
(2006) 10 DEL CK 0096

In the Delhi High Court

Case No : Writ Petition (C) 7437-38 of 2005

B.R. Goel and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Citation : (2007) 136 DLT 189 : (2006) 92 DRJ 461

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rakesh Mahajan, in WP C 7437-38/2005, Amrit Kaur Oberoi, in W.P.C 5556/2005 and Puneet Verma, in W.P.C 7218/200, for the Appellant; A.K. Bhardwaj in WP (C) Nos. 7218 and 7437-38/2005; Malika Chaudhary, for R-2 in W.P.(C) Nos. 5556 and 7218/2005, Mritunjai Kumar and Sarfaraz Khan, in W.P. (C) 5556/2005 and Rajiv Nayyar and Kunal Tandon, for R-2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The common claim in all these writ proceedings is for appropriate directions to the first respondent to fully reimburse the expenses incurred by the petitioners or their dependents, for medical treatment undergone by them through the second respondent the Escorts Heart Institute.

2. The petitioners are members and card holders of (and Therefore are all beneficiaries of) the Central Government Health Scheme (hereinafter referred to as "CGHS") under which they are entitled to medical treatment. In terms of the Scheme, they, their spouses and dependents (a term defined under the Scheme) are entitled to medical treatment, which includes diagnosis, medication and if necessary, surgical intervention. As per the Scheme, members are in addition to treatment through CGHS dispensaries, also entitled to seek the facilities in private designated/notified hospitals.

3. The Escorts Hospital and Research Centre, was included in the list of designated Medical Institutions by the Memorandum issued by the first

respondent on 18.9.1996. As per the then prevailing norms, reimbursement of the cost incurred by the CGHS beneficiaries was limited to Rs. 99,000/- with an additional increase of 15% for private Wards and a discount of 10% for a General Ward.

4. The first respondent issued an Office Memorandum on 22.4.1998 revising the rates for the Coronary Bypass Surgery at different rates. This Notification also made a mention of the second respondent.

5. It is undisputed that the petitioners and/or their relatives underwent treatment for heart disease in the second respondent Hospital between 2000 and 2002. It is also not denied by the respondents that the treatment was warranted having regard to the medical condition of the patients. The only controversy which arises between the parties is to the amounts payable as reimbursement to the petitioners. The petitioners claim full reimbursement of the amounts charged whereas the first respondent states that the reimbursement is permissible only to the extent of what is indicated in the Office Memoranda issued, to the extent of package rates and that costs incurred over and above the package rates are to be borne by the petitioners.

6. The relevant particulars pertaining to the treatment, and the amounts spent as well as the amounts admitted are given below in a Tabular statement:

W.P.	No	Date	Nature	of Amount	Amount admitted/	Treatment	Treatment
involved	sanctioned	7437-38/2005	May, 1997	Heart surgery	Rs. 2,23,000/-	Rs. 1,12,800/-	5556/2005
		22-3-2002	CABG	Rs. 2,0,3850/-	Rs. 1,13,850/-		7218/2005
		May-June,	CABG	Rs. 1,83,000/-	Rs. 89,100/-		2000

7. The first respondent in its return, as noted earlier has not disputed the facts so far as the treatment undergone and need for the same are concerned. It has also admitted its liability to a limited extent. However, in all the cases it has taken the specific position as claims for reimbursement are as per rates applicable in the Office Memoranda dated 18.9.1996, 22.4.1998 and 7.9.2001. It is also claimed that when permission to undergo the medical treatment was given, the petitioners were aware of this condition and, Therefore, they cannot now compel the first respondent to pay the balance amounts.

8. Counsel for the petitioners have relied on the judgments of this Court in Shri V.K. Gupta Vs. Union of India (UOI) and Another, , Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI), M.G. Mahendru v. UOI 92(2001) DLT 59, and Narendra Pal Singh Vs. Union of India and Others, . It is contended that the Central Government is under an obligation to ensure that the actual costs incurred are fully recompensed or reimbursed having regard to its obligation to extend medical facilities to the petitioners. It was also contended that the failure of the Central Government to re-negotiate the package rates or ensure that empanelled hospitals do not charge more than the package rates for medical treatment incurred ought not impact on the beneficiaries adversely and that in case of any such differential amounts, the liability to pay them is that of the

Central Government.

9. The respondents have reiterated the contention taken in their counter affidavit. Learned Counsel for the first respondent contended that the Central Government's liability has to be necessarily restricted to the notified package rates as per the Memoranda issued from time to time namely, 18.9.1996, 22.4.1998 as well as the Memoranda issued on 7.9.2001, 5.10.2001 and 26.8.2001. These Memoranda were within the knowledge of the petitioners who were even informed about the maximum amounts that could be borne by the Central Government.

10. Learned Counsel for the respondent has also relied upon the judgment of the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, to say that though the State might have an obligation to ensure medical treatment of its employees which may also include reimbursement of expenses, that obligation may not amount to a duty to give full reimbursement, since the State does not possess unlimited resources.

11. The Division Bench, in its judgment reported as *Sqd. Commandar Randeep Kumar Rana (supra)* held as follows:

Therefore, once the respondent themselves have recommended the treatment to be taken by the Escorts Hospital, they cannot deny the full reimbursement on the basis that the charges incurred by the petitioner over and above the package rate which the respondent has agreed with the said hospital cannot be reimbursed. At page 12 of the paper-book there is a letter conveying permission by the respondent to the petitioner to undertake specialized treatment from recognized private diagnostic centre. There is another letter of the respondent at pages 22-23 of the paper-book in which it has been admitted that Escorts Heart Institute and Research Centre was also one of the hospitals which the petitioner was entitled for treatment. Now we come to the plea which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of the counter affidavit that it is the duty of the citizens to see and ensure that such recognized hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to lay down guidelines is with the respondent. A citizen is a mere spectator to what State authority do not decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay to such charges as the petitioner has incurred over package rates at the first instance and if in law state can recover from the hospital concerned, they may do so but they cannot deny their liability to pay to the Government employee who is entitled for medical reimbursement.

12. The earlier ruling of this Court in *Shri V.K. Gupta Vs. Union of India (UOI) and Another*, , was to the same effect. The court had, in that case, considered the previous judgments in *Narendra Pal Singh (supra)*, the terms of the Officer memoranda cited and relied upon in these writ proceedings, viz. Dated

18-9-1996 as well as dated 2-9-2001 and held as follows:

10. The only submission by learned Counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the Circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of the legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute and Research Centre, New Delhi where he was duly referred for specialised treatment by the respondents after according permission. Escorts Heart Institute & Research Centre being a recognised purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents, who shall pay Rs. 70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs. 1,500/-.

13. Again in *Prithvi Nath Chopra v. Union of India* 2004 III AD (Del) 569, this Court held as follows:

24. In *V.K. Gupta's case* (supra), it has further been noticed that the rates given as per 1996 Memorandum were to be enforced for a period of two years. The government ought to have periodically revised the rates. The revision took place only in September, 2001. Incidentally, this is soon after the wife of the petitioner was operated in July, 2001. Had the respondent complied with its obligation to periodically review these rates every two years, as observed in *V.K. Gupta's case* (supra), the occasion for the problem at hand would not have arisen.

25. In *M.G. Mahindru's case* (supra), it has already been held that where the hospital is on the approved list of CGHS, benefit of full medical reimbursement cannot be denied to a retired government servant. This is the position in the present case.

26. It can also not be disputed that the Indraprastha Apollo Hospital has been made available land at token amount and it was for the respondents to have settled the amounts of reimbursement at the hospital. If the respondents have any grievance about the quantification of the amounts charged, it is for the respondents to take up the matter in issue with the Apollo Hospital. But that cannot deprive the petitioner of full reimbursement of the amount as charged by the recognised Indraprastha Apollo Hospital. In fact, the petitioner has been compelled to pay the charges first and thereafter reimbursement is taking place while the present policy is stated to be one where the respondents are directly billed by the approved hospitals which policy is salutary since the patient may not at a time have the funds available to first pay the amount and then claim the reimbursement.

14. In another judgment reported as *Shri T.S. Oberoi Vs. Union of India (UOI)* and

Another, , a case specifically dealing with the question of liability of the Government to reimburse amounts over and above the package rates, in respect of heart ailment treatment, in the second respondent institution, this Court reiterated the view expressed in the previous decisions, and had allowed the claim. Additionally, the court had directed the Central Government to re-negotiate package rates, periodically, to ensure that the CGHS cardholders, do not face further hardship.

15. In view of the above clear legal position, and the undisputed position in all these cases that the petitioners/ their dependents underwent treatment, which was warranted, in view of the medical condition, the position taken by the respondent Central Government, that full reimbursement is not possible, is untenable, and indefensible.

16. In the light of the foregoing discussion, the petitions are entitled to succeed. The Central Government shall process the cases of the petitioners and ensure that payments are released along with interest @ 7 per cent from 1-1-2005 till date, within six weeks from today. The first respondent shall file a compliance affidavit within eight weeks.

17. The writ petitions are allowed in the above terms.