(2013) 02 DEL CK 0200

In the Delhi High Court

Case No : Writ Petition (C) 1423 of 2012 and CM 3105 of 2012

Dr. K.S. Sidhu — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 2 AD 473 : (2013) 135 DRJ 323

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Rajiv Aneja and Ms Maldeep Sidhu, for the Appellant; C.K. Sharma with Dr. N. Panchal, Advocates for Respondent Nos. 1 to 3 and Ms. Meenakshi Singh, Advocate, for the Respondent

Judgement

Rajiv Shakdher, J.—The present writ petition under Article 226 of the Constitution of India, is filed by a retired High Court Judge. The petitioner before this court retired from the Rajasthan High Court way back in March, 1985. He seeks, by way of the present petition, reimbursement of medical expenses incurred on the treatment of his wife Smt. Gurdev Sidhu. It may be recorded, at the very outset, that in the proceeding held in this court on 23.05.2012, that the petitioner has received a sum of Rs. 2,75,113/- out of the total claim of Rs. 3,73,798/-. I may only note that in paragraph 7 of the petition it is averred that out of the total sum of Rs. 3,73,798/- a sum of Rs. 15,278/- was deposited in the petitioner''s account by respondent no. 3, resultantly, the total outstanding claim of the petitioner, at the time when the petitioner approached this court, was a sum of Rs. 3,58,520/-.

1.1 The writ petition was filed on 05.03.2012, thus the order dated 23.05.2012 has to be recalibrated in the light of what is averred in the petition as noticed hereinabove.

2. The petitioner''s claim qua his wife falls under the following three heads:

*Note: As indicated above, Rs. 275113/- has already been received by the

petitioner, thereby reducing the outstanding claim to Rs. 83,407/-.

3. The aforesaid claims arise in the background of the following brief facts:

3.1 The petitioner, as indicated above, retired as a judge of the Rajasthan High Court on 08.03.1985. He became a member of the Central Government Health Service Scheme, in 2005. The membership of the petitioner, it appears, expired on 01.06.2006, which was, evidently, not renewed till 13.01.2010.

3.2 It appears that the petitioner renewed his CGHS membership w.e.f. 14.01.2010. This aspect is noticed in the judgment dated 25.02.2011 passed in WP(C) 5273/2010. This was a writ petition which the petitioner had filed to claim medical expenses vis-?-vis medical treatment taken by him personally. I shall be referring to this aspect a little later in my judgment.

4. Suffice it to say, in so far as the wife of the petitioner is concerned, it is averred that, on 19.05.2011, she had an episode of vomiting and acute pain, in her abdomen. The petitioner''s wife was admitted to Apollo hospital on the same day. The medical tests revealed a case of intestinal blockage. The petitioner''s wife was advised, and accordingly operated, for removal of intestinal blockage, on 24.05.2011.

4.1 The petitioner''s wife, while recuperating from surgery, in Apollo Hospital, developed fungal infection. For this purpose, she was advised administration of ''Cancidas'' injection.

4.2 It appears that the fungal infection could not be brought under control, which is when she was advised to switch to ''Amphotericin B'' (also known as ''Ambisome'') injection.

4.3 It is pertinent to note that, the first dose of ''Ambisome'' injection was administered by the hospital, however, the other six doses, which were spread over the next six days, were purchased by the patient''s family, i.e., her daughter, after obtaining permission from the treating doctor at the concerned hospital. The petitioner''s wife was discharged from Apollo Hospital, on 17.06.2011.

4.4 Apparently, the petitioner''s wife developed incontinence, which after diagnosis revealed, had occurred as a result of ''bacterial infection'', acquired by her on account of prolonged hospitalization. The petitioner''s wife was consequently advised to get herself admitted once again, on an emergent basis, for treatment of ''bacterial infection'', acquired by her. Since, the petitioner''s daughter is, apparently, also a qualified doctor, she, in consultation with the treating doctor, one Dr. S. Chatterjee, came to a conclusion that the petitioner''s wife could be treated more effectively, if she were to visit the emergency ward of the hospital as an out-patient. Consequently, the petitioner''s wife was treated at the emergency ward of the Apollo Hospital, as an out-patient, between 02.07.2011 to 08.07.2011. Over this period, the petitioner was administered ''Invanz'' injection. The expenses in respect of the said injection were borne by

the petitioner.

4.5 It appears that while the petitioner''s wife was recovering from bacterial infection, she had to be admitted once again to the Apollo Hospital, on 09.08.2011, as she had become incoherent in her speech. The petitioner''s wife was, consequently, kept in the neurological ICU ward of the Apollo hospital between 09.08.2011 and 10.08.2011.

5. It is in regard to the aforesaid episodes, relating to the petitioner''s wife, which required medical intervention and treatment, that expenses have been incurred, in respect of which, a composite claim was lodged by the petitioner, with respondent no. 3, on 22.09.2011. The break-up of the three claims has already been referred to in the paragraph 3 above.

6. It appears that by a communication dated 15.10.2011, the official respondents sought the following from the petitioner: (i) an emergency certificate in original; and (ii) a clarification as to why medicines were purchased by the petitioner''s family during the period when, the patient was admitted in the hospital.

6.1 By this very communication it was also conveyed to the petitioner that the expenses incurred in the treatment of the patient (i.e., the petitioner''s wife) as an out-patient (which included expenses qua medicines administered) would not be reimbursed.

6.2 On 16.11.2011 the petitioner gave his response to the objections raised by the official respondents. As regards the request to supply the emergency certificate in original was concerned, the petitioner stated that the same had already been supplied, and that, the hospital authorities would not issue a duplicate certificate. It was further stated that, if there was any doubt, the certificates supplied could be handed over to him, which he, in turn, would submit to the hospital for verification.

6.3. As regards objection to the purchase of ''Ambisome'' injection was concerned, the petitioner stated that the said injection was administered to his wife while she was in hospital, i.e., as an in-patient. The first dose of the said injection was administered by the hospital, while permission was given for purchasing the next six injections from a pharmacy outside the hospital. The petitioner also reminded the official respondents that the permission/ authorization slip issued in this behalf, had already been enclosed with his claim form.

6.4 As regards the claim made qua expenses incurred on ''Invanz'' injection was concerned, it was conveyed that the decision to treat the petitioner''s wife as an out-patient; albeit in the emergency ward of the hospital, was taken in the interest of the patient, in view of the fact the infection had been acquired in the first place, due to hospitalization. To put the matter beyond doubt, the petitioner offered to have the treating doctor issue a certificate in that regard.

7. The official respondents, however, rejected the petitioner''s claim, vide

communication dated 24.11.2011, qua administration of ''Invanz'' injection on the ground that the said injection, which was administered to the petitioner''s wife as an out-patient, could have been procured from the CGHS Wellness Centre. It was thus their stand that, expenses incurred on purchase of the said injection, from the market, was not reimbursable.

8. Aggrieved by the same, the petitioner moved this court by way of the captioned writ petition on 05.03.2012. Pursuant to the notice issued in the writ petition, the official respondents have filed a counter affidavit, in which, it is stated that a sum of Rs. 2,59,835/- was being reimbursed to the petitioner against the first claim which was quantified at Rs. 2,89,726/-. As noticed above, a sum of Rs. 15,278/- was paid to the petitioner even before the petitioner approached this Court, resultantly the total amount, which has been received by the petitioner is a sum of Rs. 2,75,113/-, as noticed hereinabove by me.

SUBMISSIONS

9. In support of the petition, arguments have been advanced by Sh. Rajiv Aneja, while submissions on behalf of the official respondents, i.e., respondent nos. 1 to 3, have been made by Mr C.K. Sharma.

9.1 Both counsels took positions in, accordance with the averments made in their respective pleadings.

9.2 On behalf of the petitioner it was argued that, the petitioner was a retired judge of the High Court and, therefore, entitled to reimbursement of the entire expenses incurred on the treatment of his wife. In this regard reliance was placed on the judgment of the Division Bench of this Court in the case of UOI vs. T.S. Oberoi and Ors. passed in LPA No. 898/2002 dated 07.11.2003. It was urged that in any event, even de hors the aforesaid judgment, in the present case, the petitioner''s membership, as a CGHS cardholder, was valid during the period in respect of which, the instant claims had been lodged.

9.3 As regards the rejection of claim no. (ii) and (iii) was concerned, it was submitted that the same were wrongly rejected. In respect of claim no. (ii) reliance was placed on the permission slip dated 09.06.2011, issued to the petitioner, to purchase the ''Ambisome'' injection from a pharmacy outside the hospital.

9.4 As regards the rejection of the claim with respect to expenses incurred qua ''Invanz'' injection was concerned, it was submitted that: Firstly, it was an emergent situation. Secondly, the decision to treat his wife an out-patient was taken in the best interest as, the bacterial infection, for which, she was being treated, had been acquired, in the first instance, while she was in the hospital. It was thus submitted that, the reasons supplied by the official respondents for rejection of this claim, were also untenable.

10. On behalf of official respondent (i.e., respondents nos. 1 to 3), Mr Sharma while, admitting that the Apollo hospital was on the panel of the CGHS hospitals,

in the category of a super specialty hospital, w.e.f. 07.10.2010, submitted that, the expenses incurred on medicines purchased to treat the petitioner''s wife while, she was admitted to hospital was contrary to office memorandum bearing no. S-11011/23/2009-CGHS D.II/Hospital Cell (Part I) dated 17.08.2010. Briefly, it was stated that clause 9 of that memorandum provided that the hospital would not ask the petitioner or his/her attendant to purchase medicines from sources outside the hospital during the period the patient remained admitted in the hospital. Since the petitioner had relied upon a permission slip of the hospital in support of his claim, a clarification was sought, in respect of which, no reply had been received by the official respondents. Therefore, a decision had been taken to reimburse the expenses incurred on the purchase of ''Ambisome'' injection.

10.1 As regards expenses incurred on administering ''Invanz'' injection and other surgical sundries (while the petitioner''s wife visited the Apollo Hospital as an out-patient) was concerned, was also not reimbursable, as it was an expense incurred without prior permission of the concerned authorities. It was, submitted that as per the CGHS guidelines expenses incurred on treatment of a patient, while he or she is an out-patient, is reimbursable with prior permission in limited cases such as:-

(a) Post operative cases of major Cardiac Surgery/Cardiology.

(b) Oncology cases.

(c) Post operative Organ transplant cases.

(d) Post operative Joint Replacement cases.

(e) Post operative Major Neurosurgical/Neurology cases.

10.2 Learned counsel submitted that the petitioner could have visited the CGHS Wellness Centre for administration of ''Invanz'' injection. There was, according to the learned counsel, no necessity obtaining, which required the petitioner to purchase the said injection from a private pharmacy. REASONS

11. Having heard the learned counsels for the parties, there are basically two outstanding claims with which one is presently concerned with. The first is a part of claim no. (i), which relates to expenses incurred by the petitioner on purchase of ''Ambisome'' injection. This claim seems to have got resolved and is factored in the sum of Rs. 2,59,835/- paid to the petitioner. It appears that the official respondents have issued a show cause notice to the hospital, in view of the permission slip, which was enclosed by the petitioner with his claim form. The averments in this regard are contained in paragraph 7 (i) of the affidavit-in-reply.

11.1 The other outstanding claims are claim no. (ii) and (iii). Claim no. (ii) relates to the expenses incurred on administration of ''Invanz'' injection to the petitioner''s wife in the emergency ward of Apollo Hospital, though as an out-patient. The official respondents have rejected this claim on the following grounds: Firstly, that no prior permission was sought from the concerned

authority. Second, such like expenses are reimbursed only in limited circumstances as per the extant CGHS guidelines, to which I have made a reference above. Third, that the said medicine was available at the CGHS Wellness Centre. In this behalf, it is also the stand of the official respondents that the CGHS issues requisitions to local pharmacies in case medicine is required urgently.

12. Having perused the pleadings and hearing the arguments, I am of the view that the stand of the officials respondents is not tenable, as what constitutes an emergent situation is really an aspect which is within the domain of a medical professional. The petitioner has appended a certificate of the treating doctor dated 16.11.2011, which is clearly indicative of the fact that his wife had developed a urinary tract infection (E-coli), which is a bacterial infection in respect of which she was advised "immediate admission". The patient, i.e., the petitioner''s wife was required to take intravenously ''Invanz'' injection, for which she was required to attend the emergency ward daily over a period of seven days. Given the age of the patient, and her weak health status; having undergone a surgery for intestinal blockage, it was quite possible, as contended, that the infection was acquired during her stay in the hospital. Therefore, the decision to have her visit the hospital, was quite clearly based on the health parameters of the patient. Thus, taking into account the fact that, it was an emergent situation, which required treatment; the petitioner''s claim in respect of expenses incurred qua the said treatment, cannot be rejected only on the ground that the medicine was also available at the Wellness Centre of the CGHS, or that, it was reimbursable if, at all, with prior permission of the concerned authorities.

12.1 The facts set out above establish that there was close proximity between the date of the petitioner''s wife''s discharge from the hospital (post the surgery) and her having acquired the infection. Therefore, the stand of the official respondents that, the petitioner, should have approached them for prior permission, in my view, is not tenable given the fact that the infection had to be arrested quickly. The petitioner''s stand that a laborious procedure is involved in seeking prior clearance from official respondents, in such like cases, cannot be brushed aside by this court.

12.2 Mr Sharma''s submission that, a patient could seek reimbursement of expenses for treatment of out-patients only in limited circumstances, is also not tenable, in view of the fact that the patient in this case was advised to be treated, in the first instance, as an in-patient, however, keeping in mind the frail health of the patient and the possibility that the infection could have been acquired, while she was admitted in the hospital, prevailed with the treating doctor, who acceded to the request that she be brought to the emergency ward for administration of ''Invanz'' injection, over a period of seven consecutive days. Therefore, the reliance placed on the guidelines contained in OM F. No. Misc. 10001/2000/JD/R&H/CGHS/CGHS(P) dated 30.04.2001, is misconceived, as it

would not be applicable in this case.

12.3 This brings me to the third claim, i.e., expenses incurred in the hospitalization of the petitioner''s wife between 09.08.2011 to 10.08.2011. There is, as a matter of fact, no objection taken in that behalf. As a matter of fact, in none of the communications put on record, the official respondents have ever raised objection qua the said claim. In these circumstances, the expenses incurred vis-?-vis the third claim would have to be reimbursed. It is ordered accordingly.

13. Before I conclude, I may only add that despite a judgment of Division Bench of this court in the case of T.S. Oberoi, the official respondents seem to insist on examining the validity of the CGHS cards held by persons, who are or have been judges of the superior courts, i.e., the Supreme Court and High Court. I can do no better but cull out the observations of the Division Bench contained in paragraph 15 and 16 of the said judgment :-

... 15. Even otherwise in the case in hand, Justice Chawla enjoyed a special position being a Judge of superior court. Therefore, even in the absence of CGHS Membership, he would have been entitled to reimbursement of his medical expenses even after retirement. The fact of the matter is that he became life member of CGHS on 8th march, 2002 by paying a lump sum fee, which was accepted by CGHS knowing fully well that Justice Chawla is already admitted in the hospital since 13th December, 2001. Therefore, once the Life Membership Fee was accepted it had to relate back from the date when he was hospitalized i.e., 13th December, 2001. The benefit of the same could not be restricted from 8th March, 2002. The purport and purpose of CGHS Scheme is to grant medical benefit and not to deprive the medical benefit on technical grounds particularly when Justice Chawla enjoyed a special position being a retired Judge of a High Court.

16. In this context, it is relevant to mention that office Memorandum No. D-12011/64/98-CGHS Desk-I/CGHS (P) dated 1st July, 1999 issued by the Government of India on which the learned Central Government Standing Counsel has placed great reliance has been issued only to all Ministries/Departments of the Government of India (amongst others). It is nobody''s case that a High Court can be equated with any Ministry/Department of the Government of India....

(emphasis supplied)

14. The official respondents are well advised to bear in mind the aforesaid observations; as disregard of the observation would constitute deliberate and willful violation of the directions of this court. Accordingly, the official respondents are directed to pay the entire balance amount amounting to Rs. 83,407/- to the petitioner, within two weeks from today; failing which interest at the rate of 12% per annum would be payable by the official respondents, i.e., respondent nos. 1 to 3. The writ petition is disposed of with the aforesaid directions.

