

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

FRIDAY, THE 19<sup>TH</sup> DAY OF JUNE 2026 / 29TH JYAISHTA, 1948

OP (CAT) NO. 53 OF 2025

AGAINST THE ORDER DATED 24.01.2024 IN OA NO.203/2022 OF CENTRAL

ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENT:

- 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY  
MINISTRY OF HEALTH AND FAMILY WELFARE NIRMAN BHAVAN,  
NEW DELHI, PIN - 110011
- 2 DIRECTOR GENERAL, CENTRAL GOVERNMENT HEALTH SCHEME  
NIRMAN BHAVAN, NEW DELHI- 110011
- 3 DIRECTOR, CENTRAL GOVERNMENT HEALTH SCHEME NIRMAN  
BHAVAN, NEW DELHI- 110011
- 4 ADDITONAL DIRECTOR, CENTRAL GOVERNMENT HEALTH SCHEME  
NIRMAN BHAVAN, NEW DELHI, PIN - 110011
- 5 CHIEF MEDICAL OFFICER,  
CENTRAL GOVERNMENT HEALTH SCHEME WELLNESS CENTRE, BSNL  
QUARTERS, GANDHINAGAR KADAVANTHRA, KOCHI, PIN - 682021

BY ADV SHRI.T.C.KRISHNA, SENIOR PANEL COUNSEL

RESPONDENT/APPLICANT IN THE OA:

K.J JOSEPH, AGED 62 YEARS, SENIOR DRAFTSMAN (RTD) ,  
NAVAL INSTITUTE OF AERONAUTICAL TECHNOLOGY, NAVAL BASE,  
KOCHI, KATTUNILATH HOUSE, IL ALEXANDER ROAD, PUKKAD,  
MALIPPURAM P.O KOCHI, PIN - 682511

SRI.SUDEEP ARAVIND PANICKER  
SHRI.A.S.DILEEP  
SHRI.P.BINOD



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SHRI.K.Y.SUDHEENDRAN  
SMT.SUSEELA DILEEP  
SHRI.SRIVIDYA K  
SHRI.K.N.HARISHANKAR

THIS OP (CAT) HAVING COME UP FOR HEARING ON 19.06.2026,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



"CR"

JUDGMENTDevan Ramachandran, J.

The appellants assert that the final order of the learned Central Administrative Tribunal, Ernakulam Bench "(Tribunal)" is incorrect and based solely on surmises because, the disease and treatment suffered and endured by the wife of the respondent/original applicant, was not serious enough to force her to take treatment in a Non-Empanelled Hospital, to thus suffer a larger bill than authorised under the Central Government Health Scheme (CGHS).

2. Sri.T.C.Krishna – learned Senior Panel Counsel for the appellants, argued that, going by the records available and the pleadings of the respondent/applicant, the patient's disease was not grave enough to warrant an emergency treatment or surgery; and consequently, that the reliance placed by the learned Tribunal on **Shiva Kant Jha v. Union of India** ((2018) 16 SCC 187), is misplaced. He explained that, as per the treatment documents and the admitted pleadings, the patient initially was treated in one hospital, to be taken to another as reflected in Annexure A8;



and that, she then took a second opinion in a third hospital, in which, the surgery was conducted, as certified in Annexure A9. He maintained that the surgery can hence only be seen to be an elective one, and not performed in an emergency; and consequently, that the benefit of declarations in **Shiva Kant Jha** (*supra*) would not inure to the respondent/original appellant.

3. In refutation, the learned counsel for the respondent – Sri.Sudeep Aravind, pointed out that, even as per the documents relied upon by Sri.T.C.Krishna - namely Annexures A8 and A9 - it would stand to no doubt that his client's wife was in a very precarious medical condition, requiring urgent and incisive action, including a surgery, which was then done on 28.01.2021. He showed us, referring to Annexure A8, that, on 13.01.2021, his client's wife, namely the patient, was admitted in “V.G.Saraf Memorial Hospital Pvt. Ltd.”, which was also a Non-Empanelled hospital under the CGHS, with a complaint of severe bleeding; and that the doctors suspected malignancy of the rectum, for which a biopsy was taken. He says that, however, within a short period of 9 days, the patient's condition deteriorated to such extent, that she had to be admitted to the “Aster Medcity Hospital” in Kochi - which is one again empanelled under the



CGHS - in a very serious condition, thus being subjected to urgent surgery of coloanal anastomosis on 28.01.2021, as ineluctable from Annexure A9 certificate, dated 03.02.2021, issued by the said hospital.

4. Irrefutably – as is admitted – that, if the patient had had to undergo emergency surgery and did not obtain the time to go in search of a hospital empanelled with the CGHS, the declarations in **Shiva Kant Jha** (*supra*) would come to apply in all its fours.

5. In the afore precedent, the Hon'ble Court has declared, with unmistakable emphasis, that the “*ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualifications and experience gained*”; further that: “*very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated*”; and hence that “*taking treatment in Speciality Hospital by itself would not deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order.*” The judgment is important for the further declarations, namely that “*the real test in such cases must be the factum of treatment*”



and to decide “*whether the patient or the claimant had actually taken treatment as supported by the records duly certified by Doctors/Hospitals in charge*”. It then concludes clarifying that the right to medical claim cannot be denied solely because the hospital is not an empanelled one.

6. In fact, the spirit of the afore judgment is available in Annexure A27, which is the Office Memorandum issued by the Government of India on 22.05.2018, which specifies that “*treatment obtained in a private unrecognised hospital under emergency for treatment of advanced malignancy*” would not disentitle a patient or applicant from the benefits under the CGHS.

7. Applying the afore into the facts of this case, we obtain no reason to disbelieve the respondent, that his wife was suffering gravely even when she had been admitted to “V.G.Saraf Memorial Hospital” on 13.01.2021 because, its certificate, namely Annexure A8, records that she was having bleeding. The suspicion at that time was malignancy in the rectum; and a biopsy had also been taken. The patient was discharged from the said hospital on 14.01.2021; however, to be taken to another hospital, namely the “Aster Medcity”, on 27.01.2021, to be then subjected



to an emergency life saving surgery on that day, as apodictic from the certification contained in Annexure A9 dated 03.02.2021.

8. Annexure A9 is incontrovertible in its tenor that the surgery was done on the patient on an emergency basis; and that she underwent "*Laparoscopic ultra low anterior resection with coloanal anastomosis and covering stoma under GA on 28.01.2021*" (sic).

9. In such factual scenario, we cannot find the contentions of Sri.T.C.Krishna to be deserving approval in any manner, particularly that the surgery conducted on the patient was an "elective" one. We have nothing before us to disbelieve Annexure A9, which is the certificate issued by "Aster Medcity", especially when it is not under challenge.

In the afore circumstances, we obtain no reason to intervene; and consequently, dismiss this petition.

Sd/- DEVAN RAMACHANDRAN  
JUDGE

Sd/- BASANT BALAJI  
JUDGE



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APPENDIX OF OP (CAT) NO. 53 OF 2025

## PETITIONER ANNEXURES

|              |                                                                                                                                                                                                          |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annexure A1  | A TRUE COPY OF THE INDEX CARD ISSUED ON 18.08.2020 BY THE LST RESPONDENT ALONG WITH TRUE TYPED COPY OF ANN. A1                                                                                           |
| Annexure A2  | A TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE BILL AMOUNT OF THE COVID TEST DATED 13.01.2021 OF THE APPLICANT'S WIFE                                                                       |
| Annexure A3  | A TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE BILL AMOUNT OF THE COVID TEST DATED 13.01.2021 OF THE APPLICANT                                                                              |
| Annexure A4  | A TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE BILL AMOUNT FOR RENAL FUNCTION TEST DATED 13.01.2021                                                                                         |
| Annexure A5  | A TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE BILL AMOUNT FOR ABDOMEN MRI SCAN DATED 14.01.2021                                                                                            |
| Annexure A6  | TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE BILL AMOUNT FOR SIGMOIDOSCOPY TEST DATED 14.01.2021.                                                                                           |
| Annexure A7  | A TRUE COPY OF THE RECEIPT EVIDENCING THE REMITTANCE OF THE BILL AMOUNT FOR BIOPSY TAKEN ON 14.01.2021                                                                                                   |
| Annexure A8  | A TRUE COPY OF THE DISCHARGE SUMMARY ISSUED BY V.G SARAF MEMORIAL HOSPITAL, ERNAKULAM DATED 14.01.2021.                                                                                                  |
| Annexure A9  | A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 28.01.2021 ISSUED BY THE SURGICAL GASTROENTEROLOGIST CERTIFYING THE EMERGENCY TO CONDUCT LAPAROSCOPIC ULTRA-LOW ANTERIOR RESECTION SURGERY AT ASTER MEDCITY |
| Annexure A10 | A TRUE COPY OF THE MEDICAL BILL OF ASTER MEDCITY DATED 03.02.2021 ALONG WITH TRUE TYPED COPY OF ANN. A10                                                                                                 |
| Annexure A11 | A TRUE COPY OF THE DISCHARGE SUMMARY DATED 03.02.2021 ALONG WITH TRUE TYPED COPY                                                                                                                         |
| Annexure A12 | : A TRUE COPY OF THE REPRESENTATION DATED 30.07.2021 PREFERRED BY THE APPLICANT BEFORE THE 4TH RESPONDENT                                                                                                |
| Annexure A13 | A TRUE COPY OF THE EMAIL/ COVERING LETTER                                                                                                                                                                |



|                         |                                                                                                                                            |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
|                         | DATED 30.07.2021                                                                                                                           |
| Annexure A14            | A TRUE COPY OF THE CALCULATION SHEET FOR ADMISSION OF MEDICAL REIMBURSEMENT CLAIMS ISSUED BY THE 4TH RESPONDENT                            |
| Annexure A15            | A TRUE COPY OF THE CERTIFICATE ISSUED BY THE RADIATION ONCOLOGIST DATED 01.03.2021.                                                        |
| Annexure A16            | A TRUE COPY OF THE MEDICAL BILL DATED 05.06.2021.                                                                                          |
| Annexure A17            | A TRUE COPY OF THE REPRESENTATION DATED 05.01.2022 PREFERRED BY THE APPLICANT BEFORE THE 4TH RESPONDENT                                    |
| Annexure A18            | A TRUE COPY OF THE EMAIL/ COVERING LETTER DATED 06.01.2022 OF THE 4TH RESPONDENT                                                           |
| Annexure 19             | TRUE COPY OF THE CALCULATION SHEET FOR ADMISSION 6F MEDICAL REIMBURSEMENT CLAIMS ISSUED BY THE 4TH RESPONDENT                              |
| Annexure A20 to A20 (b) | A TRUE COPY OF THE SIGMOIDOSCOPY TEST DONE ON 2.08.2021 AT ASTER MEDCITY                                                                   |
| Annexure A21            | A TRUE COPY OF THE REPRESENTATION DATED 11.02.2022 BEFORE THE 4TH RESPONDENT                                                               |
| Annexure A22            | A TRUE COPY OF THE CERTIFICATE DATED 03.03.2021 ISSUED BY THE EMPANELLED HOSPITAL IN THE AREA.                                             |
| Annexure A23            | A TRUE COPY OF THE ORDER IN O.A NO. 951 / 2011 DATED 12.04.2012                                                                            |
| Annexure A24            | A TRUE COPY OF THE ORDER IN WP(C) NO. 3295 OF 2021 DATED 31.01.2022                                                                        |
| Annexure R1             | TRUE COPY OF O.MS BEARING NO. NO.Z.15025/117/2017/DIR/CGHS DATED 15.01.2018                                                                |
| Annexure R2             | TRUE COPY OF OM NO. 15025/64/2018/DIR/CGHS DATED 31.07.2018.                                                                               |
| Annexure A25            | A TRUE COPY OF THE PRESCRIPTION ISSUED BY THE ONLINE OPD, E-SANJEEVANI DATED 03.01.2021                                                    |
| Annexure A26            | A TRUE COPY OF THE LIST OF HOSPITALS EMPANELLED UNDER THE CGHS 4 I A TRUE COPY OF THE OM NO. 15025/38/ 2018/ DIR/CGHS/EHS DATED 22.05.2018 |
| Annexure A27            | A TRUE COPY OF THE OM NO. 15025/38/ 2018/ DIR/CGHS/EHS DATED 22.05.2018                                                                    |
| Exhibit P1              | TRUE COPY OF THE O.A. NO. 180/00203/2022 FILED BY THE RESPONDENTS BEFORE THE HON'BLE                                                       |



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**CAT ERNAKULAM BENCH**

**Exhibit P2** TRUE COPY OF THE REPLY STATEMENT FILED BY  
THE PETITIONERS HEREIN BEFORE THE CAT,  
ERNAKULAM BENCH IN OA NO. 180/00203/2022

**Exhibit P3** A TRUE COPY OF THE REJOINDER FILED BY THE  
RESPONDENT HEREIN BEFORE THE CAT ERNAKULAM  
BENCH IN OA NO. 180/00203/2022

**Exhibit P4** A TRUE COPY OF THE ORDER DATED 24.01.2024  
IN OA NO. 180/00203/2022 OF THE CENTRAL  
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

**RESPONDENT ANNEXURES**

**Annexure-A1** True copy of the Death Certificate of Mrs.  
Laly Joseph dated 31/01/2025