
(2008) 10 RAJ CK 0045
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5442 of 2006

Abdul Aziz Khan

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Citation : (2008) 10 RAJ CK 0045

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Petitioner while working as Principal of Government Senior Secondary School retired from service and thereafter has been residing at Sawai Madhopur, where he had a chest pain, thereby his family members took him to Government Hospital Sawai Madhopur on 23.07.2003 from where he was referred to SMS Hospital, Jaipur. As alleged, at SMS Hospital Jaipur since he was not properly being responded in an emergent & critical state of his health, his family members took him to Tongia Heart Hospital, Jaipur where he was admitted in Intensive Care Unit on the very day-23.07.2003 and since his condition was deteriorating, he was diagnosed and medically treated for respiratory coronary angiography on 27.07.2003 and after surgical operation, was discharged from Tongia Hospital on 28.07.2003 & bill of Rs. 26,869.35p was raised.

2. As alleged, since infection in heart and kidney of petitioner developed, his family members again hospitalized him on 10.08.2003 in Santokba Durlabhji Memorial Hospital cum Medical Research Institute, Jaipur where he was medically treated as indoor patient and discharged on 13.08.2003, for which a bill of Rs. 9,181.23p, was raised.

3. Petitioner submitted two bills (1) of Rs. 26,869.35p raised by Tongia Hospital & (2) of Rs. 9,181.23p, raised by Santokbha Durlabhji Hospital vide application dt.30/09/04 (Ann.1)and ultimately his claim through medical reimbursement bills

for aforesaid amount was rejected by respondents vide order dated 17.09.2005 (Ann.4) on the premise that the patient undertook treatment in private Hospitals (supra) which are not recognized & approved by Government.

4. Counsel submits that petitioner is a retired Government servant and a member of Rajasthan State Pensioners Medical Concession Scheme and in a critical condition, when he was not provided proper medical care in Govt. Hospital, he was immediately taken to private Hospital where he was surgically operated; for which the bills which he raised are in accordance with medical Scheme; as such very rejection of bills for reimbursement on the premise that Tongia Hospital & Santokbha Durlabhji Hospitals are not recognized/approved by Government, cannot be sustainable under law.

5. However, Counsel for respondents submits that since petitioner has not been operated and medically treated in recognized hospital, is not entitled for medical reimbursement and placed reliance upon DB decision in State of Rajasthan v. Mithulal Gupta (Special Appeal (Writ) 858 of 2007 decided on 24.03.2008 (Per Hon. R.M. Lodha, J.).

6. I have considered contentions of both the parties and with their assistance, pondered over material on record. This fact remain undisputed that petitioner was firstly taken to Govt. Hospital at Sawai Madhopur being in a critical condition, was referred to SMS Hospital, Jaipur, as well and his condition became deteriorated, ultimately he was shifted to Tongia Heart Hospital (supra) in an emergent situation, and was operated medically treated for respiratory coronary angiography and thereafter as a result of infection in his kidney & heart, he was again hospitalized in Santokbha Durlabhji Hospital and medically treated for which he incurred expenses as raised vide application (Ann.1).

7. In State v. Mithulal Gupta (supra) this Court while dealing with such like controversy and taking note of Para 4E of Pensioners" Medical Scheme, observed ad infra:

11. The Counsel for the respondent then submitted that in any case the petitioner was entitled to the reimbursement to the extent of Rs. 1,20,000/- as per the then existing Rule 4B. Rule 4B provides the scale of assistance to the extent of 80% of hospital expenses or Rs. 1,20,000/- which is less in the case of bye-pass surgery if the treatment is taken in a Government hospital within the State of Rajasthan. The petitioner did not choose to avail of the specialized treatment in SMS Medical College and Hospital although angiography was done there but instead without any reference from that hospital went to Escort Hospital, New Delhi on his own. Having not chosen to have the specialised treatment in a Government hospital within the State of Rajasthan, the scale of assistance provided in the para 4B of the Rules for treatment in such hospitals cannot be applied. The case of petitioner is covered by para 4E of the Scheme and according to that provision, scale of assistance is limited to Rs. 44,000/- being 80% of general award charges of All India Institute of medical Sciences,

New Delhi.

In instant case, petitioner took treatment from a hospital in State of Rajasthan, which is not recognised hospital duly approved by Government. Paras 4A of Pensioner medical scheme take note of treatment of disease not available in Government Hospital in the State of Rajasthan and so also para 4B is in respect of specialised treatment taken in Government hospital within State of Rajasthan. Para 4G deals with treatment of disease other than heart ailment in recognised hospital outside the State being entitled to AIIMS as per rates prescribed therein. No provision has been brought to the notice of this Court in regard to cases where treatment of heart ailment has been undertaken by a member of pensioners medical scheme from a hospital within State of Rajasthan which is not a recognized hospital. At the same time, Para 4-E of the Scheme, deals with treatment undertaken by member of the Scheme from a hospital/institution not recognised by Govt. Thus, this Court considers it proper that in such cases, where the member has taken treatment from a hospital which is not recognised by Government within State of Rajasthan shall also be entitled to claim reimbursement under para 4-E of the Scheme.

8. In view of what has been observed above, instant petitioner is entitled for reimbursement of medical bills furnished by him, in terms of Rule 4-E of the Scheme.

9. Consequently the writ petition succeeds and is hereby allowed. Order impugned dated 17.09.2005 (Ann.4) is quashed & set aside. Respondents are directed to make payment of medical bills raised in terms of Rule 4E of the Scheme with interest @ 9% p.a., from the date of presentation of bills till actual payment. The respondents may ensure compliance of this order within three months.

10. No order as to costs.