

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943

WP(C) NO. 3295 OF 2021

PETITIONERS:

- 1 DR.GEORGE THOMAS,AGED 37 YEARS
S/O THOMAS GEORGE, 'SANKARATHIL', VADAKKUPURAM P.O
PATHANAMTHITTA, PIN-689 653, (ASSISTANT PROFESSOR,
DEPARTMENT OF PHYSICS, CATHOLICATE COLLEGE,
PATHANAMTHITTA).
- 2 THOMAS GEORGE,AGED 76 YEARS,SANKARATHIL, VADAKKUPUARM
P.O.,PATHANAMTHITTA, PIN-689 653.

BY ADVS.

JACOB P.ALEX
SRI.JOSEPH P.ALEX
SHRI.MANU SANKAR P.

RESPONDENTS:

- 1 STATE OF KERALA,REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.
- 2 DIRECTOR OF COLLEGIATE EDUCATION,
DIRECTORATE OF COLLEGIATE EDUCATION, VIKAS BHAVAN,
THIRUVANANTHAPURAM, PIN-695 033.
- 3 DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
DEPUTY DIRECTORATE OF COLLEGIATE EDUCATION,
VAYASKARAKUNNU, NEAR FIRE STATION, KOTTAYAM, PIN-
686001.
- 4 DIRECTOR OF HEALTH SERVICE,
DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL
JUNCTION, THIRUVANANTHAPURAM, PIN-695 035.
- 5 DISTRICT MEDICAL OFFICER (HEALTH),
PATHANAMTHITTA, OFFICE OF DMO, CIVIL STATION,
PATHANAMTHITTA, PIN-689 645.
- *6 DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF KERALA, REPRESENTED BY ITS SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

* (ADDL.R6 IMPEADED AS PER ORDER DATED 5-3-2021 IN IA 1/2021 IN WPC) .

BY GOVERNMENT PLEADER SRI.JIMMY GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The 1st petitioner is working as an Assistant Professor in Catholicate College, Pathanamthitta. On 14.05.2018, the 2nd petitioner, the father of 1st petitioner who is wholly dependent on 1st petitioner sought treatment in General Hospital, Pathanamthitta and was diagnosed with Carcinoma Rectum and was referred to higher center. Accordingly, he was taken to Medical and Surgical Oncology Department of the St. Gregorious Medical Mission Hospital, Pathanamthitta which is a private specialty hospital for Cancer treatment. The Consultant Medical Oncologist opined that the 2nd petitioner has to undergo surgery and accordingly he was operated in the Laparoscopic

Department of St. Gregorious Medical Mission Hospital.

2.The Government have issued Ext. P2 G.O.(P) No.10/2016/H&FWD dated 21/01/2016 empanelling certain private hospitals for treatment to facilitate medical reimbursement benefits under the Kerala Government Servants Medical Attendance Rules, 1960 (the 'Rules', for short). The name of St. Gregorious Medical Mission Hospital, Pathanamthitta (hereinafter referred to as the 'Hospital') appears at serial No. 20 of the Annexure to Ext. P2 order which provides for the list of private hospitals recognised by the Government for treatment under Rule 8 (3) of the Rules and the Departments recommended include

Medical and Surgical Oncology. The relevant portion of the Annexure to Ext. P2 order which provides for the list of private hospitals for empanelment is reproduced hereunder:

Sl. No.	Name of Hospital	Department recommended
20	St. Gegorious Mission Medical Hospital, Pathanamthitta.	Nephrology, Trauma Care, Neuro Surgery, Medical and Surgical Oncology, Gastroenterology, Neonatology, Urology, Neurology, Physiotherapy.

3. According to the petitioners, the 2nd petitioner was initially admitted in the Hospital between 30.05.2018 and 09.06.2018 and during this period, 1st petitioner had incurred an amount

of Rs.1,98,311/- towards treatment of the 2nd petitioner. The 1st petitioner submitted Ext. P3 application seeking reimbursement of Rs. 1,98,311/- with the required proforma issued by the Authorized Medical Attendant and Essentiality Certificate certifying that the medicines prescribed were essential for the recovery of the patient. Out of Rs. 1,98,311/- claimed in Ext. P3, the office of the Director of Health Service found that reimbursement claim for an amount of Rs. 1,26,368/- is admissible.

4. The 2nd petitioner had undergone further treatment in the Hospital between 12/06/2018 and 23/06/2018. During this period, the 1st petitioner incurred a further amount of Rs.65,756/- and

submitted Ext.P4 application dated 23/11/2018 seeking reimbursement of Rs. 62,756/-. The District Medical Officer (DMO), by Ext.P4 (b), found that, out of the aforesaid amount claimed, an amount of Rs. 23,580/- is admissible and forwarded necessary documents to the Deputy Director of Collegiate Education for approval.

5. The 2nd petitioner was again admitted in the Hospital from 22/08/2018 to 01/09/2018. During this spell, the 1st petitioner incurred an amount Rs. 86,744/- and he submitted Ext. P5 application seeking reimbursement of an amount of Rs. 86,744/-. The 2nd petitioner was further admitted in the Hospital from 04/09/2018 to 19/09/2018 and the 1st petitioner submitted Ext. P6 application

seeking reimbursement of an amount of Rs. 1,20,227/-.

6. While so, on 12/06/2020, the Government issued Ext. P7 circular stating that medical reimbursement will not be made unless the treatment was availed in Government recognized private hospital. Based on Ext. P7, the Government issued Ext. P8 communication informing that the claim made by the 1st petitioner cannot be allowed since the department of Laparoscopic surgery at St. Gregorious Medical Mission Hospital was not empanelled under the Rules. Accordingly, by Ext. P9 letter addressed to the Principal of the College, the Deputy Director of Collegiate Education returned the applications and

bills of the 1st petitioner for reimbursement. Challenging Exts. P7 and P8, the petitioners have filed this writ petition. They have also sought for a declaration that the 1st petitioner is entitled for reimbursement of an amount of Rs. 4,68,038/- as claimed in Exts. P3 and P4 series, Ext. P5 and Ext. P6 and for disbursement of the same.

7. As stated earlier, considering Ext. P4 application, the DMO, *vide* Ext. P4 (b), informed the Deputy Director of Collegiate Education that, out of the amount of Rs.62,756/- claimed by the 1st petitioner, an amount of Rs. 23,580/- is admissible. During the pendency of the writ petition, the Government have issued Ext. P10 order sanctioning Rs.18,864/-, being 80% of the

amount found admissible in Ext. P4 (b). In Ext. P10, the Government have stated that the 2nd petitioner was referred to General and Laparoscopic Department by the Medical Oncologist and considering that the treatment was taken on reference from recognized department, sanction is accorded for reimbursement of 80% of the amount found admissible by the DMO.

8. A Statement is filed on behalf of the 1st respondent wherein it is stated that the Government, by Ext. P7 circular, has decided not to give the reimbursement to patients who had taken treatment from private hospitals other than the empaneled one. Since the General and Laparoscopic surgery department of St. Gregorious

Medical Mission Hospital from where the 2nd petitioner has received the treatment was not recognized by the Government, it was decided to reject the applications of the 1st petitioner.

9. Heard Sri. Jacob P. Alex, the learned counsel for the petitioners and Sri. Jimmy George, the learned Government Pleader for the respondents.

10. According to Sri. Jacob P. Alex, the reimbursement of medical claims incurred in private hospital is admissible under the Rules and from Ext. P2 G.O, it can be seen that St. Gregorious Medical Mission Hospital is empanelled under the Rules. The learned counsel submits that, the doctors in Oncology department of the Hospital, after considering the nature of Cancer,

advanced age and general health condition of the 2nd petitioner, the advantages of shorter length of stay at hospital, faster recovery and lesser operative complications, recommended for Laparoscopic surgery and the respondents cannot deny claim for medical reimbursement only for the reason that surgery is performed in Laparoscopic surgery department of the Hospital. Sri. Jacob refers to Ext. P2 and submits that the Medical and Surgical Oncology department of the Hospital is recognised and recommended by the Government.

11.Sri. Jacob contends that, the claim for reimbursement is admissible even if the hospital from which the treatment is availed is a private hospital. Relying on the decision of the Hon'ble

Supreme Court in **Shiva Kant Jha v. Union of India** [(2018) 16 SCC 187; AIR 2018 SC 1975; 2018 KHC 6285], the learned counsel contends that, the right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order and the real test must be the factum of treatment. Ext. P7 circular cannot circumvent the Rules and if reimbursement of medical claims incurred in private hospital is admissible under the Rules, the same cannot be denied by issuing a circular in the nature of Ext. P7. Sri. Jacob also relied on the decision of the Hon'ble Supreme Court in **State of Punjab and others v. Mohinder Singh Chawla and others** [(1997) 2 SCC 83; AIR 1997 SC

1225: 1997 KHC 692] wherein the Court held that, the right to health is integral to right to life and if the government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant and to reimburse the expenditure. The learned counsel then refers to Ext. P10 and contends that Ext. P4 bill has been approved and therefore, there is no justification in denying the claims in Ext. P3 series, Ext. P5 and Ext. P6. Sri. Jacob refers to the Division Bench decision of this Court in **Central Provident Fund Commissioner, New**

Delhi and others v. N. Satheesan and another
[2018 (1) KHC 921] to contend that effecting part payment of the claim itself is a ground to presume that the genuineness of the claim is not in dispute.

12. Per contra, Sri. Jimmy George would contend that, based on the present financial constraints, the Government by Ext. P7 circular have decided not to give the reimbursement to patients who had taken treatment from private hospitals other than the empaneled one and since the General and Laparoscopic surgery department of St. Gregorious Medical Mission Hospital from where the 2nd petitioner has received the treatment was not recognized by the Government, it was decided to reject the applications of the 1st

petitioner.

13. I have considered the rival submissions. The entitlement of the 1st petitioner, an Assistant Professor in an affiliated College to get reimbursement of medical bills under the Rules in respect of his father who is stated to be wholly dependent on him is not disputed. The genuineness of the claim made in the bills is also not disputed. The fact that the 2nd petitioner initially sought treatment in General Hospital, Pathanamthitta (Government Medical Institution) and on diagnosed with Carcinoma Rectum was referred to higher center is also not disputed. On such reference, the 2nd petitioner had undergone surgery and treatment in St. Gregorious Medical

Mission Hospital, which is a hospital empanelled under the Rules. According to the petitioners, it is after considering the nature of Cancer, advanced age and general health condition of the 2nd petitioner, the Medical Oncologist recommended for Laparoscopic surgery. The objection now taken in Ext. P8 is that, the General and Laparoscopic surgery department of St. Gregorious Medical Mission Hospital from where the 2nd petitioner has received the treatment is not recognized by the Government. Going by Ext. P2, Medical Oncology and Surgical Oncology departments of the Hospital are recognized by the Government. Surgical Oncology is a field of medicine that uses surgery to treat cancer. Surgery for Carcinoma Rectum

(cancer in the rectum) can be Laparoscopic or open (conventional). In medical terminology, the procedure performed is also called Laparoscopic Oncosurgery. Laparoscopy (keyhole surgery) is one of the types of surgical procedure. Under the Rules, 'medical attendance' includes surgical treatment. The Laparoscopic surgery for Carcinoma Rectum is part of surgical treatment of the 2nd petitioner. It is for the Doctor to decide how a patient should be treated and which surgical procedure is safer and suitable to the patient. When Medical and Surgical Oncology department of the Hospital has been recognised by the Government in Ext. P2, the respondents cannot reject the claim of the 1st petitioner saying that the

General and Laparoscopic surgery department from where the 2nd petitioner has received the treatment is not recognized by the Government. Undergoing Laparoscopic surgery for Carcinoma Rectum will not make the treatment as one done in a department other than the Medical and Surgical Oncology department in the Hospital. The procedure done and the treatments received at the Hospital is part of the medical and surgical oncology treatments of the 2nd petitioner. The Hon'ble Supreme Court in **Shiva Kant Jha** (supra) has observed that while considering the claim for medical reimbursement, what is relevant is whether the claimant had actually taken treatment and the factum of treatment. The Court held:-

“17. 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...”

14. It is an admitted fact that the 2nd petitioner had surgery for Carcinoma Rectum and was treated in the Hospital during different spells. The reason stated in Ext. P8 to reject the claim of the 1st petitioner for reimbursement of the medical bills is not factually and legally sustainable. The 1st petitioner is entitled for reimbursement of the amounts incurred for the treatment of the 2nd petitioner at the Hospital as per the Rules.

15. Here, it is also pertinent to note that, in Ext. P10 order, the Government while considering Ext. P4 claim of the 1st petitioner and approving the admissible amounts therein have stated that, the 2nd petitioner was referred to General and Laparoscopic Department by the Medical Oncologist and considering the treatment taken on reference from recognized department, sanction is accorded for reimbursement of 80% of the amount found admissible by the DMO. In view of the said stand taken by the Government in Ext. P10 in respect of one of the claims for reimbursement submitted by the 1st petitioner, the other claims have to be considered on the same basis and reasoning.

16. As held by the Hon'ble Supreme Court in **Mohinder Singh Chawla** (supra), the right to health is an integral part of right to life guaranteed under the Constitution of India and the Government have Constitutional obligation to provide health facilities and bear the expenses incurred by the government servant for the treatment as per the policy of the Government.

The Court held:

"4.... It is an admitted position that when specialised treatment was not available in the Hospitals maintained by the State of Punjab, permission and approval having been given by the Medical Board to the respondent to have the treatment in the approved hospitals and having referred him to the AIIMS for specialised treatment where he was admitted, necessarily,

the expenses incurred towards room rent for stay in the hospital as an inpatient are an integral part of the expenses incurred for the said treatment. Take, for instance, a case where an inpatient facility is not available in a specialised hospital and the patient has to stay in a hotel while undergoing the treatment, during the required period, as certified by the doctor, necessarily, the expenses incurred would be integral part of the expenditure incurred towards treatment. It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.”

17. The Kerala Government Servants Medical Attendance Rules, 1960 have been framed in exercise of the powers under the proviso to Article 309 of the Constitution of India. It provides for reimbursement of the medical expenses incurred by the government servants and their family as defined therein and subject to the conditions provided therein. Under the Rules and the orders issued thereunder, claim for reimbursement is admissible even if the hospital from which the treatment availed is a private hospital, provided it is empanelled under the Rules, on satisfying the criteria for recognition. The hospital where the 2nd petitioner was treated is listed in Ext. P2 Government Order dealing with empanelment of

private hospitals for medical reimbursement. There is a Constitutional as well a Statutory obligation on the part of the State to bear the expenses for treatment of the government servant and his family. In the backdrop of Article 21 of the Constitution of India and the Rules issued under the proviso to Article 309, it is impermissible for the respondents to reject the claim of the petitioner for reimbursement of the bills for the reasons stated in Ext. P8. Accordingly, Ext. P8 is set aside. The 1st petitioner shall resubmit the applications and bills returned by the 3rd respondent through the Principal of the College and the 3rd respondent shall forward Ext. P3 and Ext. P4 series, Ext. P5 and Ext. P6 to the 1st

respondent within two weeks of receipt of the same and the 1st respondent shall consider the same afresh in the light of the findings in this judgment and in accordance with law within two months. The amounts due to the 1st petitioner pursuant to such order shall be disbursed by the competent authorities among the respondents within one month therefrom.

The writ petition is ordered accordingly. There will be no order as to costs.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

APPENDIX OF WP (C) 3295/2021

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE F-FDG PET/CT REPORT DATED 18.5.2018 OF THE HOSPITAL
- EXHIBIT P1 (A) TRUE COPY OF BILL NO 13100 DATED 14.5.2018 ISSUED FROM THE DEPARTMENT OF ONCOLOGY, ST.GREGORIOS MEDICAL MISSION HOSPITAL, PARUMALA
- EXHIBIT P1 (B) TRUE COPY OF BILL NO 13092 DATED 14.5.2018 ISSUED FROM THE DEPARTMENT OF ONCOLOGY, ST.GREGORIOS MEDICAL MISSION HOSPITAL, PARUMALA
- EXHIBIT P1 (C) TRUE COPY OF BILL NO 14358 DATED 18.5.2018 ISSUED FROM THE DEPARTMENT OF ONCOLOGY, ST.GREGORIOS MEDICAL MISSION HOSPITAL, PARUMALA
- EXHIBIT P2 TRUE COPY OF THE GO(P) NO 10/2016/H&FWD DATED 21.01.2016
- EXHIBIT P3 TRUE COPY OF THE APPLICATION DATED 13.11.2018 SEEKING REIMBURSEMENT OF RS.1,98,311/-.
- EXHIBIT P3 (A) TRUE COPY OF THE NECESSARY DOCUMENT PRODUCED IN APPENDIX II ALONG WITH EXHIBIT P3(A)
- EXHIBIT P3 (B) TRUE COPY OF THE ESSENTIALITY CERTIFICATE DATED 1.11.2018 WITH RESPECT TO EXHIBIT P3
- EXHIBIT P4 TRUE COPY OF THE APPLICATION DATED 23.11.2018 SEEKING REIMBURSEMENT OF RS. 62756/-
- EXHIBIT P4 (A) TRUE COPY OF THE ESSENTIALITY CERTIFICATE DATED 1.11.2018 WITH RESPECT TO EXHIBIT P4

- EXHIBIT P4 (B) TRUE COPY OF THE LETTER BEARING NO C3-10603/2019 DATED 2.7.2019
- EXHIBIT P5 TRUE COPY OF THE APPLICATION DATED 4.2.2019 SEEKING REIMBURSEMENT OF AN AMOUNT OF RS. 86744/-
- EXHIBIT P6 TRUE COPY OF THE APPLICATION DATED 4.2.2019 SEEKING REIMBURSEMENT OF AN AMOUNT OF RS 1,20,227/-
- EXHIBIT P7 TRUE COPY OF THE NOTIFICATION BEARING NO 34/2020/FINANCE DATED 12.6.2020.
- EXHIBIT P8 TRUE COPY OF THE COMMUNICATION BEARING NO F3/15/2020/H.EDU DEPT. DATED 19.8.2020
- EXHIBIT P9 TRUE COPY OF THE LETTER BEARING NO A3/6379/2020/DCEDDKTM DATED 9.11.2020 ISSUED BY THE 3RD RESPONDENT TO THE 6TH RESPONDENT.
- EXHIBIT P10 TRUE COPY OF GO(RT)NO.1030/2021/H.E.D DATED 09.08.2021 ISSUED BY THE 1ST RESPONDENT.

spc/