(2013) 08 DEL CK 0334

In the Delhi High Court

Case No : Writ Petition (C) 5576 of 2012

Jai Pal Aggarwal — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0334

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Dinesh Sharma, Sumit Bansal, Mr. Ateev Mathur and Mr. Anil Sharma, for the Appellant; Sachin Datta, Dr. Prashant, CGSCs and Mr. Dinesh Sharma, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—The petitioner, on superannuation from this Court, was issued a CGHS card valid till November, 2014. In November, 2010, the petitioner visited Sri Balaji Action Medical Institute, Paschim Vihar for treatment of some urinal problem developed by him and was advised prostatic biopsy suspecting that he may be suffering from prostatic cancer. The biopsy report revealed that the petitioner was having adenocarcinoma, prostate gleason score-8(3+5). He was advised MRI of the pelvis region which was carried on 24.6.2011. On 21.7.2011, the petitioner went to Gurgaon to attend a family function. During the said function, he developed a serious urinary problem and in emergency, he was taken to Medanta Hospital for treatment. There is no Government/CGHS approved hospital in the vicinity of the place where the petitioner was attending the function. He was immediately admitted for robotic radical prostatectomy and his family was made to deposit a sum of Rs. 2,18,000/- which they deposited on the same date. The surgery was carried out on 22.7.2011 and the petitioner was discharged from the hospital on 25.7.2011. A total sum of Rs. 2,24,120.55 was charged from him by the hospital. He was charged a sum of Rs. 1926.67 for removing catheter on 1.8.2011. The petitioner thereafter submitted a bill of Rs.

2,26,047/- to the Chief Medical Officer, CGHS Dispensary, Vikaspuri, New Delhi seeking payment of the aforesaid amount. CGHS, however, made payment of only Rs. 25,731/- to him. The petitioner represented to the Technical Committee in the office of Additional Director, seeking reimbursement of the balance amount. He also intimated CGHS that though Medanta Hospital was not on the panel of CGHS at the time when he was admitted in the said hospital, it had since been brought on the panel with effect from 16.11.2011. The claim of the petitioner, however, was rejected by the respondent. Being aggrieved from rejection of his claim, he is before this Court, seeking the following reliefs:

a. pass a writ, order or direction in the nature of a writ of certiorari thereby quashing the communication dated 31.5.2012 issued by the office of Additional Director, North Zone, Central Government Health Scheme of the respondent, as being contrary to law and the guidelines framed for the reimbursement of medical expenses;

b. pass a writ, order or direction in the nature of a writ of certiorari thereby directing the respondent to reimburse the balance amount of Rs. 2,00,310/- to the petitioner being the claim of the petitioner for the treatment meted out to the petitioner in emergency at Medanta. The Medicity, Sector-38, Gurgaon, Haryana.

2. In their counter affidavit, the respondents have stated that though the petitioner was admitted in Medanta Hospital on 21.7.2011 with complaints of acute urinary retention and haematuria and underwent Robotic Radical Prostatectomy on 22.7.2011, no permission from the Competent Authority was taken by him for treatment at non-empanelled private hospital. According to the respondents since Medanta Hospital was not empanelled at the time the petitioner took treatment there, he was reimbursed as per CGHS Package Rates for NABH accredited hospital and the amount so calculated was duly paid.

3. Clause 10 of MH & FW, OM No. S. 11011/23/2009-CGHS D.H/Hospital, Cell (Part-I), dt. 17.8.2010 reads as under:

10. In case of treatment taken in emergency in any non-empanelled private hospitals, reimbursement shall be considered by competent authority at CGHS prescribed packages/rates only.

Vide OM of even number dated 13.9.2010, CGHS clarified as under:

2. After the issue of the above referred Office Memorandum of 17th August, 2010, CGHS has received requests for clarification as to whether they will be categorized as "super-speciality hospitals" and that they can charge rates fixed for Super-speciality hospital. It is clarified that the entitlement of hospitals to super-speciality rates will not be because they perceive themselves to be super-speciality hospitals, but subject to their fulfilling the eligibility conditions in the tender document for being classified as super-speciality hospitals. The qualifications as mentioned in the tender document, to be eligible for qualifying

under different categories of hospitals, are stated below:

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Super-speciality Hospitals with 300 or more beds with treatment facilities in at least three of following Super Specialities in addition to Cardiology & Cardiothoracic Surgery and Specialized Orthopaedic Treatment facilities that include Joint Replacement surgery:

? Nephrology & Urology incl. Renal Transplantation

? Endocrinology

? Neurosurgery

? Gastro-enterology & Gl. Surgery incl. Liver Transplantation

? Oncology-(Surgery, Chemotherapy & Radiotherapy)

Xxx

B. Eligibility Criteria

(i) The Hospitals must fulfill the requirements of one of the categories of hospitals indicated at (A) above.

(ii) The hospitals that are not already empanelled by CGHS must be accredited by National Accreditation Board for Hospitals and Health Care providers (NABH) or its equivalent such as Joint Commission International (JCI) of USA, ACHS of Australia or by any other accreditation body approved by International Society for Quality in Health Care (ISQua).

Or

Must have obtained entry level pre-accreditation from NABH at the time of submission of bid. Such hospitals would however have to obtain final accreditation from NABH by 31st August, 2010 failing which they shall be removed from CGHS panel.

4. It is not in dispute that the petitioner had to take treatment at Medanta Hospital in an emergency condition. The emergency certificate issued by Medanta Hospital clearly shows that he was admitted through emergency with complaints of acute urinary retention and haematuria and was advised robotic radical prostatectomy okn 21.7.2011. Therefore, the petitioner was entitled to reimbursement in terms of clause 10 of the OM dated 17.8.2010 issued by CGHS. This is an admitted case that though Medanta Hospital was not empanelled with CGHS it had been accredited by National Board for Hospitals and Health Care Provider (NABH). It is also not in dispute that certain hospitals were empanelled with CGHS as super-speciality hospital at the time the petitioner took treatment in Medanta Hospital. This is not the case of the respondent that Medanta Hospital did not qualify for empanelment as super-

speciality hospital, at the time the petitioner was treated there on 22.7.2011. During the course of arguments, it was not in dispute that even at that time it was a hospital with 300 or more beds with treatment facilities in at least 3 super-specialities mentioned in OM dated 13.9.2010, in addition to Cardiology, Cardiothoracic surgery and Specialized Orthopaedic Treatment facilities including Joint Replacement surgery.

In my view, the only logical interpretation which can be given to clause 10 of the OM dated 17.8.2010 is that if a government servant or a government pensioner holding a CGHS card takes treatment in emergency in a non-empanelled private hospital, he is entitled to reimbursement at the rates prescribed by CGHS for hospitals which are at par with the hospitals in which the treatment is taken. In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition. Clause 10 of the OM dated 17.8.2010 deals only with the cases where a card holder on account of some emergent medical requirement has to go to a non-empanelled hospital. There is no logical reason for not reimbursing him as per package rates approved by CGHS for its empanelled hospitals if the treatment is taken in a hospital, which is qualified and eligible for being empanelled as a super-speciality hospital though they were not actually empanelled with CGHS. Any other interpretation would result in a situation where CGHS card holder, despite needing immediate medical treatment will either not be able to take treatment in a nearby hospital or he will have to bear the cost of such treatment from his own pocket though he may nor may not be in a position to afford that treatment.

For the reasons stated hereinabove, the writ petition is allowed and the respondents are directed to reimburse the petitioner at the package rates approved by CGHS for its empanelled super-speciality hospitals as on 22.7.2011. The payment in terms of this order shall be made to the petitioner within a period of two weeks from today.

A copy of this order be given dasti under the signatures of the Court Master.

