(2006) 03 MAD CK 0278

In the Madras High Court

Case No : Writ Petition No. 39201 of 2005 W.P.M.P. No. 42007 of 2005

K. Subramanian — APPELLANT

Vs

Special Commissioner and Commissioner of Treasuries and Accounts, The Chief Educational Officer and The Headmistress, T.A. Ramalingam Chettiar Higher Secondary School — RESPONDENT

Date of Decision : 16-03-2006

Acts Referred:

Citation : (2006) 2 MLJ 267

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; D. Malarvishi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—In this writ petition, petitioner seeks a direction to the first respondent to pay the sum of Rs.67,935/- to him forthwith, as per the sanction order dated 19.9.2005 of the second respondent along with interest at the rate of 18% per annum from the date of first sanction order dated 5.11.2003.

2. The brief facts of the case that are necessary for the disposal of the writ petition are as follows.

(a) Petitioner is working in the third respondent school, which is a fully aided school and getting 100% grant-in-aid from the Government of Tamil Nadu. He was initially appointed as Secondary Grade Teacher on 15.3.1973 and was later promoted as Tamil Pandit in the year 1995.

(b) The Government of Tamil Nadu framed a medical scheme called the ''Tamil Nadu Government Employees Health Fund Scheme'' during the year 1992 with an object to provide financial assistance to the Government servants/employees of the Aided Educational Institutions, in case of major ailments either for themselves or for their family members. For that purpose, a Fund was created and each employee has to pay a sum of Rs.25/- per year as contribution towards the Fund. Later the rate of contribution was changed to Rs.10/- per month, from January, 1999. Petitioner made contributions to the said Fund till his retirement on 31.5.2005.

(c) While framing the scheme, the Government issued a list of ailments for which financial assistance can be availed and also issued a list of approved private hospitals from which the employees can take treatment or undergo surgery. The said lists of ailments and approved private hospitals were revised from time to time. The latest Government Order in this regard was issued in G.O.Ms.No.400 Finance (Salaries) Department, dated 29.8.2000. According to the petitioner, as per the said Government Order, every employee, who becomes a member to the Fund, is entitled to get advanced specialised treatment/surgery in any one of the accredited and approved hospitals for undergoing special treatment for themselves or for their family members. The diseases/ailments for which the advanced/specialised treatment/surgery can be undertaken by the employees are given in Annexure-I and the list of accredited and approved hospitals are given in Annexure-II to the said Government Order. As per the said Government Order, the employees can get financial assistance to the tune of 75% of the actual expenditure or Rs.1,00,000/-, whichever is less. The District/Regional Heads are empowered to sanction the financial assistance to the employees after verifying the nature of the treatment underwent and the hospital in which they got treatment.

(d) Petitioner states that his wife S.Kalaiselvi suffered a massive heart attack during April, 2003, and she was admitted into the G.Kuppusamy Naidu Memorial Hospital, Coimbatore. After clinical examinations and based on various medical reports, it was found that she was suffering from Congenital Heart Disease Class-II Dysphoea on exertion. She was admitted as inpatient on 21.4.2003 and discharged on 23.4.2003. The Doctors advised her to undergo immediate surgery to save her life. Hence petitioner''s wife was again admitted into the same hospital on 27.4.2003 as inpatient and she was operated for the Congenital Heart Disease on 29.4.2003 and was discharged on 5.5.2003. Even after discharge, she was advised to take medical and follow-up treatment regularly and accordingly, she is taking medicines and going for periodical check-up till date.

(e) According to the petitioner, an amount of Rs.1,03,059.50 was spent towards surgery, treatment and medical expenses and the petitioner, being a Teacher of the Aided Educational Institution, is entitled to get the Family Benefit Fund and applied for the same on 7.5.2003 to the third respondent in the prescribed form with all medical reports and bills. The third respondent forwarded the application to the second respondent along with his letter of recommendation for the sanction of financial assistance. The second respondent by his letter dated --.9.2003 asked the third respondent to submit a certificate from the Doctor specifying as to what kind of operation was performed to the wife of the petitioner. The Doctor, who performed surgery to the petitioner''s wife, issued a certificate certifying that the petitioner''s wife was operated for Congenital Heart Disease, which was submitted to the second respondent through the third respondent. Pursuant to that, the second respondent, by his order dated 5.11.2003, sanctioned a sum of Rs.67,985/- being 75% of the actual expenditure and authorised the first respondent to issue a cheque/DD for the said amount, to the petitioner.

(f) It is further stated in the affidavit that after passing the sanction order dated 5.11.2003, the second respondent required the petitioner to submit a certificate specifically mentioning as to what kind of open heart surgery was performed to his wife as per G.O.No.400 and also to submit a certificate as to what was his son''s occupational/professional status. Petitioner once again obtained a certificate dated 17.3.2004 from the Doctor to the effect that the open heart surgery was performed for correcting the congenital complex heart disease and submitted the same along with a certificate dated 17.3.2004 stating that his son was doing MBA through correspondence course and he had no source of income and that his wife was also not employed. Based on the said certificates, the second respondent passed a fresh sanction order dated 30.3.2004 (2nd sanction order) and forwarded the same to the first respondent for disbursement of the sanctioned amount to the petitioner.

(g) Further case of the petitioner is that in spite of the second sanction order dated 30.3.2004, the first respondent, instead of disbursing the sanctioned amount, by his proceedings dated 15.5.2004 returned the sanction order dated 30.3.2004 on the ground that the surgery, which the petitioner''s wife underwent was not the one included in G.O.Ms.No.400, Finance (Salaries) dated 29.8.2000 and hence the claim of the petitioner could not be admitted. Hence, the second respondent referred the petitioner''s wife to the Joint Director of Health Services, Coimbatore, to ascertain as to whether the surgery performed to the wife of the petitioner would come within the purview of the diseases/surgeries/special treatment, mentioned in G.O.No.400 dated 29.8.2000. Consequently, petitioner''s wife appeared before the Medical Board, Government Head Quarters Hospital, Tiruppur on 28.7.2004 and based on the report of the Medical Board, the Joint Director of Health Services wrote a letter on 4.8.2004 to the second respondent certifying that the petitioner''s wife had undergone Open Heart Surgery for Osticum Secundum Artrial Septal Defect at GKNM Hospital, Coimbatore, and the operation performed was a genuine one and it was absolutely necessary. It was also recommended that the claim of the petitioner for financial assistance could be admitted as per the Government rules. Based on the said report dated 4.8.2004 and in terms of G.O.Ms.No.400 dated 29.8.2000, the second respondent passed a fresh sanction order dated 25.10.2004 (3rd sanction order) and forwarded the same to the first respondent for disbursement to the petitioner.

(h) Again the first respondent returned the sanction order dated 25.10.2004 by his letter dated 27.12.2004 by referring the letter dated 6.12.2004 and stating that the surgery performed to the wife of the petitioner was not one of the surgeries approved in the G.O.No.400 dated 29.8.2000. The third respondent once again forwarded the proposal along with the returned claims to the second respondent by letter dated 19.1.2005 and also enclosed a copy of G.O.Ms.No.400 dated 29.8.2000. Third respondent clearly pointed out that the surgery performed to the wife of the petitioner was correction of congenital complex heart disease, which is one of the open heart surgeries approved in para-1, Schedule-I of Annexure-I to the G.O.No.400 dated 29.8.2000 and therefore petitioner is entitled to get the financial assistance as per the said Government Order.

(i) The second respondent, after receipt of the renewed proposal from the third respondent, made a request to the Director of Medicine and Rural Health Services, Chennai-6, enclosing all the medical certificates, to ascertain as to whether the petitioner is eligible to get the financial assistance as per G.O.No.400 dated 29.8.2000. The Director of Medicine and Rural Health Services referred the matter to the Medical Board, Government General Hospital, Chennai-3 and obtained a report dated 2.6.2005 from the Medical Board. On the basis of the said report, the Director of Medicine and Rural Health Services wrote a letter on 27.6.2005 to the second respondent, wherein it is clearly certified that,

(i) the surgery performed was in emergency,

(ii) the treatment undergone by the wife of the petitioner is covered under G.O.No.400 dated 29.8.2000, and

(iii) the Hospital where petitioner''s wife got treatment is also one of the hospitals approved in G.O.No.400 dated 29.8.2005.

Again the second respondent issued the sanction order dated 19.9.2005 (4th sanction order) for a sum of Rs.67,935/- as financial assistance towards the expenditure incurred by the petitioner for giving special treatment to the petitioner''s wife. The said sanction order was forwarded to the first respondent along with a covering letter dated 19.9.2005 enclosing the reports/certificates issued by,

(a) the Doctor of GKNM Hospital,

(b) the letter sent by the Joint Director of Health Services,

Tiruppur,

(c) the medical report dated 25.6.2005 issued by the Medical Board, Government General Hospital, Chennai-3, and

(d) the letter dated 27.6.2005 from the Director of

Medicine and Rural Health Services, Chennai.

In spite of the said orders and reports, according to the petitioner, the first respondent has not disbursed the sanctioned financial assistance of Rs.67,935/- and therefore the petitioner has filed the present writ petition for the above referred prayer along with interest at the rate of 18% per annum from the date of first sanction order dated 5.11.2003 and also exemplery cost.

3. When the writ petition came up for admission on 6.12.2005, the learned Government Advocate took notice for respondents 1 and 2 and sought two weeks time for getting instructions. Hence the matter was directed to be posted after two weeks in the motion list. Again, when the matter was listed on 7.3.2006, at the request of learned Government Advocate, the case was adjourned to 13.3.2006, on which date, the learned Government Advocate appearing for the respondents submitted her arguments based on the available records.

4. The learned counsel for the petitioner reiterated the points urged in the affidavit and argued that G.O.Ms.No.400 dated 29.8.2000 clearly covers the disease for which the petitioner''s wife underwent surgery and the hospital in which petitioner''s wife underwent surgery is an accredited and approved hospital.

5. The learned Government Advocate, appearing for the respondents submitted that only because of the doubts with regard to the applicability of G.O.Ms.No.400 dated 29.8.2000 to the petitioner''s case, repeated objections were raised by the first respondent.

6. I have considered the rival submissions of the respective counsels.

7. For proper appreciation of the issue involved, it is useful to extract the G.O.Ms.No.400 dated 29.8.2000, which reads as under,

GOVERNMENT OF TAMIL NADU

ABSTRACT

Tamil Nadu Government Employees Health Fund Scheme, 1991 - Streamlining and approval of registered private hospitals under the TNGEHFS - Classification of specialised advanced surgeries/treatment under the broad based groups - approved - orders issued.

--- FINANCE (SALARIES) DEPARTMENT

G.O.Ms.No.400 Dated 29th August 2000, Aavani, 14 Vikkirama, Thiruvalluvar Aandu 2031 Read: 1. G.O.Ms.No.18, Finance (All) Department, dated 9.1.92 2. G.O.Ms.No.91 Finance (Sal) Department, dated 7.2.95 3. G.O.Ms.No.817 Finance (Sal) Department, dated 20.10.95 4. G.O.Ms.No.340 Finance (Sal) Department, dated 14.7.98 5. G.O.Ms.No.846 Finance (Sal) Department, dated 14.12.93 6. G.O.Ms.No.460 Finance (Sal) Department, dated 19.6.95 7. G.O.Ms.No.817 Finance (Sal) Department, dated 20.10.95 8. Government Letter No.6289 Finance (Sal) Department/96, dated 05.03.96 9. Government Letter No.52006 Finance (Sal) Department/95-7, dated 18.06.99 10. Government Letter

No.14186, Finance (Sal) Department/96-3, dated 29.09.96 11. Government Letter No.25666 Finance (Sal) Department/99-1, dated 16.04.99. Read also:- 12. G.O.Ms.No.532 Finance (Sal) Department, dated 10.12.99

ORDER:-

1. The Government in their reference first read above had constituted a fund called "Tamil Nadu Government Employees Health Fund" to provide a measure of relief to Government Employee, if they are affected by major ailments. Accordingly, the Government in their references first to fourth read above had issued orders approving certain specialised advanced surgeries/treatment and in their references fifth to eleventh read above had issued order approving certain private hospitals from where Government employee can undergo the specialised advanced surgeries/treatment and avail medical assistance under this scheme.

2. Of late, certain management of the private hospitals had requested the Government to include them in the approved list so as to enable the Government employees and their family members to undergo specialised advanced surgeries/ treatment if they are affected by major ailments. As there were no uniform norms prescribed for inclusion of private hospitals in the list of approved hospitals, the Government in their reference twelfth read above had issued order prescribing certain norms for streamlining the system of approving the private hospitals based on their specialisation in the specified diseases under the Tamil Nadu Government Employee Health Fund Scheme.

3. Accordingly, Director of Medical Education/Director of Medical and Rural Health Services have inspected the private hospitals who had applied for accreditation. The Director of Medical Education/Director of Medical and Rural Health Services after inspecting the private hospitals concerned have submitted their reports to Government with their recommendations to include them in the accredited list.

4. The Government, after careful examination on the recommendations of the Director of Medical Education/Director of Medical and Rural Health Services, pass the following orders:-

1) the specialised advanced surgery/treatment which were approved earlier are now classified under the broad based groups as indicated in the Annexure 1 to this order. 2) the private hospitals which were accredited already in the reference fifth to eleventh read above have ceased to be in the approved list forthwith. 3) the revised accredited list of hospitals and the specialisation for which the hospitals are approved is indicated in the to this order. Annexure-II

5. There shall be no change in other existing rules and conditions.

6. The sanctioning authorities empowered to sanction financial assistance under this scheme are requested to indicate the classifications of the diseases in their proceedings/orders scrupulously.

(By Order of the Governor)

P.V.RAJARAMAN SECRETARY TO GOVERNMENT

To

All Secretaries to Government, Chennai-9.

All Departments of Secretariat (OP), Chennai-9.

The Secretary, Legislative Assembly Secretariat, Chennai-9.

All Heads of Departments.

All District Collectors.

The Accountant General (A&E), Chennai-18.

The Accountant General (Audit), Chennai-35.

All Chief Educational Officers.

ANNEXURE - I

SCHEDULE - I

LIST OF DISEASES CLASSIFIED UNDER THE BROAD BASED SPECIALITIES:

I. CARDIOLOGY AND CARDIO THORACIC SURGERY:-

1. Open heart surgery including

a) Caronary By-pass Surgery (CABG)

b) Valve replacement

c) Correction of Congenital Complex heart diseases.

II. ORTHOPAEDIC SURGERY:-

1. Total Hip replacement

2. Total Knee replacement.

III. NEPHROLOGY/UROLOGY:-

a) Renal transplantation.

b) Lithotripsy

IV. ONCOLOGY:-

1. Surgical Management of Malignancy (Cancer),

2. Laser or radiation treatment of cancer.

V. NEUROLOGY:-

1. Emergency life saving operation on brain and spinal cord.

2. Advanced specialised operation on Brain and spinal cord such as

cerebrovascular surgery (Ancurysm and Arteriovenoces Malformation), skull base surgery, deep seated tumour of brain, synotactic surgery.

3. Surgery for Intractable Epilepsy.

VI. OPHTHALMOLOGY:-

1. Simple surgery

a) any cataract surgery with or without Intra Ocular Lens (IOL)

b) Glaucoma surgery

2. Specialised Surgery

a) Surgery for detachment of Retina.

b) Vitrectomy

c) Keratoplasty (Corneal Grafting)

d) Laser treatment, Krypton Laser, Dye Laser, Argon Laser, Photo Coagulation.

e) Liner Accelerator Therapy (for senile Macular Degenaration Tumour)

VII. VASCULAR SURGERY:-

Amputation of legs.

/ TRUE COPY /

SECTION OFFICER

In Annexure-II to the said Government Order, the list of private hospitals numbering 74, accredited against their speciality, are given and in Sl.No.27, the name of G.Kupusamy Naidu Memorial Hospital, Nethaji Road, Coimbatore, finds a place for the specialities in the fields of Cardiology and Oncology. Thus, it is manifestly clear that the petitioner''s wife underwent surgery in the Government approved private hospital as per Annexure-II to G.O.Ms.No.400 dated 29.8.2000, for which the family benefit fund conferred under the scheme is bound to be extended to the petitioner.

8. As rightly contended by the learned counsel for the petitioner, the second respondent, who is the competent authority, sanctioned the amount of Rs.67,935/- and all the queries raised by the first respondent on all four occasions were fully and satisfactorily explained by the second respondent. But in spite of the said clarifications coupled with the report submitted by the Director of Medicine and Rural Health Services, Chennai, the first respondent has not chosen to disburse the sanctioned amount till date. This shows the manner in which the claim of a deserving person is unjustly prolonged and delayed and the same is to be treated as vexatious.

9. The Government has formulated a scheme to give the medical benefit to the

deserving persons and in clear and categorical terms, listed the diseases, for which the medical reimbursement is permissible. To avail the said benefit, the Government also listed the authorised private hospitals in which claimants are entitled to undergo treatment/surgery. When both the conditions having been satisfied in the case of petitioner herein, the unnecessary repeated queries raised by the first respondent, is unauthorised and uncalled for.

10. The novel scheme having been framed by the Government and the petitioner having paid his contribution to get the benefit under the scheme, denial of the said benefit in spite of the sanction order issued by the competent authority/ second respondent as early as on 5.11.2003, is totally erroneous and illegal. Schemes are introduced neither for the purpose of adding feathers to the cap of the Government nor for the sake of adding to the records of achievements. The schemes are intended for helping the deserving persons. Therefore, it is a disgrace on the part of the first respondent in delaying disbursement of the sanctioned amount to the petitioner for about 21/2 years in spite of the sanction order.

11. There is no justification on the part of the first respondent to delay the payment as the first respondent is also duty bound to look into the Government Order, particularly when it was marked to be served on him. Here in this case, four times, i.e., on 5.11.2003, 30.3.2004, 25.10.2004 and 19.9.2005, the competent authority clarified the doubts and again and again sanctioned the amount. Therefore, the first respondent''s action is not only arbitrary, but also causes great prejudice to the petitioner and therefore for the said wilful delay, the first respondent is bound to pay interest, at least at the rate of 9% per annum. Petitioner is therefore entitled to get the sanctioned amount with interest at the rate of 9% per annum, payable from the date of first order of sanction i.e., from 5.11.2003 till the date of payment.

12. The first respondent is directed to pay the sum of Rs.67,935/-, as per the sanction order dated 19.9.2005 with interest at the rate of 9% per annum from 5.11.2003 till the date of payment, within a period of two weeks from the date of receipt of copy of this order. It is open to the Government to realise the amount paid towards interest from the Officer/Officers, responsible for the delay in disbursement of the sanctioned amount to the petitioner, so that the Government need not suffer any financial loss due to the indifferent attitude of the Officer/ Officers concerned.

The writ petition is allowed with the above directions. No costs. Connected WPMP NO.42007 of 2005 is closed.