
(2014) 08 KL CK 0012
In the High Court Of Kerala
Case No : WP(C). No. 18886 of 2007 (W)

Lekha S. Nair

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0012

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : P.R. Venketesh, Advocate for the Appellant; M.J. Rajashree, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner who is working as an UPSA at the KKM Higher Secondary School, Vandithavalam in Chittur Taluk, Palakkad District, had admitted her husband to a hospital in connection with a heart ailment. On account of the seriousness of the ailment, he was advised to undergo treatment at Kovai Medical Centre Hospital, Coimbatore, and accordingly referred to the said hospital for treatment. He was admitted to the said hospital on 28.5.2004, and on examination, he was advised to undergo emergency bypass surgery. Thereafter he was again admitted to the hospital, this time as an inpatient, on 9.6.2004. The surgery was performed on 11.6.2004 and he was discharged from the hospital on 23.6.2004. The issue in this writ petition pertains to the reimbursement of medical expenses, incurred by the petitioner, in connection with the hospitalisation and surgery undergone by her husband during the aforementioned period.

2. The grant of reimbursement to the petitioner is governed by the Kerala Government Servants' Medical Attendance Rules, 1960 as modified by Ext. P11 Government Order dated 4.12.1993, Ext. P10 Government Order dated 18.2.1997 and Ext. P9 Government Order dated 17.1.2007. As per Ext. P10 Government Order, it is made clear that there will not be a ban for referring patients to a centre outside the State for taking treatment for the diseases listed

in Appendix I to the said Government Order as there is a long waiting list and considerable delay at the centres in Kerala. In the Appendix to the said Government Order, coronary artery bypass surgery is mentioned as one of the diseases for which a patient can be taken to a centre outside the State. By Ext. P9 Government Order dated 17.1.2001, the Kovai Medical Centre and Hospital Limited, Coimbatore, to which the petitioner's husband was referred, is also listed as referral centre for cardiology and cardiovascular surgery for the purposes of the Medical Attendance Rules referred to above.

3. The case of the petitioner is that when she preferred Ext. P1 application for claiming reimbursement of medical expenses incurred on behalf of her husband, duly supported by Ext. P2 recommendation of the Principal of the School and the Superintendent of the District Hospital, Palakkad, and Ext. P4 case summary and discharge record issued by the Kovai Medical Centre and Hospital Limited, Coimbatore, she was served with Ext. P5 order of the Director of Health Services, Thiruvananthapuram informing her that insofar as she had not obtained prior permission from the Director of Health Services as mandated in Ext. P10 Government Order, she had to apply for an ex post facto sanction of her application from the Director of Health Services before her claim for reimbursement could be processed. The petitioner, therefore, applied for ex post facto sanction and her application to the Director of Health Services, Thiruvananthapuram was forwarded to the 1st respondent for onward transmission to the 3rd respondent. The response to Ext. P6 was through Ext. P7 communication from the 1st respondent to the petitioner informing her that the request for medical reimbursement was rejected on account of the following reasons:

- 1) Prior sanction was not obtained from DHS for the treatment outside the State.
- 2) There is no valid referral letter from an authorised Medical attendant.
- 3) Similar treatment is available in major hospitals under Government Sector and recognised private hospitals inside the State.

4. Ext. P7 order, to the extent it rejects the request for medical reimbursement, is challenged in the writ petition.

5. A counter affidavit has been filed on behalf of the 2nd respondent. In the said counter affidavit, the stand taken by the 2nd respondent is that the application by the petitioner had to be submitted through the District Educational Officer, Palakkad and not directly by the Head Master of the School. It is also pointed out that the petitioner ought to have obtained the prior sanction from the Director of Health Services for treatment at a private hospital outside the State. The existence of a similar treatment facility in major hospitals in Government sector is also cited as one of the reasons for rejection of the claim of the petitioner. In short, the stand taken by the respondents is that the petitioner has not complied with certain procedural requirements for obtaining reimbursement and it was in those circumstances that her claim for medical reimbursement was rejected.

6. I have considered the submissions made by counsel for the petitioner as also the Government Pleader. I note from Ext. P7 order of the 1st respondent that the reason cited in the said order for rejection of the claim of the petitioner is threefold as noticed above, of the three reasons that are cited, the reason that there was no valid referral letter from an authorised medical attendant does not appear to be a valid reason for the reason that the application submitted by the petitioner was duly supported by a recommendation from the Office of the District Medical Officer. As regards the third reason that is cited in Ext. P7 order, namely that similar treatment was available in major hospitals under Government sector and recognised private hospitals inside the State, I feel that this is not a stand that is open to the Government to take in view of the specific provisions in Exts. P9 and P10 Government Orders which clearly indicate that it was on account of the long waiting list and considerable delay experienced at the centres in Kerala that the Government thought it fit to extend the facility of medical reimbursement even when the patient had to be referred to other institutions outside the State for the diseases specifically mentioned in the said Government Orders. Having held out that the treatment at the specified hospitals outside the State would also qualify for the grant of medical reimbursement in terms of the Kerala Government Servants' Medical Attendance Rules, 1960, the Government was estopped from taking such a contention to deny reimbursement to the petitioner. Lastly, the denial on the ground that no prior sanction was obtained, does not stand to reason. It would be noted that the application preferred by the petitioner was forwarded to the 1st respondent only because the petitioner could not comply with the procedure of getting a prior sanction from the Director of Health Services. The petitioner had been informed by the respondents through Ext. P5 communication that the technical lapse of not getting a prior permission from the Director of Health Services could be regularised by applying for an ex post facto sanction from the Director of Health Services. It was under these circumstances that the application was made for ex post facto sanction from the Director of Health Services. On such an application, it cannot be the answer of the Government that the application could not be considered for want of a prior sanction from the Director of Health Services. The reply given by the 1st respondent to the petitioner in Ext. P7 virtually has the effect of making the petitioner run from pillar to post in an exercise which can only be categorised as unnecessary. The respondents cannot be so callous in their consideration of legitimate claims for reimbursement preferred by Government servants or, as in this case, a teacher working in a Higher Secondary School. There is nothing on record to suggest that the claim put forward by the petitioner is in any way contrary to the terms of the Medical Reimbursement Rules referred to above or that the expenses were not incurred, as a matter of fact, by the petitioner. Under these circumstances and considering the fact that it has been almost ten years since the petitioner incurred the expenses in respect of which she has preferred the claim for reimbursement, I deem it fit to direct the 1st respondent to expeditiously process and clear the application for medical reimbursement submitted by the petitioner. The respondents shall take

immediate steps to sanction and disburse the reimbursement amounts due to the petitioner in accordance with the Medical Reimbursement Rules referred to above within a period of two months from the date of receipt of a copy of this judgment. I make it clear that I have not pronounced on the entitlement of the petitioner for interest on the amount that has been directed to be disbursed to the petitioner. The petitioner is free to agitate her claim, for interest on the reimbursement amounts sanctioned to her, in separate proceedings.

The writ petition is allowed as above.