

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **03.08.2018**

Pronounced on : **28.05.2019**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

W.P.(MD).Nos.13429 of 2013, 16503 of 2013, 14165 of 2015, 420 of 2016, 839 of 2016, 4640 of 2016, 14983 of 2016, 21297 of 2016, 21803 of 2016, 24455 of 2016, 2610 of 2017, 4062 of 2017, 4148 of 2017, 4623 of 2017, 4783 of 2017, 7942 of 2017, 10747 of 2017, 10773 of 2017, 10868 of 2017, 10904 of 2017, 11051 of 2017, 11210 of 2017, 11733 of 2017, 11982 of 2017, 12075 of 2017, 12369 of 2017, 12855 of 2017, 13742 of 2017, 14467 of 2017, 15443 of 2017, 15468 of 2017, 18660 of 2017, 19316 of 2017, 19732 of 2017, 19814 of 2017, 19816 of 2017, 20054 of 2017, 20390 of 2017, 20391 of 2017, 21128 of 2017, 21183 of 2017, 21184 of 2017, 21190 of 2017, 21333 of 2017, 21644 of 2017, 21748 of 2017, 21822 of 2017, 21937 of 2017, 22093 of 2017, 22455 of 2017, 22879 of 2017, 23173 of 2017, 23422 of 2017, 23982 of 2017, 343 of 2018, 1811 of 2018, 6357 of 2018, 7038 of 2018, 7064 of 2018, 7065 of 2018, 7270 of 2018, 7931 of 2018, 8814 of 2018, 9087 of 2018, 9148 of 2018, 9535 of 2018, 9819 of 2018, 10098 of 2018, 11912 of 2018, 11927 of 2018, 12336 of 2018, 12389 of 2018, 12820 of 2018, 12858 of 2018, 13179 of 2018, 13180 of 2018, 13379 of 2018, 13380 of 2018, 13484 of 2018, 13512 of 2018, 13514 of 2018, 13918 of 2018, 14050 of 2018, 14723 of 2018, 15365 of 2018, 15521 of 2018, 16591 of 2018, 16795 of 2018, 16923 of 2018, 17404 of 2018 and 17332 of 2018 and connected miscellaneous petitions

W.P.(MD).No.13429 of 2013

S.Marimuthu
E.X. V.A.O. Karuppoor Village,
Muthulapuram Piraka,
Attayapuram Taluk,
Thoothukudi District.

.. Petitioner

-Vs-

1. The Government of Tamil Nadu,
Represented by its Secretary,

Department of Health and Family Welfare,
Fort St.George,
Chennai.

2. The Additional Director of Medical and Rural Health Services,
O/o. Additional Director of Medical and Rural Health Services,
Chennai - 6.
3. The District Collector,
Tuticorin District,
Tuticorin.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order Mu.Mu.No.15553/KaPi2/3/2/2011 dated 16.04.2012 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the respondents to disburse the sum of Rs.46,120.20/- together with further interest under Medical Reimbursement Scheme.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.B.Pugalendi, AAG
Assisted by
Ms.S.Srimathy, Spl.G.P.

COMMON ORDER

In all these writ petitions in this batch of cases, the issue raised is the entitlement of the writ petitioners, who are either Government employee or pensioner of the State Government and its undertakings or their family members / legal heirs / next kith and kin, to get medical reimbursement under the New Health Insurance scheme implemented by the State Government from time to time.

2. In all these cases, since the issue raised is one and the same and the relief sought for in each of the writ petitions in this batch are also same or similar, all these writ petitions were heard together and are being disposed of by this common order.

3. Factual background :

(i) The State Government originally was having a scheme called "Tamil Nadu Government Employees Health Fund Scheme (herein after referred to as Health Fund Scheme), which was implemented by issuance of G.O.Ms.No.18, Finance Department, dated 09.01.1992.

(ii) When the said Health Fund Scheme was in vogue, as it was felt that, the said Health Fund Scheme did not provide necessary or adequate assistance by way of reimbursement of the medical needs of the state employees, on getting various representations at various point of time from the employees and the pensioners, the State Government thought it fit to introduce a new health insurance scheme to Government employees and employees of local bodies, public sector undertakings, statutory bodies and State Government Universities. Accordingly, G.O.Ms.No.430, Finance (Salaries) Department, dated 10.09.2007 was issued, under which, the Health Insurance scheme for the Government and Public

sector undertaking employees have been introduced by the State Government, which was continued for block year of four years from 11.06.2008 up to 10.06.2012.

(iii) Since the Health Insurance scheme expired with the block year by 10.06.2012, the Government issued G.O.Ms.No.139, dated 27.04.2012 of Finance (Salaries) Department, for extension of the Health Insurance scheme beyond 10.06.2012. Accordingly the New Health Insurance scheme 2012 was introduced by the issuance of G.O.Ms.No.243, Finance (Salaries) Department, dated 29.06.2012 (herein after referred to as 2012 scheme). According to the 2012 scheme, the scheme will be in operation for four years commencing from 01.07.2012 to 30.06.2016 and the scheme would be administered through the third party administrator under the control of United India Insurance Company, Chennai. Every employees of the State Government and Public sector undertakings shall pay premium of Rs.150/- per month to the State Government and the said amount would be deducted from their salary. The 2012 scheme shall be compulsory for all Government employees. In turn, the State Government entered into an agreement with United India Insurance Company Ltd., Chennai (herein after referred to as Insurance Company) and accordingly, the annual premium of Rs.1,860/- would be paid by the State Government to the Insurance

company as an yearly premium for the employee, under which the employee as well as his family would be covered under the Insurance scheme 2012.

(iv) The scheme is on cashless basis and no payment for treatment of approved disease need to be made by the employee to the approved hospital. The maximum reimbursement by way of direct payment payable by the Insurance company to the hospital, where treatment was taken in the whole block year by the employee / family member, shall be Rs.4,00,000/-. Accordingly the insurance scheme 2012 was implemented for a block period consisting of four years commencing from 01.07.2012 till 30.06.2016.

(v) Since the insurance scheme 2012 was expired by 30.06.2016, the State Government decided to extend the New Health Insurance Scheme beyond 30.06.2016, thereby the Government issued G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016, under which New Health Insurance Scheme 2016 was implemented (herein after called as Insurance scheme 2016). The said 2016 scheme would be implemented for a block period of four years commencing from 01.07.2016 up to 30.06.2020. The very same insurance company namely United India Insurance

Company Ltd., Chennai is the insurance company, with whom the State Government entered into an agreement, according to which, from 01.07.2016 onwards the scheme would be implemented as a cashless model for the approved treatments / surgeries in the hospitals approved by the United India Insurance Company / third party administrator and the employee and their eligible family members would be covered under the scheme and shall avail financial assistance on cashless basis up to the limit of Rs.4,00,000/- in a block period of four years. However the assistance shall be up to Rs.7,50,000/- for specified illness listed in Annexure-II A.

(vi) At any rate the over all limit of assistance in any case shall not exceed Rs.7,50,000/-. The annual premium of Rs.2,100/- shall be paid by the State Government to the Insurance company for each of the employee who were covered under the scheme and in turn, the State Government will deduct a sum of Rs.180/- per month, for each employee from their salary, as monthly premium subscription.

(vii) Therefore the Government on receipt of Rs.2,160/- per year by way of premium from the employee would in turn pay Rs.2,100/- to the Insurance company. The said scheme, i.e., Insurance Scheme 2016 is now under implementation till the year 2020.

(viii) Like that, a similar Health Insurance Scheme for the benefit of pensioners of the State Government and its undertakings also was introduced by the State Government by issuance of G.O.Ms.No.171, Finance (Pension) Department, dated 26.06.2014. The scheme called New Health Insurance Scheme, 2014 (herein after referred to as Health Insurance Scheme 2014) to provide health care assistance to the pensioners (including spouse) / family pensioners on cashless basis, under which, they can avail the assistance up to Rs.2 lakhs for a block period of four years and the same would be implemented through the Director of Treasuries and Accounts, Chennai. Accordingly the United India Insurance Company Ltd., Chennai was awarded with the contract, with whom the State Government had entered into an agreement for the implementation of Health Insurance Scheme 2014 for pensioners for a four years block period commencing from 01.07.2014 up to 30.06.2018.

(ix) Under the 2014 Insurance Scheme for pensioners, the pensioners / family pensioners shall uniformly subscribe a sum of Rs.150/- per month to the said scheme as a premium subscription. They can avail the medical assistance up to a limit of Rs.2 lakhs in a block period of four years from 01.07.2014 up to 30.06.2018 on a cashless basis for the accredited treatment / surgeries in the hospitals approved by the United India Insurance Company / third

party administrator under the scheme. Accordingly the said Pensioners Health Insurance Scheme 2014 was implemented for the block year consisting of four years up to 2018.

(x) Since the said Pensioners Health Insurance Scheme 2014 expired in 2018, the Government decided to extend the scheme for a further block period of four years. Accordingly, G.O.Ms.No.222, Finance (Pension) Department, dated 30.06.2018 was issued, under which, the New Health Insurance Scheme 2014 replacing the Tamil Nadu Government Pensioners Health Fund Scheme 1995, was extended for a further period of four years under the new scheme called "New Health Insurance Scheme 2018 for pensioners (including spouse) / family pensioners" (herein after referred to as Health Insurance Scheme 2018 for Pensioners). This time also the contract was awarded to the United India Insurance Company Ltd, Chennai, which executed an agreement with the State Government for implementation of the 2018 scheme. The annual premium payable by the Government to the insurance company was fixed at Rs.3,800/- plus GST, per annum, for the block period of four years from 01.07.2018 to 30.06.2022. In turn the Government will recover a sum of Rs.350/- per month as premium subscription from each of the pensioner, who were covered under the 2018 scheme for the whole block period of four years.

(xi) In both employees Health Insurance Scheme as well as Pensioners Health Insurance Scheme, the enrollment is compulsory and there is no option given in this regard either to the employee or to the pensioner in joining the scheme.

(xii) The 2018 scheme would provide for financial assistance up to Rs.4 lakhs with a provision to pay up to Rs.7.5 lakhs for approved treatment taken and surgeries undergone as per Annexure I A to the guidelines. This 2018 scheme for pensioners is presently under implementation up to the year 2022.

(xiii) Therefore there are two parallel Health Insurance Scheme, one is for Government employees and the employees of the public sector undertakings and another one is for pensioners.

(xiv) In so far as the employees are concerned, the scheme was introduced in the year 2008 onwards for every four years called block years. Accordingly, the 2008 scheme expired in 2012 and 2012 scheme expired in 2016 and the 2016 scheme is presently under implementation.

(xv) Like that, in so far as the pensioners are concerned, in 2014, the scheme was introduced, which lasted for four years block

period up to 2018 and as of now, the 2018 Health Insurance Scheme for Pensioners is at implementation for four years period up to 2022.

(xvi) As of now in both the schemes which are currently under implementation, except the payment of premium, the other aspects are almost similar, where the maximum financial assistance by way of medical assistance can be availed by a subscriber to the Insurance Scheme is Rs.4 lakhs for both schemes and the same would be extended up to Rs.7.5 lakhs only in respect of specified treatments / surgeries enumerated under Annexure II A / I A to the scheme respectively.

(xvii) While these schemes were under implementation, since there has been a contract between the State Government and the Insurance Company, whenever the scheme was introduced and subsequently reintroduced, according to the contract, two major ingredients were available, they are (1) that the member of the Insurance scheme and his or her family shall take treatment only in approved / networking hospitals, which have been specifically mentioned in the Annexure to the scheme itself and (2) they shall take treatment only for the listed diseases / surgeries.

(xviii) In other words, every member of the Health Insurance Scheme, both by the employee as well as the pensioner and their family members, can take treatment on need basis only from the approved / network hospitals as approved or accredited by the Insurance Company and listed out in the scheme itself. If treatment is taken other than the network hospital and if any amount has been paid by the employee / pensioner or their family members, the same would not be reimbursed by the Insurance Company.

(xix) Like that, apart from the diseases and surgeries notified as Annexure in the scheme, any other treatment is taken by the employee / pensioner or their family members either in the networking hospital or in the non networking hospital, even in that case also, there would not be any reimbursement by the Insurance company.

(xx) Also yet another embargo was that, assuming the treatment has been taken in network hospital and if any amount / cash has been paid in advance without the pre-approval of the third party administrator, on behalf of the Insurance Company, even then also such amount paid by the employee / pensioner would not be reimbursed, because the scheme itself is a cashless scheme, under which the treatment can be taken by the member of the Insurance

Scheme from the networking hospital for listed diseases, without paying any cash, of course after getting pre-approval and if any of these conditions, as indicated above, has been violated or has not been fulfilled as required under the Scheme or the contract between the Government and the Insurance company, the member of the scheme would not be entitled to get any medical reimbursement and therefore in that score, the Insurance company would not be liable to pay any reimbursement for such a claim from the member of the scheme.

3. Only at this factual background, litigations were pouring in, as number of such claims made by the employee / pensioner had been rejected either by the Insurance company or by the State Government.

4. In this context, it is to be noted that, the Government, along with the implementation of the scheme, has also constituted / nominated accreditation committee for empanelment of hospitals to be included in the scheme as approved or network hospital and also appointed District level Empowered Committee consisting of Doctors and other officials headed by the District Collector concerned, to whom, such kind of claims made by the employee / pensioner would be placed for scrutiny and decision and based on such

decision taken by the Empowered Committee, it would be forwarded to the Insurance Company for reimbursement.

5. It is further to be noted that, in number of cases, such claims made by the employee / pensioner has either been rejected by the Insurance Company or by the Empowered Committee, therefore against all such rejections, time and again cases have been filed before this Court.

6. In the earliest occasion, in the year 2010 itself, such kind of cases were filed by way of writ petitions by the aggrieved employees / pensioners. Considering the cases on individual basis, orders seems to have been issued by this Court giving suitable directions to the State Government / Insurance Company to consider the claim made by the employee / pensioner and to sanction the reimbursement.

7. When one such order was passed in W.P.(MD).No.1091 of 2009 by a learned single Judge of this Court on 20.07.2009, the same was appealed by way of Intra Court Appeal by the Insurance Company in W.A.(MD).No.480 of 2009. The said Writ Appeal along with some connected writ petitions were heard together and decided by a Division Bench of this Court in the matter of **Star Health and**

Allied Insurance Co., Ltd., v. A.Chokkar and another reported in **2010-2-LW 90**.

8. In the said Division Bench Judgment, in Star Health and Allied Insurance Co., Ltd., case, the Division Bench, after having exhaustively discussed the issue, has given the following decision :

"24.In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such Rules furthermore having been framed under the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognised government hospitals and on the other he, at his option, may get himself treated from other recognised hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited."

Of course, in that case, the Supreme Court had directed the State of Karnataka and Rajasthan to pay the balance amount. But, the law laid down in the case was paragraph 29:

"29.In a case of this nature, we are of the opinion, that having laid down the law for the future that claim for reimbursement must be

made only in terms of the Rules and not de hors the same, and more so, when there is no power of relaxation, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the State of Karnataka and Rajasthan to pay the balance amounts. However, this order shall not be treated as a precedent."

24. In the present case, what we have to decide is whether the State is bound to reimburse the claim, whether the insurance company is bound to indemnify the beneficiary for the claim made by him. As held in the decisions referred to above, the insurance company is strictly bound to strictly by the terms of contract and cannot be asked to settle a claim which does not fall within the terms of the contract and therefore the claim made by the beneficiaries in respect of treatments that were taken in a non-network hospital or for reimbursement of the claim made the insurance company is not liable. For this reason, the insurance company had made it clear that only if the beneficiary took treatment in a network hospital they would settle the claim and more importantly the facility itself is a cashless facility. The insurance company cannot pay cash and if we issue direction to the insurance company to reimburse the claim, we would be virtually re-writing the contract which we are not entitled to.

25.The Tamil Nadu Medical Attendance Rules ("the Rules" in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a non-network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself makes the network hospitals as intrinsic. However, the petitioners/claimants were also not remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee.

26.Before taking up the individual cases, we must record that there are certain situations which may arise and in fact which have arisen, for which the Government must issue clear guidelines. This the Government has to do, since it has made the Scheme obligatory for everyone and there is automatic deduction of premium to an extent of Rs.25/- per month. The directions are as follows:

(i)The State shall make it clear that if for some reason, which is satisfactory, the claimant is unable to take treatment in a network hospital but has been advised or had to go to a non-network hospital, then his claim would be considered under the Rules.

(ii)If the claimant has been advised some procedure which is not covered by the Scheme, there again, it must be made clear that he can apply under the Rules.

(iii)To safeguard duplication of payments, the Government can make sure and when they apply under the Rules, that the claimant himself certifies that he has not made claim under the Scheme or vice-versa.

(iv)The State shall inform every network hospital that if it receives complaints from claimants that money was demanded for admission or for treatment, then that hospital will be removed from the network. This warning is necessary, since, at times of crisis, the claimants will not be in a position to argue with the hospital that this is a "cashless" Scheme. We are aware that there is an officer of the Star Health Insurance Company at every network hospital to ensure that hospitals adhere to the terms of the Scheme but, yet, it is better to make this position clear to the hospitals, since one of the questions that has arisen before us is that whether the claimants

will be entitled to reimbursement if, by mistake, they pay cash.

27. Now coming to the individual cases, in all the case, whatever may be the category, the petitioners/claimants have paid the amount. The scheme is a 'cashless' one and, therefore, it is only the Government which have to make the payment under the Rules. The Redressal Committee is empowered to decide the following circumstances, namely, any difficulty in availing treatment, non-availability of facilities, bogus availment of treatment for ineligible individuals, etc. It is really not clear what other complaints would be covered under the umbrella "etc.". But, however, since the Paragraph relating to 'Redressal of Grievances' starts with the sentence "The Hospitals shall extend treatment to the beneficiaries under the Scheme on a cashless basis", it is evident that the Committee cannot direct payment of cash.

28. Therefore, if the claimants have made payments whether for a procedure not covered or whether at a non-network hospital or they have paid when they have been treated for a covered procedure in a network hospital, their only remedy is to approach the Government under the Rules. If, however, before they take treatment they are informed that a particular procedure is not covered, then at that stage, they may approach the Redressal Committee where the medical expert can decide whether

that procedure is covered or not. The Redressal Committee may also go into the complaints regarding non-availability of facility at a network hospital, which may be available in favour of the claimant when he applies under the Rules. Otherwise, we do not think that the Redressal Committee can do much in any one of these cases, since all the petitioners/claimants before us would have made payments. But, if there is a petitioner who has not settled the claim and has come before us, then, in the event, that it is for a procedure that is not covered, he may approach the Redressal Committee. In view of the fact that there are the above lacunae in the Scheme, the Government shall not deny any claim validly made under the Rules only because the claimant is a member of the Scheme.

29. With the above directions and observations, all the writ petitions are disposed of. W.A.No.480/2009 is allowed and the order of the learned Single Judge is set aside. No order as to costs. Connected M.Ps. are closed."

9. Following the said Division Bench decision in Star Health and Allied Insurance case (*cited supra*), number of such cases were filed subsequently before this Court and time and again those cases were decided and disposed. In most of the occasions, this Court has

given directions to the State Government as well as the Insurance Company to consider the claim and pay the reimbursement as claimed by the employee / pensioner.

10. When this position was continuing for the past few years from 2010 onwards, this batch of cases have been filed. Most of the cases is of the year 2017 or 2018 and some of the writ petitions were filed in 2013, 2015 and 2016.

11. If we look at the prayer sought for in each of the writ petitions, in some of the cases, writ of mandamus have been sought for seeking direction to the respective respondents to consider the medical reimbursement claim made by the writ petitioner for the medical bill, which have already been settled by the employee / pensioner for the treatment for the employee / pensioner or their family members, who are covered under the New Health Insurance Scheme (2008, 2012, 2014, 2016 and 2018).

12. In most of the cases such medical claim for reimbursement were rejected by the respective respondents. In some of the cases, the rejection orders were made by the Insurance Company, in some of the cases by the Empowered Committee of the District Level and in some of the cases, the High Level Committee at the State Level.

13. Challenging those orders, writ petitions seeking for writ of certiorarified mandamus also were filed to quash the respective impugned orders and for directions to the concerned respondents to sanction and pay the medical reimbursement claimed by the respective writ petitioners. That is how all these writ petitions have been grouped together and heard together and are disposed of by this common order.

14. Primarily on two grounds, most of the cases have been rejected by the respondents. Firstly, the reason is that, treatment has not been taken in the network hospital / hospital which has not been approved or listed out in the scheme. The second reason is that, the treatment taken by the employee / pensioner is for a disease which is not listed out in the scheme and therefore out of the purview of the scheme, treatment had been taken for the disease, performance has been done / surgeries have been undertaken and therefore they cannot be covered under the Insurance Scheme. Only for these two primary reasons, majority of the claim in these writ petitions have been rejected by various authorities as set out above.

15. Apart from these two major reasons, some peculiar reasons also has been given and in most of the cases, there has

been no reason as reflected in the respective impugned orders and it is merely stated that, the District Level Empowered Committee has rejected the claim or the Insurance company has rejected the claim or the claim made by the employee / pensioner cannot be considered as it is not covered under the Scheme.

16. In order to appreciate the way in which these claims were rejected by the authorities, some of the impugned orders in this batch of writ petitions (sample orders) are taken into account and the relevant portion of the said impugned orders alone are extracted hereunder for ready reference.

"W.P.(MD) No.13429 of 2013:

தாங்கள் மேற்கொண்ட சிகிச்சை இத்திட்டத்தின்கீழ் அங்கீகரிக்கப்படாத நிலையில் தங்களது கோரிக்கை ஏற்க இயலவில்லை என்பதை தெரிவித்துக் கொள்ளப்படுகிறது.

W.P.(MD).No.21297 of 2016:

The Cashless Hospitalization is denied, as the illness is not covered under the policy.

W.P. (MD) No.21803 of 2016:

Treatment taken during second year of the scheme are not considered for reimbursement.

W.P. (MD) No.7942 of 2017:

1. தனியர் மேற்படி சிகிச்சையினை அரசாணையில் அங்கீகரிக்கப்பட்ட மருத்துவமனையில் சிகிச்சைப் பெறவில்லை.

2. தனியர் சிகிச்சைக்கு இணை இயக்குநர் மருத்துவம் மற்றும் ஊரக நலப்பணிகள் அவர்களால் தொகை வழங்க பரிந்துரை செய்யப்படவில்லை.

எனவே மேற்கண்ட காரணங்களால் தனியருக்கு மருத்துவ செலவு தொகை வழங்க வழி வகை இல்லை என அதிகாரம் பெற்ற மாவட்ட குழுவால் நிராகரிக்கப்படுகிறது.

W.P. (MD) No.10773 of 2017:

பார்வை 1ல் கண்ட அரசு ஆணையின்படி, அங்கீகரிக்கப்பட்ட மருத்துவமனைகளில் சிகிச்சைக்கு முன் உரிய அனுமதி பெறாததால் மருத்துவ செலவீனம் மீளப் பெற இயலாது என்று கூறி பார்வை 5ல் கண்ட கடிதத்தின்படி தனியரின் விண்ணப்பம் திரும்பவரப்பெற்றுள்ளது. எனவே, திருமதி.ஜா.உஜ்ஜா ஜாய் செல், தலைமை ஆசிரியை என்பவரது விண்ணப்பம் உரிய இணைப்புகளுடன் அசலாக திருப்பப்படுகிறது.

W.P. (MD) No.11051 of 2017:

Treatment taken in non-network hospital need not be considered as per G.O.No.171 dated 26.06.2014 and letter No.34231 (Pension) / 2015 / 1 dated 01.07.2015 issued by Finance Secretary (Pension) Department.

W.P. (MD) No.11982 of 2017:

I am directed to inform that the High Level Committee of the above said scheme rejected your appeal for the reason that the G.Kuppusamy Naidu Memorial Hospital, Coimbatore, is not an approved hospital for the coverage of assistance under New Health Insurance Scheme, 2014 for pensioners (including spouse) / Family Pensioners.

W.P. (MD) No.12369 of 2017:

The treatment was taken in a Non-Network hospital. Hence the committee rejected the claim.

W.P.(MD).No.20054 of 2017:

பார்வை 2ல் காணும் கூடுதல் அரசுச் செயலர் அவர்களின் நேர்முக கடிதத்தில் அரசுப் பணியாளர் மற்றும் ஓய்வூதியர்களுக்கான NHIS அரசாணையில் தெரிவிக்கப்பட்டுள்ள மருத்துவமனை மற்றும் சிகிச்சை முறைகளை தவிர்த்தவற்றை பரிந்துரைக்க வேண்டாம் என தெரிவிக்கப்பட்டுள்ளதை இதன்வழி தனியருக்கு தெரிவிக்கப்படுகிறது.

W.P.(MD).No.21183 of 2017:

பார்வையில் கண்டுள்ள கடிதத்தின் படி மருத்துவ செலவினம் மீளக்கோரும் தங்களின் விண்ணப்பத்தின் மீது எடுக்கப்பட்ட நடவடிக்கைகளில் தங்கள் விண்ணப்பம் நிராகரிக்கப்பட்டுள்ளது என்ற விபரம் தெரிவிப்பதுடன் தங்களின் விண்ணப்பம் மற்றும் மருத்துவசெலவின ரசீதுகள் யாவும் இத்துடன் இணைத்து அனுப்பப்படுகிறது.

W.P. (MD) No.21644 of 2017:

Conservative Management for RTA is not covered.

W.P. (MD) No.21822 of 2017:

பார்வையில் காணும் கன்னியாகுமரி மாவட்ட மருத்துவம் மற்றும் ஊரக நலப்பணிகள் இணை இயக்குநரின் கடிதத்தின் படி திருப்பி அனுப்பப்பட்ட, கிறிஸ்துராஜபுரம், எம்.ஜே.கே.எம்.எம்.எஸ்.சி மேல்நிலைப் பள்ளி தையல்

ஆசிரியை திருமதி.சி.தங்கபுஷ்பம் என்பாரின் மருத்துவ செலவினம் மீளக்கோரிய கருத்துருக்கள் மற்றும் அசல் மருத்துவ ரசீதுகள் இத்துடன் திருப்பி அனுப்பலாகின்றன.

W.P. (MD) No.7064 of 2018:

தாங்கள் அனுப்பிய மருத்துவ முன்மொழிவில் மருத்துவ பட்டியல் அனைத்தும் நகல்களாக பெறப்பட்டுள்ளது மற்றும் அசல் விலகல் சான்றில் கையொப்பமிட்ட மருத்துவரின் பதிவெண்ணுடன் கூடிய முத்திரை இல்லாததால் இதன்மீது நடவடிக்கை எடுக்க விதிகளில் இடமில்லை என தெரிவித்து ஆவணங்கள் அசலாக திருப்பப்படுகிறது.

W.P. (MD) No.7931 of 2018:

அக்குழுக்கூட்டத்தில், தங்களின் விண்ணப்பம் ஆய்வுக்குட்கருத்தப்பட்ட நிலையில் பார்வை 1ல் காணும் அரசாணையில் கூறப்பட்டுள்ள விதிகளுக்குட்பட்டு, தாங்கள் சிகிச்சையினை மேற்கொள்ளாததால் (அங்கீகரிக்கப்படாத மருத்துவமனை அங்கீகரிக்கப்படாத சிகிச்சை), பார்வை 2ல் தங்களது விண்ணப்பம், அசலாக இக்கடிதத்துடன் இணைத்து அனுப்பப்படுகிறது என்பதனை தெரிவித்துக் கொள்கிறேன்.

W.P. (MD) No.13514 of 2018:

1. அங்கீகரிக்கப்பட்ட மருத்துவமனையில் சிகிச்சை மேற்கொள்ளப்படவில்லை.

2. சிகிச்சை மேற்கொண்ட காலத்தில் அங்கீகரிக்கப்படவில்லை.

W.P. (MD) No.13918 of 2018:

The Cashless Hospitalization is denied, as the illness is not covered under the policy."

17. If these are all the reasons which have primarily triggered the authorities / respondents herein to reject the claim of the medical reimbursement made by the respective writ petitioners for the treatment taken by themselves or their family members who have been covered under the successive medical Insurance Schemes, whether these reasons can be sustainable reasons for denying or rejecting in toto, the claim of the employee / pensioner for medical reimbursement is the only issue to be decided in this batch of cases.

18. In Star Health and Allied Insurance Company case cited above (2010-2-LW 90), it has been held that, when there has been agreement between the Insurance Company and the State Government and the said agreement is nothing but a contract, the party to the contract will be abide by only on the condition of the contract and not beyond that. It means that, the Insurance company, if at all liable to pay reimbursement of medical claim, such liability is only in consonance with the terms of the contract and not beyond that. While holding so, the Division Bench has further held that, in cases where the Insurance Company is not liable to pay, it is for the Government to pay, of course on the basis of the Tamil Nadu Medical Attendance Rules.

19. In this context, it is to be noted that, the Tamil Nadu Medical Attendance Rules, as amended, has been lastly issued in the year 1980 in G.O.Ms.No.1308, Health and Family Welfare Department, dated 12.08.1980. The said rule would apply to the persons who are entitled to medical attendance under the Secretary of State Services (Medical Attendance) Rules 1938, the All India Services (Medical Attendance) Rules 1954 and also to the Tamil Nadu State Higher Judicial Officers, who are to be treated on par with the I.A.S and I.P.S Officers.

20. The Rule also would be applied to Government servants of Groups A and B and Government servants of Groups C and D and their families, Tamil Nadu Public Works Department, who were working at Mysore and Krishnarajasagaram. In the definition of the rule, the word "Government Servants" is defined as, "whole time Government servant employed under the Tamil Nadu Government", but it does not include part time or honorary worker. Since it is an exhaustive rule, there is a detailed procedure given as to how medical reimbursement can be claimed under the said Rule by the employee. Further the rate which can be claimed for any medical treatment taken by the employees, also has been mentioned in the said Rule.

21. In this context, it is to be further noted that, the rate of reimbursement of medical expenses under the Medical Attendance Rules were last revised only in the year 1995 and thereafter there is no revision. According to the said revised rate in the year 1995, very paltry or meagre amount alone has been quoted as reimbursement rate for various treatments / surgeries to be undertaken by the employees.

22. Only during the hearing of this batch of cases, on behalf of Government, Letter No.30207 / Finance (Salaries) / 2018, dated 13.07.2018 issued by the Government, has been produced, whereunder, the Government requested the Principal Secretary to Government, Health and Family Welfare Department to make the revision of the rates under the Tamil Nadu Medical Attendance Rules expeditiously. The relevant portion of the said letter reads thus :

"As per the reference first and second cited, the New Health Insurance Scheme is being implemented as a cashless scheme for Government employees and pensioners and due to this scheme, there has been a substantial reduction in the reimbursement claims under Tamil Nadu Medical Attendance Rules.

2. In rare occasions, when the Hospital is not covered or the treatment is not enlisted under New Health Insurance Scheme, Employees and

Pensioners apply under the Tamil Nadu Medical Attendance Rules to get reimbursement of medical expenses.

3. It has been observed that the rates for reimbursing medical expenses under the Tamil Nadu Medical Attendance Rules were revised as early as in 1995, as per reference fourth cited and more than twenty three years have passed since this revision. This directly affects the employees / pensioners getting reimbursement under the Tamil Nadu Medical Attendance Rules as they get only a part of the actual expenditure incurred, which has led to many litigations in the court.

4. For the benefit of Employees and Pensioners, you are requested to expedite the revision of these rates under the Tamil Nadu Medical Attendance Rules."

23. Therefore it is an admitted case on the part of the State Government that, the rates for reimbursement of medical expenses under the Medical Attendance Rules since has been last revised only in the year 1995, it is not at all adequate and therefore based on the said rates, employees cannot be compelled to claim the reimbursement. Having this in the background, whether the denial on the part of the Insurance company or the District Level Empowered Committee or State Level Committee, to reject the reimbursement claim of various employee / pensioner on the

ground that, the treatment taken in the hospital is not a network hospital or the treatment taken for the disease is not a listed disease, is justifiable or not, is to be decided.

24. To answer the said query, which in fact is a moot query to be answered in this batch of cases, it is to be noted that, as cited supra in Star Health and Allied Insurance Co., Ltd., case, the Division Bench has made it clear that, apart from the contractual obligation, the Insurance Company cannot be compelled to reimburse any medical reimbursement to any claim. But at the same time, the Division Bench has stated that, under the Tamil Nadu Medical Attendance Rules, the employees are entitled to get reimbursement.

25. This apart, on the outright rejection of medical reimbursement by the Insurance Company and the District Level and State Level Committee on the ground of non-network hospital and non listed disease, a series of Judgments had been given by this Court at various point of time. In this context, some of the Judgments, most of them are of Division Benches, given by this Court, can be usefully referred to hereunder.

26. The following Judgments are relevant to be noted :

(1) In **K.Srinivasan v. State Government of Tamil Nadu and another** reported in **2014-4-LW 650**, a learned Judge of this Court has held as follows :

13. It is contended on behalf of the Insurance Company that unless the terms and conditions contained in the Policy are satisfied, no claim could be made against the Insurance Company. The said contention of the Insurance Company is justified in terms of the Judgment of the Supreme Court reported in 1999-3-L.W. 672 : (1999) 6 SCC 451 : AIR 1999 SC 3252 (*Oriental Insurance Co. Ltd. v. Sony Cheriya*); 2005-1-L.W. 82 : (2004) 8 SCC 644 (*United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal*); and (2009) 4 MLJ 811 (SC) (*Vikram Greentech (I) Ltd.v. New India Assurance Co. Ltd.*).

14. The Tamil Nadu Medical Attendance Rules clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. As per the said rules, the petitioners are entitled to claim medical reimbursement against the Government. Similar issue was considered by the Division Bench of this Court in the case reported in 2010 (2) LW 90 (*Star Health and Allied Insurance Co. Ltd. v.A. Chokkar*) wherein in paragraphs 25 and 26 the Division Bench held thus,

...

...

...

In the said judgment the Division Bench directed the State Government to inform every network hospital that if any complaint from claimants regarding demand of money for admission or for treatment is received, the concerned hospital will be removed from the network. In spite of such direction given by the Division Bench of this Court as early as in the year 2010, the hospitals in which petitioner's son (in W.P. No. 13594/2013) took treatment and petitioner's husband (in W.P. No. 29192/2013) was hospitalised, insisted for payment of amount for extending treatment, for which petitioners cannot be blamed. It is not disputed that the Government have not removed the hospitals from the approved list, which insisted to pay the amounts, as on date. Thus, the fault is entirely with the Government.

15. Another judgment of this Court made in W.P. (MD) No. 6299 of 2013 considered similar claim with reference to G.O.Ms. No. 243 Finance (Salaries) Department, dated 29.6.2012, wherein a direction was issued to the Government to reimburse medical expenses claimed, with 9% interest till date of payment. The learned Special Government Pleader appearing for the first respondent submitted that the above said orders of this Court were

accepted by the Government and medical expenses were reimbursed to the claimant therein.

16. Similar issue was considered by the Division Bench of this Court in W.P. No. 3236 of 2014 order dated 3.3.2014, wherein the issue was as to whether Southern Railway was justified in rejecting the claim of the Railway Employee, who took treatment in the unlisted hospital due to emergent situation. Following the decisions of the Hon'ble Supreme Court reported in (1996) 2 SCC 336 (*Surjit Singh v. State of Punjab*) and (1997) 2 SCC 83 (*State of Punjab v. Mohinder Singh Chawla*) the Division Bench of this Court wherein I was a member of the Bench, upheld the order of the Central Administrative Tribunal, which ordered reimbursement of medical expenses.

17. In the light of the judgments cited supra, which covers the matter in issue, petitioners are entitled to succeed in their claim against the first respondent/Government. Consequently both the writ petitions are disposed of as against the first respondent/Government with direction to the first respondent/Government to sanction and reimburse the eligible medical expenses, by receiving claim from the petitioners and after ascertaining the genuineness of the claim with reference to the bills/vouchers submitted, pay the same with 9% interest from the date of remittance of amount

to the listed hospitals by the respective petitioner till date of payment, within a period of four weeks from the date of receipt of copy of this order. No costs.

(2) W.A.(MD).No.1579 of 2016 in the matter of MD India Healthcare Services (TPA) Ltd., v. K.Parameshwari and others. This case also of a Division Bench, of course after having followed the Judgment in Star Health and Allied Insurance Co., Ltd., case, it has been held as follows :

" 5. Admittedly, the first respondent's husband took treatment in a non- network hospital. The relationship of the appellant with the first respondent's husband is purely a contract. The appellant is not bound to satisfy any claim that is not covered by the scheme or contract. The appellant is strictly bound to satisfy the claims arising out of the procedures/treatments that are listed. According to the appellant, the first respondent's husband took treatment in a non network hospital, that is the hospital which is not covered under the contract and hence, the appellant / Insurance company is not liable to pay the compensation. We find force in the submission of the appellant.

6.At this juncture, the learned Additional Government Pleader appearing for the respondents 2 and 3 submitted that as per G.O.Ms.No.241, Finance (Salaries) Department,

dated 24.08.2016, the matter may be referred to the District Level Empowered Committee. The said G.O. came into effect only on 24.08.2016, whereas the first respondent made claim prior to the issuance of the said G.O. Therefore, we are of the view that the said G.O. is not applicable to the present case.

7. In view of the above, this Writ Appeal is allowed and the order passed by the learned Single Judge directing the appellant to reimburse the amount claimed by the first respondent alone is set aside. In other respects, the order of the learned Single Judge holds good. The 2nd and 3rd respondents herein are directed to comply with the order of the learned Single Judge within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

(3) In an another Division Bench Judgment in the matter of the **Director of Pension and others v. B.Saratha** reported in **CDJ 2017 MHC 7488**, the Division Bench has held as follows :

"31. Apart from that, the Division Bench of this Court, while allowing the aforesaid Writ Appeal by setting aside the issuance of direction by the Learned Single Judge in directing the Appellant to reimburse the amount claimed by the First Respondent, the Bench observed that in other

respects, the order of the Learned Single Judge holds good and further, directed the Respondents 2 and 3 therein to comply with the order of the Learned Single Judge within a period of four weeks from the date of receipt of a copy of the order.

32.In the order dated 27.02.2017 in W.P.(MD)No.2059 OF 2017 between T.BALAMANI v. THE PRINCIPAL SECRETARY TO GOVERNMENT, FINANCE (SALARIES) DEPARTMENT, SECRETARIATE, CHENNAI - 9 AND SIX OTHERS, the First Respondent therein was directed to sanction the medical expenses incurred by the Petitioner/Employee/pensioner as per the eligible criteria in terms of amount under the scheme along with interest at 9% p.a. without standing on technicalities and also ordered the release of the eligible amount within a period of two months from the date of receipt of a copy of the order.

33.In W.A.(MD)No.843 of 2017 and CMP(MD)No.5757 of 2017, dated 30.06.2017, between THE DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND TWO OTHERS v. J.KANAGAM, this Court had observed the following and granted an order of interim stay. While ordering notice to the Respondent through Court and privately returnable by 25.07.2017.

34.It is to be noted that Article 47 of the Constitution of India speaks of 'Duty of the

State to raise the level of nutrition and the standard of living and to improve public health'. In this connection, this Court points out that in the decision of the Hon'ble Supreme Court *PASCHIM BANGA KHET MAZDOOR SAMITY AND OTHERS v. STATE OF WEST BENGAL AND ANOTHER*, reported in (1996) 4 SCC 37, it is observed that 'in a welfare State, the primary duty of the Government is to secure the welfare of the people. It cannot be gainsaid that a failure to provide timely medical treatment to an individual, who is in need of such treatment is a violation of his right to life enshrined under Article 21 of the Constitution of India'.

35. It is to be pertinently pointed out that 'Right to Health' is an integral part of the Right to Life and the Government is under a Constitutional obligation to provide health welfare facilities. If a Government servant underwent a requisite treatment for his ailment and if necessary proof is produced, then it is the primordial duty of the State Government to bear the expenses incurred thereto and reimburse the same. Just because the Government servant had undergone the treatment at an unapproved Hospital, the expenses incurred thereto cannot be denied by the State Government notwithstanding the fact that the Government servant is a member of the scheme introduced by the Government. Also that the individual

Government servant/patient or his family members is/are the proper persons to take a final decision as to where the treatment in question is to be provided, as opined by this Court.

36.It cannot be brushed aside that the State Government is to satisfy the Constitutional obligation to bear/refund the expenses incurred by a Government servant while in service or after retirement from service, of course, based on the policy of the Government. In emergency cases, the treatment that is required will be immediate/forthwith and if one has to comply with the procedure, ultimately, 'waiting' in this regard may prove disastrous and fatal.

37.It is to be aptly pointed out that a human being is to take care of himself and in this regard, the individual concerned is the best Judge suited to take a final call/decision. In reality, the self preservation of one's life is enjoined under Article 21 of the Constitution of India, as an inviolable right, in the considered opinion of this Court.

38.No doubt, a patient as a lay human being cannot pick and choose the method/mode of surgery. It is for the Doctors/Medical experts to determine and suggest a right course of action as to what/which kind of surgery/treatment is suitable, ofcourse, taking into consideration the nature of the ailment and the status/condition of the concerned patient.

39. Although financial resources are required for providing medical facilities to the needy, ultimately, the State Government has the constitutional obligation to provide enough medical services to the public. On account of financial constraints, the Constitutional obligation to provide medical services/facilities to the people cannot be avoided.

40. Be that as it may, in the present case, there is no dispute as to the factum of actual expenses incurred by the Respondent / Petitioner, which she claims in the Writ Petition. Undoubtedly, the human being is to take necessary precautionary and protective measure for his body. The payment / reimbursement of medical expenses spent by the Government servant concerned or his family is not 'Bounty', but it is an obligation of the State Government to pay/disburse the said amount in question without harping on either technicalities or hyper technicalities. As such, this Court is of the considered opinion that the Learned Single Judge was correct in directing the First Appellant/First Respondent to sanction the medical expenses incurred by the Respondent/Petitioner for her husband's ailment, as per the eligibility criteria in terms of the amount under the scheme and the same is free from any flaw. However, this Court is of the considered view that the interest of 9% p.a. fixed by the Learned Single Judge is

slightly on the higher side and to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court reduces the rate of interest from 9% p.a. to that of 6%.

41. In view of the forgoing discussions and reasons, this Court, directs the Appellant/First Respondent viz., the Director of Pension, Chennai - 6, to sanction the medical expenses incurred by the Respondent / Petitioner / Employee's wife, as per eligibility criteria as regards the amount under the scheme together with interest at 6% p.a. and release the eligible sum to the Respondent/Petitioner (wife of the Employee) after subjectively satisfying about her legal heirship within a period of four weeks from the date of receipt of a copy of this order.

42. With the aforesaid Observation(s) / Direction(s), the Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed."

(4) Another Division Bench in **W.A.(MD).No.843 of 2017** in the matter of **The District Collector, Madurai District and others v. J.Kanagam**, has taken almost the similar view in the line of the view taken in those decisions and has held as follows :

"5. From the order under appeal, it appears that the impugned order dated 20.07.2016, had been passed mainly on two grounds. The first ground was that the hospital in which the

writ petitioner/respondent's husband had been treated was not an approved hospital under the New Health Insurance Scheme and the second ground was that the writ petitioner/respondent had paid for the expenses, but her entitlement to treatment was under a cashless scheme. The medical facilities of pensioners are governed by various Government orders referred to in the order under appeal.

6. As per the said Government Orders, pensioners, which includes spouses and dependent children of pensioners, who undergo specialized advanced surgeries/treatments in respect of diseases included in the approved list in unaccredited hospitals are also be eligible for sanction of assistance if admitted by reason of urgency for treatment, subject to the satisfaction of the Medical Officer concerned regarding the existence of facilities and infrastructure for the treatment/surgery in the hospital. As per the Government order, the Director of Pension has delegatory powers to sanction pending claims as well as future claims for medical assistance for the pensioners in respect of any eligible treatments as well as eligible treatment taken in unaccredited institutions both within the State as well as outside the State subject to the procedures specified. The procedure, inter alia, is that the Pension Pay Officer/District Treasury Officer/Sub Treasury Officer/Branch Manager

of Public Sector Bank, after satisfying himself about the details furnished in the application, shall consult the District Medical Officer attached to the Government Hospitals under the control of Director of Medical and Rural Health Services in the District and the Director of Medical Education in Chennai, as the case may be, who shall certify the existence of facilities and infrastructure for the treatment/surgery undergone in the hospital.

7. In the case of N.Raja v. the State of Tamil Nadu reported in (2006) 3 CTC 394, the contention that the writ petitioner had been treated in a hospital, which was not listed, was not accepted by this Court and the Government was directed to reimburse the amount. In the case of MD India Healthcare Services (TPA) Limited v. K.Parameswari being W.A.(MD) No.1579/2016, a Division Bench of which, one of us (J.Nisha Banu,J.) was member, passed an order dated 16.12.2016 allowing the claim of the husband of the writ petitioner therein.

8. The treatment of the writ petitioner/respondent's husband is not in dispute. In an emergency, a patient may not be in a position to search a network hospital listed out in a Government Order. In any case, there could be no justification in the rejection of a claim on the ground that the writ petitioner had made payment, when, in fact,

the Scheme was a cashless one. Payment under compulsion to facilitate treatment cannot possibly be a ground for rejecting a genuine claim to medical reimbursement.

9. We find no grounds to interfere with the order of the learned Single Bench. The writ appeal is dismissed. The interest shall, however, be 6% p.a., and not 9% p.a., as directed by the learned single Bench. No costs. Consequently connected Miscellaneous Petition is closed."

(5). In **W.A.(MD). Nos. 75 to 78 of 2018** in the matter of **The Director of Pension, DMS Complex, Chennai and others v. D.Sornam**, the Division Bench has made the following order :

" 2.These appeals are directed against the orders passed by the learned Single Judge in W.P.(MD)No.21356, 22962, 22382 and 23100 of 2016. The common issue involved in all these writ appeals are whether the claim for medical reimbursement for the surgery and the medical treatment undergone by the writ petitioner/their spouses has to be considered or whether the same has to be rejected on the ground that the treatment availed by them was by admission in the hospital, which is not accredited by the Government. However, it is not in dispute that the very same issue was considered by this Court in several decisions,

latest being a case of District Collector, Madurai District, Madurai v. J.Kanagam reported in W.P.(MD)No.843 of 2017, wherein the Division Bench of this Court, after taking into consideration the earlier decision in the case of N.Raja v. the State of Tamil Nadu reported in (2006) 3 CTC 394, and the judgment in W.A.(MD)No.1579 of 2016 dated 16.12.2016 dismissed the appeal filed by the Government. The only relief granted was to reduce the interest to 6% instead of 9%. Very recently, the Division Bench of this Court in the case of the Director of Pension, DMS Complex, Thenampet, Chennai-6 and 3 others v. B.Sarada reported in W.A.(MD)No.1382 of 2017, considered all the decisions on the said point and dismissed the appeals filed by the Government by judgment dated 09.11.2017.

3.The learned Special Government Pleader sought to make a distinction with regard to the case by submitting that in case of emergency, the Government order itself provides necessary protection for the persons to take treatment, but, however, in most of the cases, the procedure adopted is elective procedure I.e., surgery is preplanned and therefore, for claiming the Insurance reimbursement the person has to undergo such surgery in the Government accredited hospital. In our considered view, we are not experts to decide as to which medical treatment requires

emergency care and attention and these issues are best left to the medical professionals. The law is well settled by this Court in several decisions some of which are noted above. We find there are no merits in the appeal filed by the appellants.

4. Accordingly, the appeals fails and stands dismissed, however, we direct that the interest should be reduced to 6% instead of 9%. No Costs. Consequently, connected miscellaneous petitions are closed."

27. Apart from these decisions of this Court, a recent Judgment of the Hon'ble Apex Court, almost in a similar issue, has been heavily relied upon by the learned counsel appearing for the petitioners, i.e., **(2018) 5 MLJ 317 (SC)** in the matter of **Shiva Kant Jha v. Union of India**, where almost in similar circumstances, the Hon'ble Apex Court has held as follows :

" 12) With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large scale ramification as

none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

13) 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 specialized 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. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such

situation where the survival of the person is the prime consideration..."

28. Only with these legal background, the issue raised in this batch of cases, with aforesaid factual matrix, has to be decided.

29. Initially there was no Health Insurance Scheme for Government Employees and Pensioners of the State Government and its undertakings. In the year 1980, the Tamil Nadu Medical Attendance Rules was brought in with amendment. Only under the said rule, medical reimbursement have been met by the State. Subsequently, in the year 1991, Tamil Nadu Medical Health Fund Scheme has been brought in and under the said scheme, the medical reimbursement for employees and pensioners of the State Government were sanctioned.

30. While so, in order to provide a more beneficial health reimbursement scheme, the Government thought it fit to bring Health Insurance Scheme for Government employees at the first phase. Accordingly, from 11.06.2008 onwards the New Health Insurance Scheme 2008 was introduced which was in operation till 10.06.2012. After noting the successful implementation of the scheme, Government thought it fit to extend it further. Accordingly the New Health Insurance Scheme 2012 was implemented from

01.07.2012 up to 30.06.2016 and further when the 2012 scheme was lapsed at the end of the block period of four years by 30.06.2016, on 30.06.2016 itself by issuance of G.O.Ms.No.202, Finance (Salaries) Department, the Government introduced a New Health Insurance Scheme 2016 for another block period of four years, i.e., up to 30.06.2020 and the said scheme is presently in implementation in so far as Government employees are concerned.

31. Like that, as far as the pensioners of State Government and its undertakings are concerned, originally under issuance of G.O.Ms.No.171, Finance (Pension) Department, dated 26.06.2014, the New Health Insurance Scheme 2014 for pensioners, was introduced and that was lasting for a block period of four years up to 2018. On the expiry of the four years by 30.06.2018, the Government implemented New Health Insurance Scheme 2018 for pensioners for the next block period of four years from 01.07.2018 till 30.06.2022 and the said 2018 Scheme is currently under implementation for the pensioners and family pensioners.

32. Under the earlier schemes, especially under 2012 scheme, there were only 167 hospitals listed. In 2014 when the scheme was introduced for pensioners and family pensioners, some additional hospitals were added in the list and the list has further been

expanded when 2016 scheme was introduced, as in that scheme, number of hospitals listed were 654. However, under 2018 scheme for pensioners, which is the latest scheme in implementation, the total number of networking hospital is 913.

33. Therefore as of now more than 900 hospitals have already been listed, but at the same time during the implementation of 2012 scheme as well as 2014 scheme, the number of hospitals were very less. For instance under 2012 scheme, it was only 167 and in 2014, some more hospitals were added. These two schemes, i.e., 2012 as well as 2014 schemes were under implementation for four years, i.e., between 2012 to 2016 and 2014 to 2018 respectively. Almost all these claims covered under these writ petitions were arising either from the Scheme of 2012 or from the Scheme of 2014.

34. However the scope of the network hospitals / approved hospitals / listed hospitals have been widely expanded now as the list has gone up to 913.

35. Also the Government has simultaneously issued Government Orders with detailed procedure as to how a new hospital can be added in the list and for the said purpose,

Accreditation Committee has been constituted, to whom application has to be made by the hospital concerned, which would be forwarded to the sub-committee constituted in this regard in the District level and the sub-committee would inspect and give its views and report to the Accreditation Committee. Accordingly, the Accreditation Committee will take a decision to include the hospital in the list. Since this is the routine process as more and more hospital would come in, if they make application to get in to the list under the Health Insurance Scheme of both employees as well as pensioners, the number of hospitals to be added will further swell in the coming years.

36. Be that as it may, in so far as the rejection of the medical reimbursement claim made by these writ petitioners are concerned, the main reasons attributed by the respondents in number of cases are either that the treatment has not been taken in the network hospital or the treatment taken for the disease which is not a listed disease.

37. In this context, the Government has come forward to add more diseases as listed disease and in so far as Annexure II A is concerned, for some of the surgeries and treatment, the medical reimbursement has been allowed to the maximum of Rs.7.5 lakhs

notwithstanding the cap of Rs.4 lakhs provided under the Scheme for the whole block period of four years.

38. It is also to be noted that, the Government in their letter, dated 13.07.2018, has already directed the Health Department to revise the rates / Government rates, which was last revised only in the year 1995 for treatment / surgeries for various diseases for the purpose of medical reimbursement. Till such decision is taken by way of revision and the Government re-fixes the rate, in between, if reimbursement claim comes, how it should be disbursed is yet another moot question which also to be answered.

39. The Law has been well settled in this regard as has been set out in number of decisions cited supra of this Court as well as the decision of the Supreme Court.

40. In all those decisions, the Courts have taken a consistent view that, though there has been a contract between the Government and the Insurance Company, it is a bilateral contract or if at all any third party administrator is introduced, it is tripartite contract, wherein the employee or pensioner is not a party. The Government while introducing the scheme has made it compulsory that, every employee or pensioner shall join in the scheme by

paying the subscription. Initially the subscription was Rs.150/- or Rs.180/- and now it has been raised to Rs.350/- per month. However the maximum claimable medical assistance is only Rs.4 lakhs for the whole block period of four years, except in few specified cases where it is Rs.7.5 lakhs.

41. If at all the Insurance Company is not liable to reimburse the claim made by the employees or pensioners by citing the reason that, as per the agreed terms or terms of contract between the Government and the Insurance Company, these claims cannot be entertained or accepted for reimbursement by the Insurance Company, even then, the liability of the Government cannot be washed away as this has been repeatedly held by number of decisions of various Division Benches of this Court as well as the Hon'ble Supreme Court in the decision in **Shiva Kant Jha v. Union of India** reported in **(2018) 5 MLJ 317 (SC)**.

42. It is the stand of the State Government as has been projected by the learned Additional Advocate General Mr.B.Pugalendhi, assisted by Ms.S.Srimathy, Special Government Pleader that, under the scheme ordinarily the Employee / Pensioner / Family Pensioner is required to avail cashless medical facility in the network hospital to the extent of eligible expenses and over all

ceiling of coverage benefits under the scheme and pay for non-eligible expenses directly to the hospital. And in case Employee / pensioner / family pensioner undergoes for any other types of emergency treatments / surgeries in the non network hospitals, the claims are governed by the provisions of the Medical Attendance Rules under G.O.Ms.No.1023 of Health and Family Welfare Department, dated 17.06.1980. The written notes submitted in this regard by the Secretary to the Government (Expenditure), Government of Tamil Nadu vide Letter No.30207 / Finance (Salaries) / 2018, dated 08.06.2018 is extracted hereunder for easy reference:

"To summarize, the scheme is that ordinarily the Pensioner / Family Pensioner is required to avail cashless facility in Network Hospital (to the extent of Eligible Expenses and over all Ceiling of Coverage benefit under the Scheme) and pay for non eligible expenses directly to the hospital. In case an Pensioner / Family Pensioner undergoes for any other types of emergency treatments / surgeries in Non-Network Hospitals, the claims are governed by the provisions of Medical Attendance Rules and the G.O.Ms.No.1023 of Health and Family Welfare Department, dated 17.06.1980 as stated supra.

In case, a Pensioner / Family Pensioner avails treatment in Non-Network Hospital where there is no emergency, the Pensioner / Family

Pensioner is not entitled for reimbursement either under the Health Insurance Scheme or under the Tamil Nadu Medical Attendance Rules."

43. Therefore, the Government stand is that, if at all any treatment is taken in non network hospital, they are not entitled to claim reimbursement under the Health Insurance Scheme but they can claim it under Medical Attendance Rules. Also it is the stand of the State Government that, if treatment is taken in non network hospital, where there is no emergency, the pensioner or employee is not entitled for reimbursement either under the Health Insurance Scheme or under the Medical Attendance Rules.

44. In this context, this Court wants to remind once again that, Courts have taken the view that, it is for the medical expert to decide as to which case is an emergency one to be attended immediately and which case is not an emergency one. Neither the administrators nor this Court has got any expertise to decide as to whether a particular case was to be treated immediately at the given point of time or could have been postponed for sometime enabling the patient to approach the network hospital and it is the matter to be solely decided only by the medical experts.

45. This position has been reiterated in number of decisions cited above and therefore when the employee or pensioner availed a treatment in a not network hospital whether the said treatment was taken out of emergency or not cannot be decided easily sitting in the Administrative desk by perusing the papers. It is at the movement where the patient comes to the hospitals with whatever health complaint, not only the patient but also the family members and kith and kin will be in the confused state of affairs and at that golden hours, whatever advice given by the Doctors available in the hospital where the employee / pensioner immediately approached or taken to, that advice would be taken and accordingly they would have acted upon.

46. Therefore this Court is of the view that, the administrative machinery cannot subscribe its view as to a particular medical case was emergent or not at the given point of time and based on which, medical reimbursement claim cannot be rejected by driving them to approach Court of law.

47. As has been held in the Judgment of **Shiva Kant Jha v. Union of India** reported in **(2018) 5 MLJ 317 (SC)** by the Honourable Apex Court, 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.

48. This ruling of the Honourable Apex Court is to be strictly adhered to and followed by all concerned as the medical reimbursement claimed by these employees and pensioners or their family members is not the bonus or bounty. Since it has been made compulsory that, every employee or pensioner of the State Government must join in the Health Insurance Scheme by paying continuous contribution towards premium every month, the State Government cannot easily abdicate their duty and responsibility by merely rejecting the case of the medical reimbursement claim on technical grounds.

49. If at all the Government made the medical Insurance Scheme optional for both employees as well as pensioners and in view of that, if the total amount to be collected by way of premium would be lesser than what is being collected now, then, a number of restrictions like non network hospital / non listed disease etc., can be imposed.

50. However these schemes are compulsory scheme for everyone i.e., every employee / pensioner and whether they are willing or not, they have been compelled to contribute towards this scheme, hence their genuine claim for medical reimbursement cannot be easily brushed aside by projecting technical reasons.

51. Moreover, if at all any terms of contract arising out of the agreement entered into between the Government and the Insurance Company or third party administrator, that will bind only the parties to the contract and in this regard, this Court wants to emphasise that, neither the employee nor the pensioner are party to the said contract entered in to between the Government and the Insurance Company.

52. Of course, the Government entered in to the contract with the Insurance Company only for the benefit of the employee and the pensioner, nevertheless, the terms of contract in strict sense would bind only parties to the contract and by citing the said terms of the contract between the parties i.e, the Government and the Insurance Company, neither the Government nor the Insurance Company can deny the medical reimbursement to the employee or pensioner who made compulsory contribution towards the scheme by paying monthly premium throughout the scheme period / Block years.

53. In some of the impugned orders, as has been extracted in this order in the foregoing paragraphs, either very flimsy reason or unworthy, unsustainable reason has been given. In most of the cases, the District Level Empowered Committee has rejected the claim in one line without giving any plausible or acceptable reason. In some of the cases, even the State Level Committee has made rejections in one line stating that, the treatment taken in non network hospital.

54. Assuming that, the treatment has been taken in non network hospital, it is the duty of the District Level Empowered Committee or at least at the State Level high power committee to go in to the claim of such employee / pensioner and to see whether the treatment had been taken in a non network hospital for any plausible reason like emergency or immediate non-availability of the network hospital in the locality. If those issues have been gone in to in each of the case and acceptable or plausible reasons are given for rejecting the claim of the medical reimbursement by the Insurance Company, even then the claimant is entitled to get reimbursement under the Medical Attendance Rules.

55. If the claimants are entitled under Medical Attendance Rules as admitted by the Government in the Notes / letter

submitted by the Secretary to Government as extracted above, then the Empowered Committee or the High power committee must immediately have recommended for reimbursement of the claim to the extent they are entitled for.

56. In this context, since the rates for reimbursement has been lastly revised only in the year 1995 as has been admitted by the State Government and now only request has been made to the Health Department to revise the rate immediately, till such revision is made, the actual rate fixed for such diseases / treatments / surgeries under the Insurance Scheme, shall alone be taken as a rate and that rate should have been approved by the Empowered committee or High power committee and accordingly that amount should have been reimbursed to these claimants.

57. No such exercise seems to have been taken either by the District Level Committee or by the State Level Committee and they merely echoed or amplified the technical reason of non network hospital, non listed diseases quoted by the Insurance Company, as a mouth piece of the Insurance Company, therefore which practice on the part of the State authorities, in the opinion of this Court, is not appreciable.

58. Since the State (Government) is the welfare State and though it has duty to protect the well being of every individual / citizen of the State, at least the Government must be so vigilant and shall take all possible efforts to protect the well being, especially the health conditions of its employees and former employees.

59. With this measure to protect its employees and former employees, the State Government in fact introduced the scheme, not as a charity, but as an enabling procedure, because, the State Government has not paid any money to the Insurance Company for reimbursement, but only the contribution to be made by the employee and the pensioner, by way of premium subscription paid by them every month, alone is paid back to the Insurance Company and therefore, the responsibility of the State Government is still more and enormous to protect the interest of its employees and pensioners from all health issues.

60. The scope of Right to Life enshrined in the Constitution under Article 21 has been expanded, which includes, Right to Health, which is an integral part of Right to Life. Since Right to Health is part of Right to Life under Article 21 of the Constitution, it is obligatory on the part of the State to take all possible efforts and measures to give quality medical facilities to its citizens.

61. In this context, the employees and pensioners of the State Government and its undertakings apart from being so, also are the citizens of the State. Therefore the obligation of the State to give more protection, from health hazards or health issues, to the employees and former employees is inevitable.

62. It is not only from the angle of, "The Right to Life" which includes Right to Health, but also from the point of view of the State to give adequate facilities to have the protection cover for every citizen from health issues, the State must provide all such facilities on their own.

63. In spite of the limitation of the State's financial capability, though number of hospitals, nursing homes and medical care units have been established and are functioning at the behest of the Government, still medical needs or medical care of large number of citizens are met only by private sector.

64. In this context, if the Government wants to give protective cover by way of Health Insurance to its employees and former employees by introducing the Health Insurance Scheme compulsorily for all its employees and former employees and premiums are collected compulsorily from them, it is not only the

duty of the State but also its obligation to ensure that, none of its employees / former employees or their families / dependents are suffered with any health issues because of lack of medical facilities.

65. Though it is a stand of the State Government that, they have adequate medical facilities on their own, where employee and former employee can take treatment, the practical scenario is clearly different as most of the employees and former employees of the State like any other citizen, go for private medical facilities for redressal of their ailment. This factor has also been accepted by the Government, that is the reason why, the Government thought it fit to bring the Health Insurance Scheme.

66. If the Government in a phased manner develop the medical facilities of the State Government (Government Hospitals, Nursing Homes, Primary Health Centres) on par with private medical facilities, certainly large number of people including its employees and former employees, their dependents and family members would avail the medical facilities run by the Government either at free of cost or at concessional rate. However, in practical scenario, the Government medical facilities cannot be equated with the private medical facilities and this view is being expressed by this Court, by taking judicial notice that, even the Rulers and

Administrators who run the State Government are straightaway approaching the private medical facilities for their medical care and need, instead of approaching the Government medical facilities. Therefore it is the duty of the State Government to ensure that, either the standard of the State medical facilities (Government Hospitals, Nursing Homes, Dispensaries, Primary Health Centres) should be enhanced with the state of the art quality / facility for treatment on par with private medical facilities or till such time such parity is achieved by the State, it must provide all necessary financial assistance to its employees / pensioners to take care of their medical needs through the private sector.

67. Only in order to fulfill this obligation, the Government had introduced and implemented the successive Health Insurance Schemes for its employees and pensioners. Therefore it is the obligation of the State either to provide medical facilities on their own, of course on par with private medical facilities, otherwise they must be kept enabled to avail such facilities through private sector.

68. As quoted above, Right to Health is an integral part of Right to Life under Article 21 of the Constitution. This theory of the State's obligation towards Right to Health for its citizen is not an invention of our Constitution makers alone, as this obligation had

been felt at thousands of years back in Sangam Age in this part of the Country, i.e., Tamil Nadu.

69. Saint Thiruvalluvar in his universally acclaimed poetry work "Thirukkural" has defined what is the welfare State / Good Country under the Chapter, "The Country" (நாடு).

70. The following couplets are worthy to be mentioned :

(i) உறுபசியும் ஓவாப் பிணியும் செறுபகையும்
சேராது இயல்வது நாடு.

It means

A kingdom is that which continues to be free from excessive starvation, irremediable epidemics and destructive forces.

(ii) பிணியின்மை செல்வம் விளைவுஇன்பம் ஏமம்
அணிஎன்ப நாட்டிற்குஇவ் வைந்து.

It means

Freedom from epidemics, wealth, produce, happiness and protection (to subjects); these five, the learned, say, are the ornaments of a kingdom.

71. The freedom from hunger and disease as well as from the threat of enemies invasion is a State, that is desired for a prosperous nation, according to Saint Thiruvalluvar.

72. Like that, Thiruvalluvar elucidated five items as ornaments of a prosperous country. Out of which, the first one is freedom from disease, apart from the other four, namely freedom from invasion and also the availability of wealth, rich harvest and popular pleasures.

73. Therefore free from disease or epidemics, i.e., Right to Health is an important facet of any welfare State. The State must explore all possible resources and implement all such welfare schemes to ensure such Right to health situation to its citizens.

74. In order to achieve the said avowed goal as quoted by Saint Thiruvalluvar, the State Government, being the welfare State, must be in a position to protect its citizens, especially, in the present context, its employees and erstwhile employees, from all health issues. Therefore the obligation of the State Government and their duty towards achieving this goal cannot be abdicated on any flimsy or technical reasons.

75. Therefore viewing from this angle also, the State Government's obligation cannot be easily given up or washed away in the manner it has been done in these cases. Therefore this Court is of the considered view that, none of the impugned orders passed in this batch of cases, are sustainable.

76. Even though District Level Empowered Committee have been constituted headed by the District Collector concerned, in some of the cases, if this Court look at the decision making process as well as end result of the decision taken by the Empowered committee, it is hardly to believe whether any application of mind has been made by the Empowered committee against each of the claim before taking a decision either to accept or reject the claim.

77. In number of cases, very mechanically rejection orders have been passed with one word reason or one line reason, that itself is unacceptable or unsustainable.

78. Assuming that the non network hospital and non listed disease are the major reasons for rejection of most of the claims, even that reasons cannot stand in the legal scrutiny, in view of the catena of decisions, as has been cited above of both this Court as well as the Apex Court. Therefore, all these reasons given in the respective impugned orders are not at all worthy or sustainable and therefore all these impugned orders, in the respective writ petitions, are liable to be quashed.

79. Like that, in some of the cases, writ of mandamus have been sought for, where claim has been made for medical

reimbursement and for one reason or other, those claims have been kept pending or yet to be decided and in those cases certainly the authorities are bound to decide the same for sanction and grant of medical reimbursement.

80. In order to reconsider all these claim made by the respective writ petitioners for medical reimbursement, by remitting the matters back, the following directions are issued:

(i) All the impugned orders in the respective writ petitions in this batch of cases, are hereby quashed.

(ii) The writ petitions where impugned orders are quashed as well as the writ petitions where mandamus sought for, are hereby remanded with directions to the concerned District Level Empowered Committee, before whom, these matters shall be placed and the Committee shall reconsider every individual case.

(iii) While reconsidering, the Committee shall not reject any claim merely on the reason of non network hospital or non listed disease.

(iv) The Committee, wherever possible, shall give suitable direction to the Insurance Company to reimburse the claim made by the respective claimant / employee / pensioner.

(v) If the Committee finds some cases where the Insurance Company cannot be directed to reimburse, in those cases, suitable orders shall be passed directing / recommending the State authorities to reimburse the claim under Medical Attendance Rules.

(vi) Once such orders are passed, the Insurance Company shall immediately reimburse the medical claim with 6% interest from the date of due till date of payment, within a period of thirty days from the date of receipt of such order to be passed by the Empowered Committee of the District concerned.

(vii) On receipt of such orders / recommendation from the Empowered Committee, the Sanctioning authority / State authority / High Power Committee in the State Level shall pass necessary orders allowing the medical reimbursement claimed by the individual claimant / employee / pensioner under the Medical Attendance Rules.

(viii) While ordering medical reimbursement under Medical Attendance Rules, the rate approved, accepted or quoted by the Insurance Company under the Medical Insurance Scheme shall be taken as the rate and by calculating the reimbursement on the said rate, the reimbursement claim shall be immediately

sanctioned and the amount shall be reimbursed to the claimant with 6% interest from the date of due till date of payment, within a period of thirty days from the receipt of the recommendation / order from the District Empowered Committee.

With these directions, all these writ petitions are ordered to the terms indicated above. Consequently, connected miscellaneous petitions are closed. However there shall be no order of costs.

28.05.2019

Index : Yes

Speaking Order

tsvn

To

1. The Secretary,
Government of Tamil Nadu,
Department of Health and Family Welfare,
Fort St.George,
Chennai.
2. The Additional Director of Medical
and Rural Health Services,
O/o. Additional Director of Medical
and Rural Health Services,
Chennai - 6.
3. The District Collector,
Tuticorin District,
Tuticorin.

R.SURESH KUMAR, J

tsvn

**Common order
in W.P.(MD).No.13429
of 2013 etc., batch**

28.05.2019