

HIGH COURT OF ANDHRA PRADESH**Bench: Hon'ble Sri Justice Gannamaneni Ramakrishna Prasad****Date of Decision: 1st May 2024**

SPECIAL ORIGINAL JURISDICTION

WRIT PETITION NO: 8740/2024

Petitioner: A Siva Kumari**VS****Respondents: The State of Andhra Pradesh, Dr YSR Aarogyasri Health Care Trust, The District Collector of NTR District, The Headmaster of BSRK MC High School****Legislation:**

Article 21 of the Constitution of India

Office Memorandum, dated 17.10.2016, Ministry of Health and Family Welfare, Government of India

Office Memorandum, dated nil.09.2021, Ministry of Health and Family Welfare, Government of India

Subject: Writ of Mandamus seeking advance funding for 90% of the estimated expenses for petitioner's lung transplantation surgery, which was denied by the respondents.**Headnotes:**

Medical Treatment Entitlement – Writ of Mandamus sought for advance payment of 90% of estimated costs for a lung transplantation, cited non-response to petitioner's requests as illegal and unconstitutional – Petitioner, a school teacher with significant accolades, diagnosed with severe lung disease, requires transplantation; cited two Office Memorandums promising financial aid for such conditions – Court recognizes a mismatch in funds allocation by the respondent authorities, with only Rs. 20,00,000 approved

against an estimated Rs. 70,00,000 from KIMS and Rs. 50,00,000 from Apollo Hospital [Para 2-11].

Judicial Precedents – Reference to several cases supporting state responsibility in providing health services under Article 21 of the Constitution – Mentioned Manoj M vs. State of Kerala, Mohd. Ahmed (Minor) vs. Union of India & Ors, and Brij Mohan Lal vs. Union of India to assert the state’s duty to finance rare disease treatments [Para 7-10].

Court’s Decision – Directed immediate issuance of additional funds totaling Rs. 45,00,000 inclusive of post-operative costs, aligning more closely with the lower estimate provided by Apollo Hospital – Emphasized the state’s responsibility to ensure adequate medical treatment without solely relying on state resources, suggesting possible supplementation through public and private contributions [Para 12-13].

Referred Cases:

- Manoj M vs. State of Kerala: 2016 (4) KerLT 491
- Mohd. Ahmed (Minor) vs. Union of India & Ors: 2014 SCC OnLine Del 1508
- Brij Mohan Lal vs. Union of India: (2012) 6 SCC 502
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Representing Advocates:

For Petitioner: M Kishore Babu

For Respondents: GP for Services I, GP for Services IV, K.S.G. Padmavathi (for Respondent No.4)

The Court made the following Order:

Heard Sri K. Manikanteswara Rao, Learned Counsel representing Sri M. Kishore Babu, Learned Counsel for the Writ Petitioner and Smt. K.S.G. Padmavathi, Learned Standing Counsel appearing for Respondent No.4.

2. The prayer sought in the present Writ Petition is as under:

I, therefore pray that this Hon'ble Court may be pleased to issue an appropriate Writ, order, orders or directions more particularly one in the nature of Writ of Mandamus declaring the inaction of the Respondent Authorities to grant of advance amount upto 90% of Estimated expenditure for the Petitioner's Lungs Transplantation Operation in KIMS Hospital, Secunderabad, which is high cost, without considering her Representations, dt.07.02.2024, as illegal, arbitrary, biased, unconstitutional and against the principles of natural justice, and consequently, direct the Respondent Authorities to grant of advance amount upto 90% of Estimated expenditure i.e., Rs. 70 Lakhs only for the treatment of Lungs Transplantation Operation of the Petitioner, and to pass such other relief or reliefs as this Hon'ble Court may deem fit, just and necessary in the circumstances of the case.

3. The case of the petitioner is that she had initially joined as Secondary Grade Teacher on 15.11.1989 and promoted as School Assistant (Social Studies) in the year 2007; that she has been presented the best-teacher award continuously for a period of 3 years and had received one such award from the then President of India, Dr. Sri A.P.J. Abdul Kalam on 01.03.2006; that 5 years ago, the Writ Petitioner was affected with lung disease("end stage Interstitial Lung Disease") and due to the progression in the disease, the damage to her lungs was about 70%; the All India Institute of Medical Sciences, Mangalagiri, confirmed that the damage caused to the lungs is about 70% and that there is no treatment for mitigating the situation except bilateral lung transplantation; that the Writ Petitioner is affected by this lung disease, which is very rare one; that she had consulted several hospitals at Chennai, Mumbai, Pune, Delhi and Hyderabad; finally, the Krishna Institute of Medical Sciences (KIMS), Secunderabad have tested the Writ Petitioner and gave an estimated expenditure for lung transplantation surgery as Rs. 70,00,000/-(Rupees Seventy Lakhs only) on 24.02.2024 (Ex.P.2); that the Writ Petitioner had approached the Respondent Authorities for reimbursing of 90% of the expenditure, by placing reliance on an Office Memorandum, dated 17.10.2016, issued by the Ministry of Health and Family Welfare, Government of India (Ex.P.3); and that the Writ Petitioner has also placed reliance on the Office Memorandum, dated nil.09.2021 issued by the Ministry of Health and Family Welfare, Government of India.

4. When this matter was listed on 18.04.2024, this Court had directed the Respondents to obtain Written Instructions, keeping in mind the urgency that is involved in this matter. As the name of the Learned Counsel appearing for the Respondents was not printed in the Cause-list, the Learned Counsel for the Respondents was not ready with the matter on 22.04.2024. This Court had directed the matter to be listed again on 23.04.2024 on the top of the 'Motion List'. On 23.04.2024, the Smt. K.S.G. Padmavathi, Learned Standing Counsel appearing for the Respondent No.4 has submitted the Minutes of the EHS Technical Committee meeting, which had recommended to issue Letter of Credit (LOC) to "KIMS Hospital" for an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) to undergo treatment for "Bilateral Lung Transplantation" under the Employees Health Scheme (EHS).
5. Having considered the said Minutes of the EHS Technical Committee meeting, dated 19.04.2024, this Court has observed in its Order on 23.04.2024, that there is a mismatch between the amount required by the Petitioner as per the estimate given by the KIMS (Rs.70,00,000/-) and the amount recommended by the EHS Technical Committee meeting (Rs.20,00,000/-). This Court had directed the Learned Counsel to submit the breakup of the details, as to how the Technical Committee has arrived at Rs.20,00,000/- as the cost for undergoing Bilateral Lung Transplantation Surgery. It was directed to list the matter again on 25.04.2024. On 25.04.2024, the Learned Counsel for the Writ Petitioner has sought an adjournment with a request to list the matter on 29.04.2024 to place some material on record. Therefore, the matter is listed today.
6. The Learned Counsel for the Respondent, during the course of the hearing, has furnished an estimate given for "Lung Transplantation" by the Apollo Hospital, Chennai, which is about Rs.50,00,000/- (Rupees Fifty Lakh only) and also submitted the Proceedings from the Chief Executive Officer of Dr.YSR Arogyasri Health Care Trust, dated 24.04.2024, indicating the break up, which is supplied by the Superintendent of Government Hospital for Chest and Communicable Diseases, Guntur. The relevant portion of the Letter dated 24.04.2024 addressed to the Learned Standing Counsel is extracted here under:

"In this regard the Superintendent of Govt. Hospital for Chest & Communicable Diseases, Guntur, has provided the breakup details regarding the sum of Rs. 20,00,000/- for the Bilateral Lung Transplant Surgery to Smt. A. Siva Kumari as follows:

| Sl.No. | Component | Amount |
|--------|--|---|
| 1 | Special investigations | Rs. 2 lakhs and Rs. 50,000/- as buffer amount |
| 2 | Surgery disposables and drugs | Rs. 3,00,000/- |
| 3 | Immunosuppressants for a period of two weeks including induction agents (1L 2 blockers, Tacrolimus, Mycophenolate, and steroids) | Rs. 4,00,000/- |
| 4 | Professional incentives | Rs. 4,00,000/- |
| 5 | Hospital incentive | Rs. 1,50,000/- |
| 6 | Follow-up package for one year | Rs. 5,00,000/- |
| | Total: | Rs. 20,00,000/- |

Sd/-

Chief Executive Officer,
YSR Aarogyasri Health Care Trust,

Dated: 24.04.2024”

7. Sri K. Manikanteswara Rao, Learned Counsel representing

Sri M. Kishore Babu, Learned Counsel for the Writ Petitioner has drawn the attention of this Court to various Judgements, which are filed along with the Memo, dated 13.04.2024. The Learned Counsel for the Writ Petitioner has also drawn the attention of this Court to an Order passed by the Learned Single Judge of this Court in W.P.No.5859 of 2022, dated 09.03.2022. The said Judgment would indicate that the rough cost of treatment for ‘Pompe Disease’ is estimated to be Rs.39,87,204/- and the Learned Single Judge of this Court had directed the State Government as under:

“14. In the circumstances, the only way this case can be closed by this Court is to allow it by directing the State of Andhra Pradesh and the Commissionerate of Health and Family Welfare & National Health Commission to ensure that the petitioner herein is provided with Enzyme Replacement Therapy (ERT), free of charge. The

State is also free to explore all means of financing the treatment of the petitioner, including sourcing the funds through crowd funding.

15. Accordingly, the writ petition is allowed. There shall be no order as to costs.”

8. The Learned Counsel for the Petitioner has also placed reliance on the Judgement rendered by the Hon’ble High court of Delhi in Mohd. Ahmed (Minor) vs. Union of Indi &Ors :2014 SCC OnLine Del 1508, wherein, for a similar disease namely “Pompe disease” the Hon’ble High Court of Delhi, after having considered the various authorities, had directed the All India Institute of Medical Sciences (AIIMS), New Delhi, to treat the patient free of charge taking into account three factors namely:
 - i. That the State did not regulate the drugs meant for orphans for treating the chronic diseases and rare diseases
 - ii. That the prognosis and success rate in treatment of ‘Pompe disease’ is very high.
 - iii. The patient, as an infant, cannot be allowed to die due to the cost factor that is involved in the treatment.
9. The Learned Counsel for the Petitioner has also placed reliance on the Judgement rendered by a Learned Single Judge of Hon’ble High Court of Kerala in Manoj M vs. State of Kerala: 2016 (4) KerLT 491 on 22.09.2016. The Learned Counsel for the Petitioner has drawn the attention of this Court to the ratio in the Judgement. The Learned Single Judge of High Court of Kerala, while referring the right to health and medical care as a facet of Article 21 of Constitution of India, has held that a Welfare State like India has to guarantee the life of its citizens and it is the obligation of the Welfare State to provide adequate medical facilities for securing life of its citizens.
10. A reference has been made to the ratio in Brij Mohan Lal vs. Union of India: (2012) 6 SCC 502 to state that in so far as the person, who cannot afford to pay for their medical treatment, the State is certainly obliged constitutionally to make adequate provision for their treatment, for, no Government can say that it will not treat patients with rare diseases due to financial constraints. It is noted that it does not mean that the State has to make use of its resources for the said purpose, for, the resources of the State are to be utilised for various other purposes as well. Having taken note of these issues, the Learned Single Judge had observed that the Government can utilise the other sources for meeting with the expenditure namely by utilising the Chief Minister’s Relief Fund which is created out of donations. The government can also tap the resources of the civil society and nonGovernment and charitable

organisations to take care of the situation. It is also stated that the initiative to tackle situations of this nature has to come from the Government and it cannot shirk its responsibility by contending that it has no resources.

11. Following facts are taken into consideration in the instant case:
 - i. That the Writ Petitioner is in Government service, presently working as School Assistant.
 - ii. She has secured best-teacher awards on three occasions, and on one such occasion, the award was presented to the Writ Petitioner by the then President of India, Dr. Sri A.P.J Abdul Kalam on 01.03.2006; and that she has also received several other best-teacher awards from the local authorities.
 - iii. That the Writ Petitioner has been diagnosed with the rare lung disease that has caused damage of lungs up to 70%, as confirmed by All India Institute of Medical Sciences, Mangalgi; that the All India Institute of Medical Sciences, Mangalgi has also confirmed that there is no treatment to mitigate the present disease and the only alternative is lung transplantation.
 - iv. That the Writ Petitioner has explored places for treatment at Chennai, Mumbai, Pune, Delhi and Hyderabad for lung transplantation; that the Krishna Institute of Medical Sciences (KIMS), Hyderabad has given an estimated expenditure for lung transplantation operation as Rs.70,00,000/-(Rupees Seventy Lakhs only). Representation was made by the Writ Petitioner to the Respondent Authorities on 07.02.2024, for which there is no response; and, that the Apollo Hospital, Chennai has given an estimate for "Lung Transplantation" as Rs.50,00,000/-(Rupees Fifty Lakh only).
 - v. That the Union Of India vide Office Memorandum, dated 17.10.2016 would advance 90% of the package rates for all Indoor Treatments, irrespective of major or minor diseases just on the receipt of Certificate from the treating physician either by the Government Hospital or from the recognised Hospital as per the guidelines; that the Union of India, would advance an amount of 90% for outdoor treatment as well for the above mentioned diseases and the same shall be released within ten (10) days (Ex.P.3).
 - vi. The Writ Petitioner is only aged about 57 years.
 - vii. The percentage of success in lung transplantation is more than 80% as per the available data (source: Google).

- viii. As the EHS Technical Committee in its meeting held on 19.04.2024, had recommended for LOC for a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only); that vide proceeding dated 24.04.2024, on the direction of this Court, had given a breakup of the expenditure by the Superintendent of Government Hospital for Chest and Communicable Diseases, Guntur(extracted supra).
12. Having considered the above facts and the legal authorities on this issue, this Court is inclined to issue the following directions:
- i. The Respondent Authorities shall immediately issue Letter of Credit (LOC) for sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as resolved in the Minutes of the EHS Technical Committee meeting held on 19.04.2024.
 - ii. As this Court is of the opinion that there is a mismatch between the actual expenditure suggested by KIMS (Rs.70,00,000/-) and the recommendation of the Minutes of the EHS Technical Committee meeting (Rs.20,00,000/-) and that this Court has also taken into consideration the estimated expenditure given by Apollo, Chennai, this Court would deem it appropriate to award additional sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) in favour of the Writ Petitioner for the purpose of meeting with the Lung Transplantation Surgery and an additional amount of Rs.5,00,000/- (Rupees Five Lakhs only) for meeting the Post Operative Expenditure (this makes the total amount to Rs.45,00,000/- (Rupees Forty Five Lakhs only) as total contribution from the State of Andhra Pradesh).
 - iii. Accordingly, the balance amount of Rs.25,00,000/- shall also be made ready through Letter of Credit (LOC) by the Respondents within one (01) week from today.
13. In the above premise, this Writ Petition stands allowed. No order as to costs.
14. Interlocutory Applications, if any, stand closed in terms of this order.

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