
(2013) 10 MP CK 0062

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1868 of 2009 (S)

Dr. (Smt.) Kirti Saxena

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2014) 2 MPHT 245 : (2014) 1 MPLJ 700 : (2014) 2 SCT 757

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : V.S. Chaturvedi, for the Appellant; Nidhi Patankar, Govt. Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for setting aside the order Annexure P-1 whereby the claim of the petitioner for medical reimbursement towards cost of "pacemaker" to the tune of Rs. 1,69,520/- is rejected by the respondents.

Brief facts necessary for adjudication of this matter are as under:--

At the relevant time, the petitioner was working as Additional Director, Higher Education, Gwalior Chambal Division. The petitioner was appointed as Presenting Officer in a departmental enquiry instituted against a former Principal Shri R.D. Sharma. The petitioner is also a gas victim of Bhopal Gas tragedy. The petitioner, in order to attend the aforesaid enquiry, reached Bhopal and was present in the office of Commissioner, Departmental Enquiry, Vindhyaachal Bhawan, Bhopal on 29.1.2007. During the enquiry, the petitioner suffered heart attack because of which she was immediately admitted in Bhopal Memorial Hospital and Research Centre. Considering her critical condition, a temporary pacemaker was implanted on 30.1.2007. A permanent one was implanted on 2.2.2007. The petitioner, thereafter, preferred application for reimbursement of the cost of pacemaker i.e.,

Rs. 1,69,520/-. The admitted position between the parties is that the respondents have reimbursed the cost of the treatment except the cost of the pacemaker.

2. The learned counsel submits that in view of emergency, the petitioner was admitted in the hospital which is a recognized hospital. Non-reimbursement of the cost of the pacemaker is bad in law and runs contrary to the judgment of this Court in the case decided in W.P. No. 1860/2006 (S) (Umrao Singh Solanki v. The Chairman & Managing Director, M.P. West Region Electricity Distribution Co. Ltd. & Others), judgment of J&K High Court reported in Hans Raj Sharma Vs. Union of India and Others, and the judgment of this Court in Dr. Vishwanath Prasad Khare v. State of M.P. & Ors. reported in 2009 (III) MPJR SN 8, which is affirmed by the Division Bench in W.A. No. 179/2009.

3. Per contra, Mrs. Patankar, learned Govt. Advocate, submits that reimbursement is governed as per the rules and provisions introduced by the State Government for this purpose. It is contended that as per the rule/provision, the reimbursement of the cost of the pacemaker is permissible, provided it is implanted in recognized hospitals mentioned in Annexure R-1. It is contended that the treatment and certain implantations from Bhopal Memorial Hospital are reimbursable, which is clear from Annexure R-1. It does not provide the reimbursement of "pacemaker" from that hospital. That can be done only from different hospitals. Apart from this, it is contended that even if implantation of pacemaker is done from recognized hospitals as per Annexure R-1, amount to the extent of Rs. 60,000/- can be reimbursed on this head. On these twin grounds, it is contended that the petitioner is not entitled to get the amount of reimbursement because she got the pacemaker implanted from Bhopal Memorial Hospital which is not recognized for the purpose of such implantation. Secondly, the implantation can be done only from recognized hospitals and the amount to the extent of Rs. 60,000/- alone can be paid.

4. I have heard the learned counsel for the parties and perused the record.

5. The petitioner has heavily relied on the judgment of this Court in Dr. Vishwanath Prasad Khare (supra). A minute reading of this judgment shows that the treatment by the petitioner in the said case was also from the same hospital in which the present petitioner was admitted, i.e. Bhopal Memorial Trust Hospital. This Court opined that the said hospital is not totally a private hospital. The respondents in that case did not dispute that the petitioner had undergone operation at the said hospital. However, it is important to note that the amount claimed in the said case by the petitioner was less than the upper limit fixed by the State Government as per the circular dated 14.6.2005. Considering the aforesaid, this Court opined that in case of urgency where the Government servant has rushed to a hospital, he/she is entitled to get refund of the said treatment.

6. In Umrao Singh Solanki (supra) also the Court directed that the petitioner has

undergone bypass surgery in a hospital which is not a listed hospital as per the Government circular, but in view of urgency, no prior permission should have been obtained by the litigant. Thus, payment was directed to be made after verifying the bills and making necessary enquiries as per rules.

7. In *Hans Raj Sharma (supra)*, in view of urgency the treatment other than listed hospital was held to be permissible and reimbursable.

8. In the light of aforesaid, it is clear that the Bhopal Memorial Hospital was a listed and recognized hospital. The respondents have already reimbursed the amount of treatment. Non-payment is only with regard to cost of the "pacemaker". The only question is whether this denial is justifiable?. In the considered opinion of this Court, it is not in dispute that the petitioner was required to undergo the treatment and implantation because of extreme emergency. Thus, in that situation, it cannot be expected to obtain either prior permission or to travel to a recognized hospital at Indore in which implantation is recognized or made permissible for reimbursement. Putting it differently, the petitioner while attending the enquiry in her official capacity as Presenting Officer, suffered heart attack and she was taken to hospital in critical condition. In that event, the need of the hour was to provide her immediate treatment and implantation of pacemaker. It cannot be expected from such patient to travel to other hospital situated in other cities where implantation is permissible. Thus, on this count, the stand of the respondents is unjustifiable and impermissible. The ancillary question is whether petitioner is entitled to get the entire amount of Rs. 1,69,520/- refunded? This point was considered by the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, . The Apex Court opined as under:--

No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

Any State endeavor 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.

No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Part III of the

Constitution is not absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that government will give due consideration and priority to the health budget in future and render what is best possible.

9. In view of aforesaid legal position, it is clear that the claim of reimbursement must be in accordance with and to the extent of the limit prescribed in the policy. The State can reimburse the amount to the extent it is feasible and in consonance with the rule/provision in vogue. In : (2001) 9 SCC 217 (State of Punjab and others v. Mohan Lal Jindal), the litigant undergone bypass surgery from a hospital other than AIIMS due to long queue in later hospital for bypass surgery. The expense incurred for the said surgery was beyond the permissible limit for such surgery at AIIMS. The Apex Court opined that the reimbursement at AIIMS has already been made to him. Thus, a representation was directed to be made to the State. The Apex Court did not grant relief of reimbursement of the entire amount.

10. In (2004) 13 SCC 562 (Suman Rekheja v. State of Haryana and another), the Apex Court opined that in emergency cases where the Government servant had rushed to a hospital in emergency, which is not a recognized and approved hospital, the claimant would be entitled to get refund of medical expenses at the AIIMS rate. Thus, on the basis of aforesaid judgments, the petitioner, at best is entitled to get amount of implantation refunded to the extent it is permissible in the Government policy.

11. Paragraph 6 of the return shows that the cost of implantation of pacemaker at Bhandari hospital, Indore, which is recognized is upto maximum of Rs. 60,000/-. In the light of aforesaid judgments, no directions can be issued by this Court by commanding the respondents to pay an amount which is beyond the scheme/policy/governing provisions. As per the provision, an amount of Rs. 60,000/- should be paid to petitioner in the head of such implantation. Thus, the petition deserves to be partly allowed by commanding the respondents to reimburse Rs. 60,000/- against the claim of Rs. 1,69,520/-. The respondents are accordingly, directed to reimburse the amount of implantation of "pacemaker" to the extent of Rs. 60,000/- to the petitioner within three months. Petition is partly allowed to the extent indicated above.