

(2023) 05 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20996 Of 2022

Sunny Joseph

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-05-2023

Acts Referred:

Citation : (2023) 05 KL CK 0038

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : S.P.Aravindakshan Pillay, N.Santha, V.Varghese, S.A.Anand, Peter Jose Christo, K.N.Remya, L.Annapoorna, Vishnu V.K., Abhirami K. Uday, Anima M, V.A.Muhammed

Final Decision : Disposed Of

Judgement

N. Nagaresh, J.

1. The petitioner, who is working as Typist Copyist Grade-II in the service of the High Court of Kerala, is aggrieved by the denial of medical reimbursement benefit in respect of the treatment expenses incurred by him for the treatment of his late mother Chinnamma Joseph.

2. According to the petitioner, his mother had multiple health issues and has been undergoing continuous treatment for Cholangio Carcinoma at Lisie Hospital, Ernakulam since 02.12.2016. Lisie Hospital, Ernakulam is an accredited hospital where government servants and their dependents can avail medical treatment under the Kerala Government Servants Medical Attendance Rules, 2016.

3. While the mother was undergoing treatment, she fell unconscious at home on 04.03.2017. She was taken to Lisie Hospital and she was bleeding through nose and mouth. The hospital authorities refused to admit the petitioner's mother and consequently she was taken to PVS Memorial Hospital. On 05.06.2017, the petitioner's mother again fell unconscious after suffering a stroke. She was admitted to the Intensive Care Unit. She became speechless on 13.06.2017 and

passed away on 07.07.2017.

4. The petitioner incurred ₹ 2,56,089/- towards medical expenses. The petitioner sought reimbursement as per Ext.P1 application. The High Court forwarded connected documents to the Government on 14.05.2018 as per Ext.P2. The Government returned the original bills as per Ext.P3 requiring to re-transmit the same after verification by the Director of Health Services. The verification was done. By Ext.P4, the 3rd respondent-Director of Health Services informed that the amount permissible as per Government rate is ₹ 1,27,998/-.

5. While the petitioner was waiting for reimbursement of ₹ 1,27,998/-, the Government issued Ext.P5 letter dated 22.06.2020 stating that since PVS Hospital is not Government approved and since financial condition of the Government is bad, reimbursement is not allowed. When the High Court took up the issue again, the Government issued Ext.P6 communication dated 10.03.2021 stating that a review of Ext.P5 is not possible in view of the present financial condition of the Government. The further request made by the High Court was also turned down as per Ext.P7 letter dated 17.05.2022.

6. The petitioner argued that as per Rules, he is entitled to get reimbursement of ₹ 2,56,089.15 in connection with the treatment of his late mother. The High Court verified the entitlement and has forwarded its recommendation to the Government. When the eligibility of employee for reimbursement of medical expense is not in dispute, the Government cannot deny the same based on its financial condition.

7. The petitioner contended that he was forced to treat his mother in PVS Hospital under special circumstances and therefore the Government cannot deny the petitioner's claim stating that the Hospital where treatment is made is not in the list of hospitals approved by the Government. The respondents are therefore compellable to reimburse the medical expenses incurred by the petitioner.

8. The Registrar General of the High Court filed a counter affidavit. When the petitioner submitted application for reimbursement, it was forwarded to the Government as per Ext.R2(b) letter dated 14.05.2018. The application was returned for verification by the Director of Health Services. The matter was sent to the Director of Health Services as per Ext.R2(d) on 13.02.2019. The Director of Health Services certified ₹ 1,27,998/- for reimbursement as per Ext.R2(e).

9. The Government did not approve reimbursement as PVS Hospital, where treatment was made, was not an enlisted hospital notified by the Government. Though the matter was taken up again, the Government conveyed their inability to reconsider the claim due to the present financial situation.

10. The Government Pleader resisted the writ petition relying on Circular No.24623/G2/2012/H&FWD dated 11.07.2012 of the Special Secretary to Government, Health and Family Welfare (G) Department and order GO(P) No.10/2016/H&FWD dated 21.01.2016 of the Additional Secretary to the

Government, Health and Family Welfare Department. The Government Pleader also relied on order GO(P) No.122/2020/FIN dated 23.11.2020 of the Secretary to Finance Department.

11. The Government Pleader submitted that medical reimbursement payable to employees are governed by specific rules and executive instructions issued by the Government from time to time. The Government has prepared a comprehensive list of empanelled private hospitals, where Government servants can avail treatment with the reimbursement benefit. The petitioner was treating his mother in Lisie Hospital which was an empanelled hospital. However, subsequently, the petitioner's mother was admitted in PVS Hospital, Ernakulam, which is not an empanelled hospital. Therefore, the petitioner's claim for reimbursement is only to be rejected.

12. I have heard the learned counsel for the petitioner and the learned Government Pleader representing respondents 1, 3, additional respondents 4 and 5. I have also heard the Standing Counsel for the 2nd respondent-High Court of Kerala.

13. The Circular dated 11.07.2012 relied on by the respondents would show that cases of medical reimbursement claims in which treatment is undergone in Government approved private hospitals can be settled by the Administrative Departments themselves as per KGSM Rules, 1960. Only those proposals for which specific sanction is required for reimbursement need be forwarded to the Health and Family Welfare (G) Department. The Circular would indicate that the Government has power even to approve reimbursement if the treatment is availed in unapproved private hospitals. The GO dated 22.04.2013 states that the Government in future will not consider claim for reimbursement in private hospitals which are not empanelled.

14. In the case of the petitioner, it is clear that he was availing treatment for his mother in Lisie Hospital, Ernakulam which is an empanelled hospital. On 04.03.2017, when the petitioner's mother fell unconscious at home, she was rushed to Lisie Hospital. The petitioner's mother was vomiting blood and was bleeding through nose and mouth. According to the petitioner, the Lisie Hospital authorities refused to admit the petitioner's mother in their hospital and hence she was taken to the PVS Memorial Hospital, which was nearby.

15. The petitioner's mother again fell unconscious after suffering a stroke on 05.06.2017 and she had to be admitted to Intensive Care Unit. She became speechless on 13.06.2017, while she was under treatment. The Doctors of the hospital discharged the petitioner's mother stating that her stage is beyond cure by medical intervention. The petitioner's mother passed away on 07.07.2017. The question is whether in such circumstances the Government would be justified in denying medical reimbursement to the petitioner.

16. A somewhat similar issue came up for consideration before the Hon'ble Apex Court in *Shiva Kant Jha v. Union of India* [2018 (2) KLT OnLine 3040 (SC)]. The

Hon'ble Apex Court held that it is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. 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 expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialised in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. 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.

17. In the present case, the petitioner has explained the peculiar emergency circumstances under which the mother had to be admitted in a private hospital which is not an empanelled hospital. The High Court had verified the bills and forwarded the same to the Government. The Director of Health Services, as per Ext.P4, has concluded that an amount of ₹ 1,27,998/- can be permitted to be reimbursed. The said decision was taken after considering the medical bills and essentiality certificates submitted by the petitioner.

18. In the circumstances, taking into consideration the judgment of the Apex Court in Shiva Kant Jha (supra), the decision taken by the Government cannot be justified. Exts.P5 to P8 orders are set aside. There will be a direction to the respondents to reimburse the amount of ₹ 1,27,998/-certified under Ext.P4 to the petitioner within a period of two months.

Writ petition is disposed of as above.