretary to Government, finance (Salaries) Department, Government of Tamil Nadu*, wherein also the scheme framed through G.O.Ms. No. 430 Finance (Salaries) Department, dated 10.9.2007, which was called New Health Insurance Scheme, wherein also it was stated that the Scheme would be a cashless facility. The Division Bench in that case held that even if the scheme under which the Insurance Company is not liable to pay, because of the relationship of the Insurance Company with the Claimant is purely contractual, the State is bound to reimburse the claim. The learned counsel also relied on another order made in W.P. (MD) No. 6299 of 2013 wherein also Madurai Bench of this Court granted direction to the Government to reimburse the amount of Rs. 2,12,368/-, which was paid by the petitioner therein for getting treatment in approved hospital under the New Health Insurance Scheme, 2012. The learned counsel further submitted that the learned single Judge ordered the said amount to be paid with 9% interest till the date of payment and no appeal was filed against the said orders and the same was implemented.

7. Mr. S.K. Krishnamurthy, learned counsel appearing for the Insurance Company on the other hand submitted that in terms of the above said Division Bench Judgment, the Insurance Company cannot be held liable to reimburse the amount and if at all the claim of the petitioner is sustainable, this Court can only direct the Government to pay the amount.

8. Mr. V. Subbiah, learned Special Government Pleader appearing for the Government after going through the said judgment conceded the fact that the said judgments have not been appealed and the same are implemented.

9. I have considered the rival submissions made by the respective learned counsel for the parties.

10. It is not in dispute that the petitioners are covered under the Tamil Nadu Medical Health Fund Scheme. They have subscribed to the Government towards the said fund, which was in vogue by issuance of G.O.Ms. No. 18 Finance (Allowance-1) Department, dated 9.1.1992, modified through G.O.Ms. No. 141 Finance (Salaries) Department, dated 26.2.1996, G.O.Ms. No. 490 Finance (Salaries) Department, dated 19.6.1996, etc. The said scheme was modified under the new name called New Health Insurance Scheme through G.O.Ms. No. 470 Finance (Salaries) Department, dated 10.9.1997, which was again modified through G.O.Ms. No. 243 Finance Department, dated 29.6.2012. The modification of the scheme cannot be put against the petitioners, who are admittedly subscribing to the New Health Insurance Scheme, 2012.

11. It is not in dispute that in W.P. No. 13594 of 2013, the petitioner's son, aged

six years was affected by cancer and he took treatment in the listed hospitals and ultimately he passed away. The said fact having not been denied, the petitioner is entitled to get medical reimbursement to the tune of Rs. 2,91,887/-, for which the petitioner has produced the relevant vouchers. Likewise, in W.P. No. 29192 of 2013 also the treatment given to the petitioner's husband in an approved hospital vide Sl. No. 164 and the amount spent towards surgery to the tune of Rs. 2,50,000/- are not denied.

12. It is contended on behalf of the Insurance Company that unless the terms and conditions contained in the Policy are satisfied, no claim could be made against the Insurance Company. The said contention of the Insurance Company is justified in terms of the Judgment of the Supreme Court reported in Oriental Insurance Co. Ltd. Vs. Sony Cheriyan, ; United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, ; and Vikram Greentech (I) Ltd. and Another Vs. New India Assurance Co. Ltd., .

13. The Tamil Nadu Medical Attendance Rules clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. As per the said rules, the petitioners are entitled to claim medical reimbursement against the Government. Similar issue was considered by the Division Bench of this Court in the case reported in 2010 (2) LW 90 (Star Health and Allied Insurance Co. Ltd. v. A. Chokkar & another) wherein in paragraphs 25 and 26 the Division Bench held thus,

"25. The Tamil Nadu Medical Attendance Rules ("the Rules" in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a non-network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself makes the network hospitals as intrinsic. However, the petitioners/claimants were also not no remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee.

26. Before taking up the individual cases, we must record that there are certain situations which may arise and in fact which have arisen, for which the Government must issue clear guidelines. This the Government has to do, since it has made the Scheme obligatory for everyone and there is automatic deduction of premium to an extent of Rs. 25/- per month. The directions are as follows:

(i) The State shall make it clear that if for some reason, which is satisfactory, the claimant is unable to take treatment in a network hospital but has been advised or had to go to a non-network hospital, then his claim would be considered under the Rules.

(ii) If the claimant has been advised some procedure which is not covered by the Scheme, there again, it must be made clear that he can apply under the Rules.

(iii) To safeguard duplication of payments, the Government can make sure and when they apply under the Rules, that the claimant himself certifies that he has not made claim under the Scheme or vice-versa.

(iv) The State shall inform every network hospital that if it receives complaints from claimants that money was demanded for admission or for treatment, then that hospital will be removed from the network. This warning is necessary, since, at times of crisis, the claimants will not be in a position to argue with the hospital that this is a "cashless" Scheme. We are aware that there is an officer of the Star Health Insurance Company at every network hospital to ensure that hospitals adhere to the terms of the Scheme but, yet, it is better to make this position clear to the hospitals, since one of the questions that has arisen before us is that whether the claimants will be entitled to reimbursement if, by mistake, they pay cash."

In the said judgment the Division Bench directed the State Government to inform every network hospital that if any complaint from claimants regarding demand of money for admission or for treatment is received, the concerned hospital will be removed from the network. In spite of such direction given by the Division Bench of this Court as early as in the year 2010, the hospitals in which petitioner's son (in W.P. No. 13594/2013) took treatment and petitioner's husband (in W.P. No. 29192/2013) was hospitalised, insisted for payment of amount for extending treatment, for which petitioners cannot be blamed. It is not disputed that the Government have not removed the hospitals from the approved list, which insisted to pay the amounts, as on date. Thus, the fault is entirely with the Government.

14. Another judgment of this Court made in W.P. (MD) No. 6299 of 2013 considered similar claim with reference to G.O.Ms. No. 243 Finance (Salaries) Department, dated 29.6.2012, wherein a direction was issued to the Government to reimburse medical expenses claimed, with 9% interest till date of payment. The learned Special Government Pleader appearing for the first respondent submitted that the above said orders of this Court were accepted by the Government and medical expenses were reimbursed to the claimant therein.

15. Similar issue was considered by the Division Bench of this Court in W.P. No. 3236 of 2014 order dated 3.3.2014, wherein the issue was as to whether Southern Railway was justified in rejecting the claim of the Railway Employee, who took treatment in the unlisted hospital due to emergent situation. Following the decisions of the Hon'ble Supreme Court reported in Surjit Singh Vs. State of Punjab and Others, and State of Punjab and others Vs. Mohinder Singh Chawala, etc., the Division Bench of this Court wherein I was a member of the Bench, upheld the order of the Central Administrative Tribunal, which ordered reimbursement of medical expenses. In the light of the judgments cited supra,

which covers the matter in issue, petitioners are entitled to succeed in their claim against the first respondent/Government. Consequently both the writ petitions are disposed of as against the first respondent/Government with direction to the first respondent/Government to sanction and reimburse the eligible medical expenses, by receiving claim from the petitioners and after ascertaining the genuineness of the claim with reference to the bills/vouchers submitted, pay the same with 9% interest from the date of remittance of amount to the listed hospitals by the respective petitioner till date of payment, within a period of four weeks from the date of receipt of copy of this order. No costs.