

(2009) 10 MAD CK 0066
In the Madras High Court
Case No : Writ Petition No. 14285 of 2007

N. Karunanithi

APPELLANT

Vs

The Commissioner of Treasuries and Accounts, The District
Elementary Educational Officer and The Assistant Elementary
Education Officer

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2010) WritLR 88

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : G. Elanchezhiyan, for the Appellant; C.K. Vishnupriya, AGP, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner is a Secondary Grade Teacher in P.U. Middle School, Tittagudi Taluk, Cuddalore District. His wife

was suffering from heart disease and no proper treatment was available at Tittagudi. She was thus referred to Ramachandra Hospital, Chennai. In

a serious condition she was admitted on 08.10.2002 in a serious condition and a major surgery (Balloon Mitral Valvuloplasty) was done on

10.10.2002 for heart disease. She was discharged from the hospital on 14.10.2002. The petitioner incurred an expense of Rs. 88,214/- (Eighty

Eight Thousand Two Hundred Fourteen only) towards the surgery charges and other medical expenses at Ramachandra Hospital, Chennai. He

made an application for reimbursement of Rs. 66,160/- being the 75% of the total expenses, under the Tamil Nadu Government Employees

Medical Scheme, 1991.

2. The second respondent passed an order dated 29.05.2003, refusing to forward the application to the first respondent on the ground that the

surgery performed on the wife of the petitioner is not the one prescribed by the G.O.Ms. No. 400, Finance Department, dated 29.08.2000.

3. The petitioner filed O.A. No. 3134 of 2003 to set aside the order of the second respondent and for a direction to the respondents to consider

the claim for reimbursement, as per the Tamil Nadu Government Employees Health Fund Scheme.

4. Heard Mr. G. Elanchezhiyan, learned Counsel for the petitioner and Mrs. C.K. Vishnupriya, learned Additional Government Pleader for the

respondents.

5. The learned Counsel for the petitioner states that the Government of Tamil Nadu issued G.O. No. 377 Finance (Salaries) Department dated

13.10.2005, wherein it is specifically included Baloon valvulo plasty as one of the heart surgeries that is eligible for medical reimbursement. While

G. O. No. 377 is relating to the serving Government employee, G.O. No. 378 is issued on similar lines to retired Government Employees. It is

further submitted that the Go. No. 378 came for consideration by this Court in V. Palaniammal v. Secretary to Government, Finance (Salaries)

Department, Chennai and Anr. reported in (2008) 2 MLJ 852, and this Court held as follows in para 5 to 9, while relying on an order of this Court

reported in E. Ramalingam Vs. The Director of Collegiate Education and The Regional Joint Director of Collegiate Education, Tiruchirapalli

Region, .

5. I am of the view such a stand taken by the respondents cannot be accepted. Once the Hospital which gave treatment to the petitioner has

certified that coronary angioplasty with stenting done on the petitioner on 09.07.2002 is equivalent to bypass surgery in order to provide fresh

blood supply to the areas, which is supplied by the blocked artery due to advanced technologies it will have to be held that the same would fall

well within the classified treatments under the erstwhile G.Os themselves. The revised detailed classification of the treatments mentioned in

G.O.Ms. No. 378 dated 13.10.2005 by way of clarification can only be constructed as classification of the treatment of open heart surgery in

different forms. In fact, Annexure I to G.O.Ms. No. 378 dated 13.10.2005 the

Cardiology and Cardio Thoracic Surgery falling under I category as stated as under:

I CARDIOLOGY AND CARDIO THORACIC SUPGERY

Open heart surgery including

- (a) Coronary By-pass surgery (CABG)
- (b) Valve replacement
- (c) Correction of Congenital complex heart diseases.
- (d) Angioplasty and PTCA stent
- (e) Baloon Valvulo Plasty
- (f) Permanent Pacemaker
- (g) Peripheral artery embolism
- (Embolectories) By pass surgeries (Aneurysm repair)

6. Such a detailed reference to different kinds of treatment falling under open heart surgery only shows that while all the above treatments falling under Clause a to g came within the common category of open heart surgery which was the treatment already provided for in the earlier

Government Orders including G.O.Ms. No. 400 dated 29.08.2000, the present expanded classification of the said open heart surgery cannot be

construed as an inclusion of new treatment in order to state that for such a treatment the eligibility would arise only after the issuance of the present

G.O.Ms. No. 378 dated 13.10.2005. Similarly, such a view has been expressed by Justice D. Murugesan in the decision in E. Ramalingam Vs.

The Director of Collegiate Education and The Regional Joint Director of Collegiate Education, Tiruchirapalli Region, are relevant which reads as

under at p.643 of MLJ:

7. In matters like this, the Government Orders should not be strictly construed as on the date when the Government Order was issued, the

treatment viz., PTCA Stent could not have been invented or introduced. In recent days, the concept of treating ailments, has advanced so much,

thanks not only to the Speciality Hospitals. Doctors specialised in the modern/ advance treatments, but also the advanced techniques in method of

treatment with use of sophisticated equipments. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests

only with the Doctor, who is well versed and expertised both on academic qualifications and experience gained. Very little scope is left to the patient or his relative to decide as to manner in which the ailment should be treated.

8. ... The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds as found in the impugned order. Having regard to the above lacunae in the earlier Government Order and issuance of subsequent Government Order including not only the treatment but also the hospital, I am of the view that the petitioner is entitled to claim reimbursement.

9. Having regard to my above conclusion, the impugned order of the third respondent dated 10.06.2003 cannot be sustained. While setting aside the same, the respondents are directed to pass orders for disbursement of the fund to the petitioner for having underwent angioplasty operation underwent by her on 09.07.2002 and pay the permissible amount within two months from the date of receipt of a copy of this order.

6. This Court also issued direction to reimburse the permissible medical expenses without reference to the objections raised, after referring to a number of judgments on this point, in W.P. No. 26040 of 2005 dated 01.04.2008. Relevant paras 8 to 10 of the said judgment are extracted here under:

8. Similar issue, with regard to the treatment taken in the unlisted hospitals, mode of treatment not included in the Government Orders and belated applications submitted and whether the same are to be considered or not, came up for consideration before this Court in the following Judgments passed by me as well as by other Learned Judges:

- (a) K. Subramanian Vs. Special Commissioner and Commissioner of Treasuries and Accounts, The Chief Educational Officer and The Headmistress, T.A. Ramalingam Chettiar Higher Secondary School, ;
- (b) C. Nagamuthu Vs. State of Tamil Nadu and Others, ;
- (c) G. Elavazhagan v. Commissioner of Treasuries and Accounts, reported in (2006) 4 MLJ 627;

(d) E. Ramalingam Vs. The Director of Collegiate Education and The Regional Joint Director of Collegiate Education, Tiruchirapalli Region, [D.

Murugesan, J];

(e) K. Balswami Vs. Director of Pension and The Treasury Officer, [P. Jothimani, J];

(f) K. Mani Vs. The Secretary to Government, Health and Family Welfare Department, The Director of medical and Rural Health Services, The

Joint Director of Medical Services, Government Headquarters Hospital and The Superintendent of Police, [P. Jothimani, J]

(g) K. Sundararaj v. Mgmt. of T.N.S.T. Corporation (Madurai) Ltd. reported in 2006 4 MLJ 1183 [P. Jothimani, J]; and

(h) Division Bench Judgment of this Court in W.A. No. 280 of 2005, dated 04.07.2005.

9. The Supreme Court has recognised the right to health as Fundamental Right under Article 21 of the Constitution of India in the decision in State

of Punjab and others Vs. Mohinder Singh Chawala, etc., and again in the case of Paschim Banga Khet Mazdoor Samity and others Vs. State of

West Bengal and another, .

10. In the light of the above referred decisions of this Court as well as the Judgments of the Supreme Court, I hold that the impugned order passed

by the third respondent is unsustainable, and therefore, the same is set aside and the Writ Petition is allowed. The respondents are directed to

sanction the permissible amount as claimed by the petitioner without reference to the objections raised and payment shall be made by the

respondents within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, the concerned miscellaneous

petition is closed.

7. In the order dated 04.07.2005 in W.P. No. 280 of 2005, this Court (Division Bench) held that the mode of treatments listed in the concerned

Government order are only illustrative and not exhaustive. Para 3 to 6 of the said judgment which are relevant, are extracted herein below:

3. The said request was however, rejected by the Government on the ground that the treatment undergone by the petitioner was not covered under

G.O.Ms. No. 437 of Home Department, dated 11.03.1995 and he was entitled for medical reimbursement only in respect of open heart surgery

and not closed heart surgery.

4. Learned single Judge rejected the objection of the Government holding that the reason given by the Government cannot hold good as in the

modern medical treatment, new inventions are introduced and merely because one of the mode of treatment is not included in the list of treatments,

there can no denial of medical reimbursement.

5. Learned Special Government Pleader contends that para 3 of the Government order has enlisted only certain categories of treatments as eligible

for financial assistance. Under Category-I, only open heart surgery is contemplated and admittedly, the petitioner having undergone closed heart

surgery is not entitled for reimbursement. He also contends that the reason given by the learned single Judge that scientific advancement would

entitle reimbursement even apart from the categories enlisted in the Government Order cannot be sustained.

6. We do not find any ground to interfere with the order of the learned single Judge. It is admitted that the petitioner had undergone treatment for

his heart ailment and the Government Order, which is dated 17.03.1995 has not been updated to include other variations of the same surgery for

the same ailment. Advancement in medical science has opened closed heart surgery with reference to the same ailment and there is no jurisdiction

for the State to refuse to grant medical reimbursement for closed heart surgery, which is performed dealing with the same ailment. Mere default on

the part of the Government in not updating the list of treatments cannot be put against the claimant.

8. In view of the categorical pronouncement of this Hon''ble Court in various decisions as stated above, the writ petition is allowed and the

impugned order is quashed and the petitioner is directed to resubmit the application to the second respondent and the second respondent is

directed to forward the same to the first respondent within a week of the receipt of the application and the first respondent is directed to sanction

the permissible amount as claimed by this petitioner, within a period of 3 weeks from the date of receipt of the application being forwarded by the

second respondent. The writ petition is disposed in the above terms. No costs.