

(2013) 03 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 643 of 2006

Hans Raj Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2013) LabIC 2011

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : Sindhu Sharma, for the Appellant; S.S. Chib, CGSC, for the Respondent

Final Decision : Disposed Off

Judgement

Muzaffar Hussain Attar, J.—Shri Hans Raj Sharma, who retired as Naib Subedar Nursing Assistant from Army Medical Corps is before

this Court for the reason that title Institution, which he served, has refused to reimburse amount of the medical expenses, which he incurred for his

eye-treatment. Petitioner is a member of Ex-Service-men Contributory Health Scheme ("ECHS") holding Card No. JM000126. In terms of the

Information Brochure, an Ex-Servicemen, who suffers from any ailment is to be treated in an empanelled hospital/polyclinic under the "ECHS

scheme. In case of emergency the patient can be treated in a non-empanelled hospital and in terms of Chapter 7, paragraph 12(b) of the

Information Brochure, the nearest empanelled polyclinic is to be informed within 48 hours of such admission in a non-empanelled hospital.

2. It is claimed in the Writ Petition that petitioner suffered sudden loss of vision in his left eye. Dr. Ashok Sharma, Ophthalmologist, who was

posted as Lecturer in Government Medical College, Jammu, on 7th August, 2005, examined the petitioner and gave his opinion as ""Retina

Detached"" and it was advised that in the face of serious ailment the petitioner would immediately require to be surgically operated upon. The said

doctor exhibited grave concern for him as it was a case of emergency and accordingly advised the petitioner to seek medical assistance from a

hospital outside the State or anywhere in the State, because such facility was not available in Government Medical College, Jammu. The petitioner,

a member of ""ECHS"", visited Command Hospital, Udhampur, where he was admitted as in- patient on 8th August, 2005. The doctors there,

however, did not agree with the opinion of Dr. Ashok Sharma and treated the disease of the petitioner by taking it as a case of hemorrhage and

damage to the nerve affecting vision. It is also pleaded in the Writ Petition that the petitioner pleaded with the doctors of Command Hospital,

Udhampur that it was a case of ""Retina Detached"" and total loss of vision. Since the delay in providing the appropriate treatment would have been

fatal for the petitioner, the younger brother of the petitioner contacted Lt. Col. Shyam Sunder of Command Hospital and told him dial it was a case

of ""Retina Detached"". Request was further made that if the petitioner could not be surgically operated upon in the Command Hospital, he should

be referred to the nearest hospital where the treatment is available so as to avoid further damage. It is pleaded that Lt. Col. Shyma Sunder referred

the petitioner to Dr. S.P. Sharma of Rotary Eye Hospital, Udhampur and the said doctor on 16th August, 2005 agreed with the opinion of Dr.

Ashok Sharma and warned the petitioner that there should be no further delay in treating the disease. It is also pleaded that the delay in getting the

treatment had potential of turning the petitioner blind for the rest of his life.

3. It is also pleaded that the petitioner was referred to AHR and R Hospital Delhi after Dr. S.P. Sharma agreed with the initial diagnostic opinion of

Dr. Ashok Sharma. It is also pleaded that petitioner was discharged on 18th August, 2005 from the Command Hospital, Udhampur and was

referred to AHR and R Hospital Delhi.

4. It is also claimed in the paraphraph-6 of the Writ Petition that the Dy. Commandant concerned also suggested that the petitioner being a case of

emergency can be treated in any other Eye Center without reference. The

petitioner on same day travelled by train to Amritsar. It is also pleaded that since the petitioner was put on heavy dose of steroids, his blood sugar level had shot up, which delayed surgery till 22nd August, 2005. The petitioner was ultimately surgically operated upon in S.B. Dr. Sohan Singh Eye Hospital, Amritsar as shifting the patient to Delhi would have caused further delay in his treatment which would have resulted in colossal and irreversible damage to him.

5. The petitioners claim for reimbursement of the expenses incurred for undergoing the aforementioned treatment has been rejected by the respondents on the ground that S.B. Dr. Sohan Singh, Eye Hospital, Amritsar is not empanelled hospital and petitioner has not within 48 hours given information about his admission in a non-empanelled hospital.

6. Respondents have filed objections.

7. Learned counsel for the parties argued in tune with their respective pleadings.

8. The only ground for rejecting the claim of the petitioner for reimbursement of medical expenses is that information within 48 hours about his admission in a non-empanelled hospital was not given to the nearest "ECHS" polyclinic.

9. The "ECHS" is a laudable scheme, which facilitates the treatment of those retired servicemen, who become members of the said scheme.

10. Army personnel either in active service or retired are to be treated as a class apart. It is this class of people who make huge sacrifices for protecting the territorial integrity of our Country.

11. They make great sacrifices to ensure that our borders are not breached or penetrated by the enemy. While the huge population continue in their strides, to make our country great and powerful, without taking any pressure upon themselves against the external aggression and threats, it is army personnel, who vouchsafe it by selflessly discharging their duties on the borders of the Country. This class of the people spend most of their time away from their homes to ensure that rest of the population live a peaceful life. It is a known fact of life that peace alone guarantees development in all walks of life.

12. The benefits, which have been provided through various schemes to the army personnel while in service and after their retirement, have to be

construed in a manner which would translate the promises into reality. The beneficial schemes have to be enforced in a manner which would in real sense provide the benefits flowing therefrom.

13. In this case, the respondents have rejected the claim of the petitioner by invoking Chapter-7, paragraph-12(a)(b) of the Brochure, which is taken note of:--

Emergency Treatment

12. In emergencies and life threatening conditions, when ECHS patients may not be able to follow the normal referral procedure, they may report to the nearest hospital, preferably an empanelled one or a Service Hospital. There is, however, no embargo in proceeding to a non-empanelled hospital, if the emergency condition so demands:--

(a) Empanelled Hospital -- Immediate emergency treatment in any empanelled hospital will be rendered to ESM on confirmation of ECHS

membership from the ECHS card. Payment for such treatment will be regulated as under:--

(i) Empanelled hospital will inform nearest ECHS Polyclinic about emergency admission at the earliest, but not later than 48 hrs.

(ii) The empanelled hospital will not collect any payment from ECHS member. They will treat the ECHS member as if he were referred by the

Polyclinic.

(iii) The actual cost incurred for emergency procedure will be payable by ECHS. Bill for emergency treatment will be forwarded subsequently to

concerned Polyclinic for payment as per normal procedure.

(iv) On learning about admission of an ECHS member in an empanelled hospital, the OI/C Polyclinic will make arrangements for verification of the

facts of the emergency.

(v) If, during the course of investigations/treatment, a specific diagnosis is established requiring further management, the facts will be verified by

concerned OI/C Polyclinic and the patient referred for the same formally.

(vi) In case of malpractice, unethical practices or medical negligence by an empanelled Hospital or Nursing home, particularly in management of

emergencies, necessary action will be taken by the Station Commander to dis-empanel the Hospital or Nursing Home.

(vii) ECHS member must NOT misuse this facility for emergency treatment. If it is determined by the ECHS that the provision has been misused,

ECHS reserves the right not make payment or to recover any payment already made.

(b) Non-Empanelled Hospital--The ECHS member or his representative should inform nearest Polyclinic within 48 hrs. of such admission. The

responsibility for clearing bills will rest with the ECHS member. He/she will subsequently submit the bills along with summary of the case to the

concerned Polyclinic. The sanction for reimbursement as per approved rates will be accorded by Central Org. ECHS. Such bills will be submitted

within a period of one month from the date of discharge from hospital.

14. In the face of the imminent threat of turning blind and which threat was looming large on the petitioner and in view of the emergency of the

case, the petitioner got admitted in non-empanelled hospital. It is in this back-drop Clause-(b) of paragraph-12 of Chapter-7 is to be construed.

15. Paragraph-12 does authorize treatment of a patient in a non-empanelled hospital provided the conditions laid for same are fulfilled. Paragraph-

12 also provides that the empanelled hospital where the patient is admitted will inform nearest ""ECHS"" polyclinic about the emergency admission at

the earlier and not later than 48 hours. Clause-(b) of paragraph-12 envisages that the member or representative of his family has to inform the

nearest polyclinic within 48 hours about the admission of the patient in a non-empanelled hospital.

16-17. The issue that arises for consideration is as to whether non furnishing of information within 48 hours can result in rejecting the claim of

ECHC"" member for reimbursement of the amounts spent on his treatment. The requirement providing information within 48 hours of the admission

is similar in paragraph-12(a)(i) and (b). The empanelled hospital has also to inform the nearest ""ECHS"" polyclinic about the emergency admission

within 48 hours, and the member or his representative has to give like information in the like manner to a nearest polyclinic.

18. The issue, which falls for consideration is as to whether non furnishing of information within 48 hours of the admission of the patient can result in

rejection of his claim for reimbursement of expenses incurred on medical treatment. The purpose of informing the nearest polyclinic within 48 hours

of the admission of the patient, appears, to put the said "ECHS" clinic on notice about the admission of patient either in empanelled or non-

empanelled hospital. Assume a situation that a patient is struggling for his life and his attendant is single mindedly trying to seek for him immediate

and emergent medical treatment. Can it be in the normal human behavior expected that the patient or his attendant would show digression from

seeking immediate treatment for the patient and instead inform the nearest polyclinic about his admission in a non-empanelled hospital. Take a

situation that a patient has gone into Coma, his attendant firstly does not know that there is a scheme, under which, the patient is entitled to get

some benefits, or may not know where the "ECHS" polyclinic is located. Can it still be said that non-providing of information to nearest "ECHS

polyclinic is fatal to the claim of the petitioner. If the interpretation, which is sought to be placed by the respondents at paragraph-12(b) of

Chapter-7, is accepted, then the whole purpose underlying the scheme would stand defeated. The said provision, thus, cannot be construed in the

manner, the respondents want it to be.

19. The providing of information within 48 hours of admission is to enable such polyclinic and its authorities to prepare themselves for providing

benefits admissible under it to its members. Non-furnishing of information within 48 hours by the "ECHS" member or its representative will not be

of much consequences as the principle purpose sought to be achieved under the "ECHS" is to provide certain benefits to its members. The

members cannot be stripped-off of those benefits for the reason of non-providing of information about admission in a non-empanelled hospital

within 48 hours. It will be unjust and quite harsh to deny the benefits of "ECHS" to its members in the event the information about their admission is

not provided within 48 hours to the nearest polyclinic. Paragraph-12(b) of Chapter-7 is to be read down so as to make it meaningful and

purposeful and ensure that any of its conditions do not fall foul of Articles 14 and 21 of the Constitution of India.

20. The information as required to be furnished within 48 hours of admission of a patient in a non-empanelled hospital may enable the authorities to

verify the correctness of same. This purpose, however, can be achieved by putting to strict verification the claim for re-imburement projected, but

it cannot be defeated by non-supplying of information within 48 hours.

21. For the above stated reasons, it is held that non-furnishing of information by ""ECHS"" member or its representative of his admission within 48

hours to the nearest polyclinic, will not result in automatic rejection of the claim for medical reimbursement. For the above stated reasons this writ

petition is disposed of in the following manner:--

a. By issuance of Writ of Certiorari, the impugned Order/Communication dated 3rd November, 2005 (Annexure-A) and Order/Communication

dated 10th December, 2005 (Annexure-C) of the Writ Petition are quashed.

b. The respondents are directed to forthwith settle the claim of the petitioner for reimbursement of medical expenses in accordance with rules and

Paragraph 12(b) of Chapter-7 of the Brochure irrespective of non-furnishing of information within 48 hours. The amount, to which the petitioner

would be found to be entitled to, shall be paid to him within four weeks from the date copy of this order is served. Disposed of along with

connected CMAs.