

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 11TH DAY OF OCTOBER 2022 / 19TH ASWINA, 1944

WP(C) NO. 29786 OF 2022

PETITIONER:

DR. R. PRAKASH, AGED 52 YEARS, S/O LATE V.RAMADASA SHENOY, AGED 52 YEARS, ADITHYA SREE, PATTANAKKAD P.O., CHERTHALA, ALAPPUHA DISTRICT 688 531.

BY ADV SAJEEV KUMAR K.GOPAL

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT, AYUSH (B) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM. -695001.
- 2 THE SECRETARY TO THE GOVERNMENT, AYUSH (B) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM. -695 001.
- 3 PRINCIPAL AND CONTROLLING OFFICER, GOVERNMENT HOMEOPATHIC MEDICAL COLLEGE, THIRUVANANTHAPURAM-695 001.
- 4 THE DIRECTOR OF HEALTH SERVICES, DIRECTORATE OF HEALTH SERVICE, GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM 695 035.
- 5 DR.PADIYAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE, CHOTTANIKKARA, ERNAKULAM, REPRESENTED BY ITS SECRETARY- 682 312 .

SMT.PARVATHY.K-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR**JUDGMENT**

The petitioner suffered a debilitating liver disease and was rushed to the Government Hospital for treatment in the year 2011. The said hospital found his condition grave and referred him to the 'Amrita Institute of Medical Sciences' at Ernakulam. After some treatment there, said hospital also found that it did not have enough facilities to deal with the problem faced by the petitioner and he was thus advised to go to another hospital; pursuant to which, he went to the 'Appolo Hospital', Delhi, where he was treated and became well, however, incurring an amount of nearly Rs.20 lakhs as medical expenses.

2. When the petitioner applied for reimbursement under the applicable Rules, it was rejected solely saying that 'Appolo Hospital' is not a recognised one in the Medical Reimbursement Scheme and further that no prior permission had been taken for availing treatment there.

3. The petitioner thus impugns Ext.P12 order issued by

the 1st respondent – State of Kerala and prays that its competent Authority be directed to reimburse him the entire amounts as claimed in Ext.P4 application, within a time frame to be fixed by this Court.

4. The afore submissions of Sri.Sajeev Kumar K. Gopal – learned counsel for the petitioner, were, however, controverted by Smt.Parvathy K. - learned Government Pleader, pointing out to Ext.P10, wherein, according to her, the petitioner has made an admission that he had approached the ‘Appolo Hospital’ directly, without a reference being made by either the Government Hospital or the ‘Amrita Hospital’. She submitted that, therefore, the question whether such a course could inure to him the medical reimbursement is doubtful and therefore, that Ext.P12 is irreproachable.

5. Even when I hear the learned Government Pleader as afore, the fact remains that the applicable Rules certainly condone a situation where a patient is rushed in an emergency and forced to avail treatment even in a non-recognized or non-registered hospital.

6. In the case at hand, the incident happened in the year 2011, when surely our systems were far behind from what we see today. Therefore, no decision could have been taken by the 1st respondent without making a proper investigation as to whether the treatment availed of by the petitioner was absolutely necessary or whether he had any alternative in Kerala, except to rely on the expertise of the 'Appolo Hospital' in Delhi.

7. In that perspective, Ext.P10 request of the petitioner cannot be used against him because he honestly admits that since there were no hospitals in Kerala equipped to conduct liver transplantation in the year 2011; and that, considering his grave diagnosis, he was forced to approach the 'Appolo Hospital'. This does not *ipso facto* mean that the choice to go to the 'Appolo Hospital' was his alone and I am certain that this would have been guided by the references and advice offered by the hospitals in Kerala.

8. In the afore circumstances, I cannot offer imprimatur to Ext.P12 and am firm that this matter will require to be reconsidered by the competent Authority of the Government

without any further delay. Since the petitioner's claim has been pending for more than 10 years, I am certain that reconsideration will have to be swift and concluded within a strict time frame.

Resultantly, I order this Writ Petition and set aside Ext.P12; with a consequential direction to the competent Authority of the Government to rehear the petitioner and to take a fresh decision on his application for reimbursement; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

Needless to say, while completing the afore exercise, the competent Authority will advert to the applicable Rules and Regulations and will also assess whether the urgency of the petitioner for medical treatment in the year 2011 was so grave that the obtention of a prior permission was difficult, if not impossible.

RR

Sd/-
DEVAN RAMACHANDRAN
JUDGE

APPENDIX OF WP(C) 29786/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CERTIFICATE ISSUED BY DR.SUBHASH GUPTA OF INDRAPRASTHA APPOLO HOSPITAL REGARDING THE COST OF LIVER TRANSPLANTATION PACKAGE DATED 07-06-2011.
- Exhibit P2 TRUE COPY OF BREAKUP OF LIVER TRANSPLANT PACKAGE ISSUED BY THE INDRAPRASTHA APPOLO HOSPITAL DATED 25-06-2011.
- Exhibit P3 TRUE COPY OF THE CERTIFICATE ISSUED BY DR.SUBHASH GUPTA DATED 04-07-2011 REGARDING THE SURGERY.
- Exhibit P4 TRUE COPY OF THE APPLICATION FOR CLAIMING REIMBURSEMENT OF MEDICAL EXPENSES OF GOVERNMENT SERVANTS DATED NIL.
- Exhibit P5 TRUE COPY OF THE ESSENTIALITY CERTIFICATE ISSUED BY DR.SUBHASH GUPTA DATED 15-03-2012.
- Exhibit P6 TRUE COPY OF THE COMMUNICATION VIDE NO.4968/C1/11/GHMCT FROM THE 3RD RESPONDENT TO THE 4TH RESPONDENT DATED 17-12-2011.
- Exhibit P7 TRUE COPY OF THE COMMUNICATION VIDE NO.4968/C1/2011/GHMCT DATED 23-03-2017 FROM THE PRINCIPAL AND CONTROLLING OFFICER TO THE DIRECTOR OF HEALTH SERVICE WITH COPY TO THE PRINCIPAL.
- Exhibit P8 TRUE COPY OF THE COMMUNICATION VIDE NO.4968/C1/2011/GHMCT DATED 17-11-2017 FROM THE 3RD RESPONDENT TO THE 1ST RESPONDENT.
- Exhibit P9 TRUE COPY OF THE COMMUNICATION DATED 29-04-2018 VIDE NO.B2/362/2018/AYUSH FROM THE ADDITIONAL CHIEF SECRETARY TO THE 3RD RESPONDENT.
- Exhibit P10 TRUE COPY OF THE EXPLANATION GIVEN BY THE PETITIONER DATED 22-06-2018.
- Exhibit P11 TRUE COPY OF THE COMMUNICATION VIDE NO.B2/362/2017/AYUSH DATED 06-08-2020 FROM THE SECRETARY TO THE 3RD RESPONDENT.
- Exhibit P12 TRUE COPY OF THE COMMUNICATION DATED 26-05-2022 VIDE NO.B2/362/2017/AYUSH.