(2010) 09 MAD CK 0229

In the Madras High Court

Case No : Writ Petition (MD) No. 234 of 2010 and M.P. (MD) No. 1 of 2010

Murugesan — APPELLANT

Vs

The Deputy Works Manager, Government Branch Press — RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2010) 09 MAD CK 0229

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : D. Saravanan, for the Appellant; V. Rajasekaran, Spl. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the Respondent, dated 21.11.2009, by which the Respondent has rejected the claim of the Petitioner for reimbursement of the amount spent by him for medical treatment ''coronary angiogram'' undergone by him on the ground that the treatment does not find a place in the list of treatments enumerated by the Government under the Scheme.

2. It is not in dispute that the Petitioner, who is a member of the Scheme, has undergone the said coronary angiogram in M/s. Vadamalaiyan Hospital at Madurai. When once it is admitted that the Petitioner is covered under the Scheme, he is entitled for reimbursement. The said right cannot be denied on the ground that the treatment has not been taken in the empanelled hospitals or on the ground that the nature of treatment is not in the list of treatments given by the Government. The nature of treatment to be obtained/given for a patient is based on the consultation from the doctor, as an expert, and that right, which form part of right to life guaranteed under Article 21 of the Constitution of India, cannot be curtailed by stating that certain kind of treatments alone are eligible for reimbursement.

3. This concept as to whether the Government can impose a condition that for the purpose of obtaining medical reimbursement the treatment must have been taken only in the empanelled hospitals or the treatment must be only for such nature of diseases mentioned by the Government has been considered from time immemorial by the Apex Court and in a series of judgments the Apex Court has held that at the time of distress, a patient cannot be expected to instruct his doctor to give a particular treatment and it is ultimately for the doctor to give treatment and not for the patient to suggest. That was the view expressed by the Punjab and Haryana High Court in Sadhu R. Pall v. State of Punjab (1994) 1 SLR 283 (P&H) . In that case, reimbursement was rejected on the ground that treatment was not taken in any one of the empanelled hospitals. In those circumstances, the Punjab and Haryana High Court has held that in urgency, one cannot expected to sit at home in cool and calm atmosphere for getting medical treatment in a particular hospital mentioned in the Government Order. The Division Bench has observed as follows:

The Respondents appear to have patently used excusals in refusing full reimbursement when the factum of treatment and the urgency for the same has been accepted by the Respondents by reimbursing the Petitioner the expenses incurred by him, which he would have incurred in the AIIMS, New Delhi. We cannot lose sight of factual situation in the AIIMS, New Delhi, i.e. with respect to the number of patients received there for heart problems. In such an urgency, one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved.

4. The said reasoning of the Punjab and Haryana High Court has been confirmed with approval by the Hon''ble Apex Court in Surjit Singh Vs. State of Punjab and Others, . It was a case where a person who was eligible for reimbursement under the Scheme has taken treatment in Escorts Hospitals. The authorities, while dealing with the reimbursement application for treatment, have contended that if the treatment was taken in AIIMS the cost would have been lesser. In those circumstances, by approving the above referred to judgment of the Punjab and Haryana High Court, the Supreme Court has held as follows:

12. The Appellant therefore had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The Appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognised list, it is futile for it to contend that the Appellant could in no event have gone to Escorts and his claim cannot on the that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the Appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done

that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the Respondents pay to the Appellant, the rates admissible as per Escorts. The claim of the Appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000/- already paid to the Appellant would have to be adjusted in computation. Since the Appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the Appellant within two months positively. The appeal is accordingly allowed.

5. The next point raised by the learned Special Government Pleader that coronary angiogram cannot be considered as a treatment also is not tenable. In fact in E. Ramalingam v. The Director of Collegiate Education and Anr. 2007 (1) L.W. 10, this Court, while dealing with the treatment of Angioplasty/PTCA Stent, which is also similar in nature as that of coronary angiogram, held that such treatment would also to be covered under the scheme for reimbursement. In fact, in these cases which are of the beneficial legislation, one cannot look into technicalities and the real idea of the Scheme has to be implemented. Once it is established that a person, who is eligible for reimbursement under the Scheme, has undergone treatment, of course subject to the maximum limit for which he is entitled as per the Scheme, it is not certainly open to the authorities to deny his legitimate right, since consistently it has been the view of judicial fora that taking treatment is a right to life flowing from Article 21 of the Constitution of India, which is the basic fundamental right of a citizen.

6. In such view of the matter, the impugned order of the Respondent is set aside and the writ petition stands allowed with a direction to the Respondent to reimburse a sum of Rs. 22,016/- (Rupees twenty two thousand and sixteen only) claimed by the Petitioner, however, subject to the limitation prescribed under the Scheme and such payment shall be effected within four weeks from the date of receipt of a copy of this order. No order as to costs. Connected M.P.(MD) No. 1 of 2010 is closed.

