(2011) 04 SHI CK 0403

In the High Court Of Himachal Pradesh

Case No : C.W.P. (T) No. 14357 of 2008

Dr. Hari Pal Thakur APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:
Constitution of India, 1950 — Article 21, 309, 41, 47

Citation : (2011) 3 ShimLC 408

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this petition, the petitioner has prayed that the respondent-State may be directed to pay the entire amount of his medical bills. Briefly stated the facts of the case are that according to the petitioner, he suffered serious heart ailment and had to undergo open heart surgery at Apollo Hospital, Delhi. He sought ex-post facto sanction for his treatment in a hospital outside the State of H.P. While granting permission, it was clearly stated that the permission was subject to the condition that the charges would be restricted as per the rates approved at the All India Institute of Medical Sciences (AIIMS), New Delhi.

2. The appellant underwent an operation at the Apollo Hospital, Delhi and claimed total medical reimbursement of more than Rs. 3,22,715/-.

3. Sh. G.R. Palsra, learned Counsel for the petitioner relying upon the judgments of the Apex Court in Surjit Singh Vs. State of Punjab and Others, and State of Punjab and others Vs. Mohinder Singh Chawala, etc., urges that the petitioner is entitled to full reimbursement of the entire amount. Reliance is also placed by Sh. Palsra on the decision of the Apex Court in Suman Rakheja v. State of Haryana and Another 2006 SCC (L&S) 890.

4. In my view, these cases are not applicable to the present case. In the present

case, the petitioner, when permission was granted to him, was specifically informed that the permission is being granted subject to the condition that he would be medically reimbursed only at the rates approved by the AIIMS, Delhi.

5. In addition to the aforesaid, it would be pertinent to mention that the Apex Court in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., dealt with this question in detail and held as follows:-

25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

26. When we speak about a right, it correlates to a duty upon another, individual, employer, Government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, or reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep; maintenance and cleanliness has to be beyond aspersion. To employ best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the

best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

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32. Any State endeavour for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect. Article 41 : Right to work, to education and to public assistance in certain cases : The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

6. It is obvious that the Apex Court held that the State is well within its right to restrict the amount to be reimbursed by framing appropriate rules and issuing appropriate executive directions in this behalf.

7. A Constitution Bench of the Apex Court in Confederation of Ex-Servicemen Associations and Others v. Union of India and Others 2006 (8) SCC 399 held that though the right to medical aid is a fundamental right of all citizens including the employees, it is for the State to decide what is the extent of medical reimbursement which it should grant to the employees.

8. Thereafter, the Apex Court in State of Karnataka and Another Vs. Sri R. Vivekananda Swamy, held as follows:-

24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such Rules furthermore having been framed under the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognized government hospitals and on the other he, at his option, may get himself treated from other recognized hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited.

9. A Division Bench of this Court considered all the aforesaid judgments in N.C. Trehan v. State of H.P and Others 2009 (3) SLC 516 held as follows:-

From the aforesaid pronouncements of the Apex Court, it is apparent that the State has to frame a policy of medical reimbursement keeping in view the finances available with it. The State is not only under obligation to provide medical aid to its employees who may even otherwise be well paid but is also under an obligation to ensure that proper medical aid is provided to all citizens including those who are unemployed or are serving in the unorganized sectors. The poor people of this country who work in rural areas or in the unorganized sectors do not have the benefit of any medical reimbursement. A balance has to be struck between the employees of the State and such persons. The employees of the State who are well paid cannot as a matter of right claim reimbursement for treatment taken in expensive hospitals which the other citizens of this country cannot even dream of entering. There are limited finances available with the State. On the one hand there is a need to provide medical reimbursement to the employees and on the other hand there is also an equally if not more important need to provide proper medical facilities and health care to all the citizens of the country. Every citizen looks forward to the State for proper medical aid. If all the funds are spent only on the employees there will be nothing left for the other citizens. The State is the best judge as to how to balance the equities and is entitled to restrict the amount of medical reimbursement payable to its employees. In the present case, the employees were given an option of going outside the State for medical treatment but they are clearly told that the amount which will be reimbursed will be equal to the amount payable at AIIMS, which is a Government hospital. The employees knowing these rules fully well decided to go outside the State and now they cannot claim that they should be reimbursed the amount spent in private hospitals.

10. In view of the law laid down by the Division Bench of this Court, it is apparent that the petitioner is not entitled to any relief. He was aware that he was to be given medical reimbursement only at the AIIMS rate. He chose to get himself operated at Apollo Hospital, Delhi and, therefore, he must bear the difference in the cost. In view of the above discussion, I find no merit in the petition which is accordingly rejected. No order as to costs.