(2023) 01 KL CK 0292

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28741 Of 2021

K.G.Prasad — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:
Constitution of India, 1950 — Article 21, 39(e), 39(f), 41, 42

Citation : (2023) 01 KL CK 0292

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : V.A.Muhammed, P.A.Jenzia, Anima M

Final Decision : Allowed

Judgement

Raja Vijayaraghavan V, J

1. The petitioner, while working as Principal in the PMSAMA Higher Secondary School, Chemmankadavu, attained superannuation on 31.05.2020. He has approached this Court with this writ petition seeking issuance of directions to the respondents to disburse the medical reimbursement to which he claims entitlement.

2. Brief facts are as under:

On 12.06.2019, while the petitioner was working as the Principal of the school mentioned above, he suffered chest pain and collapsed. He was rushed to the Government Taluk Hospital, Malappuram. The consultant examined him and was of the view that he requires urgent management at a higher center, and promptly, Ext.P1 referral letter was issued. The friends and relatives of the petitioner, taking note of the urgency of the situation, took him to Hearts Malabar Super Speciality Hospital, which was situated within 8 km radius.

3. Exhibit P8 emergency certificate issued by the Hearts Malabar Super Speciality Hospital, would reveal that the petitioner presented before the Hospital with a

complaint of chest pain on 12.06.2019. The ECG revealed that he had suffered Acute Inferior Wall Myocardial Infarction (IWMI), which is a type of heart attack that affects the lower portion of the heart's main pumping chamber (left ventricle). To address this, he underwent an emergency Coronary Angiography (CAG) to visualize the blood vessels that supply the heart muscle. During the CAG, it was determined that an emergency Percutaneous Coronary Intervention (PCI) was needed to restore blood flow to a blocked vessel in the Left Circumflex Artery (LCX), which is one of the three main coronary vessels. This procedure is also known as an emergency Percutaneous Coronary Angioplasty (POBA) with stenting. He was advised to undergo stenting to LCX and another PCI to RCA (Right Coronary Artery). He underwent treatment in the said hospital till 15.06.2019.

4. As he was advised of Coronary Angioplasty, he was again admitted on 28.06.2019 for the same and got discharged on 01.07.2019, as is evident from Ext.P2. The Discharge summary would reveal that the petitioner underwent stenting and Percutaneous Coronary Intervention (PCI) to the Left Circumflex Artery (LCX) and Right Coronary Artery (RCA). The echocardiogram (ECHO) showed abnormalities in the heart function, and hence Percutaneous Transluminal Coronary Angioplasty (PTCA) with stenting was carried out.

5. The petitioner forwarded the bills for the expenses incurred by him for his emergency treatment and claimed reimbursement. The application submitted by the petitioner was returned by the 4th respondent by Ext.P5 letter stating that special sanction cannot be granted as the petitioner underwent treatment in a non-empanelled private hospital. It is in the above circumstances that the writ petition is filed seeking the following reliefs:

i) call for the original of Ext.P5 and P6 and set aside the same by issue a Writ of Certiorari or other appropriate Writ, Order or direction

ii) declare that Petitioner is entitled to set medical re-imbursement or expenses

iii) issue a writ of mandamus or other appropriate writ, order or direction commanding the Respondents to grant medical expenses incurred by Petitioner vide Ext.P2 by sanctioning re imbursement.

iv) declare this Ext. P6 issued later cannot be a reason and to deny the medical re imbursement claim on this petitioner occurred in June and July 2019.

6. A counter affidavit has been filed by the 2nd respondent. It is stated therein that as per the Circular dated 12.06.2020, instructions have been issued that medical expenses incurred in non-empanelled hospitals, including the cases in which ex-post facto sanction has been accorded by Health and Family Welfare Department, will not be considered for reimbursement. Such a measure was adopted, taking into account the weak financial position of the State, to tackle and tide over the current financial crisis. It was stated that the circular will have a retrospective effect and will be applicable to all the cases that came before the

Finance Department after the issuance of the Circular on 12.06.2020. It is further stated that the period of the claim is not relevant in this case, as the decision was taken based on the financial position of the Government.

7. I have heard both sides and considered the submissions advanced.

8. G.O.(MS) No.184/2017/H&FWD dated 15.12.2017 clearly says that during emergency situations, an employee or his dependant can avail treatment from a private hospital without reference from an authorized medical attendant subject to the condition that the hospital should be empanelled by the Government. Circular No.34/2020/Fin dated 12.06.2020 instructs that the medical expenses incurred in non-empanelled hospitals, including the cases in which ex-post facto sanction is accorded by the Health and Family Welfare Department, will not be considered for reimbursement.

9. I have detailed the circumstances under which the petitioner was rushed to the nearest Government Hospital when he lost consciousness on account of a heart attack suffered by him. The Government Doctor attached to the Taluk Hospital immediately referred the petitioner to a higher center. As his life was at risk and urgent intervention was required, the petitioner was taken to the Heart Hospital, where he underwent the procedure.

10. Providing emergency treatment to a person who suffers a heart attack is extremely important as time is of the essence in such cases. Every minute that passes without treatment can lead to permanent damage to the heart muscle and increase the risk of death. Treatment in a higher center, such as a comprehensive or tertiary care hospital, is necessary for a person who has suffered a heart attack, as these hospitals have specialized equipment and trained personnel to provide advanced treatments such as angioplasty or Coronary Artery Bypass surgery. The severity of the heart attack, the age and overall health of the patient, and comorbidities are all relevant facts that are to be considered. The goal is to provide the best possible care and treatment as quickly as possible to reduce the risk of death and long-term complications. It would not be possible for the person who suffers a heart attack or his relative/ friend to sit and ponder the hospital where the patient is to be rushed to, particularly in cases such as this where urgent intervention is required. It would be a different case altogether when the treatment can be scheduled at the patient’s or the hospital’s convenience.

11. In the context of the fact situation presented in this case, the question is whether the non-empanelment of a private hospital can be treated as a reason to deny a claim for medical reimbursement to an employee if he is otherwise entitled to the same. A similar question was considered by the Apex Court in Shiva Kant Jha v. Union of India (2018) 16 SCC 187. The Apex Court held that the right to medical claim could not be denied merely because the name of the hospital is not included in the Government Order. Paragraph No. 13 of the judgment reads as under:

13) It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

12. The Apex Court has observed in the State of Punjab and Others v. Mohinder Singh Chawla AIR 1987 SC 1260 that the right to health is integral to the right to life, and the Government has a constitutional obligation to provide health facilities to its servants. If a Government servant suffers an ailment that requires treatment at a specialized approved hospital and the Government servant undergoes treatment therein, it is the duty of the State to bear the expenditure incurred by the Government servant. It would be pertinent to extract the relevant observations:

10. It is contended for the State that though the Government had granted ex post facto sanction through the Medical Board and permitted the patient to undergo treatment outside the State with the policy, for reimbursement of medical expenses incurred and the medical treatment taken in the hospital to the government servant/pensioners or dependants, as per rules, the Government has imposed a condition to pay room rent at the rates charged by the AIIMS for stay in the hospital. The reimbursement will be given at those rates. The Government, therefore, is not obliged to pay the actual expenses incurred by the patient while taking the treatment as in-patient in the hospital, for rent.

11. We are unable to agree with the stand taken by the Government. It is seen that the Government had decided in the proceedings dated 8-10-1991 to reimburse the medical expenditure incurred by the Punjab Government employees/pensioners and dependants on treatment taken abroad in a private hospital. It is stated in paragraphs 2 and 3 that the Government has prepared a

list of those diseases for which the specialised treatment is not available in the Punjab Government hospitals but it is available in certain identified private hospitals, both within and outside the State. It was, therefore, decided to recognise these hospitals for treatment of the diseases mentioned against their names in the enclosed list for the Punjab Government employees/pensioners and their dependants. The terms and conditions contained in the letter under reference would remain applicable. The Government can, however, revise the list in future. The name of the disease for which the treatment is not available in the Punjab Government hospitals is shown as Open Heart Surgery and the name of the private hospital is shown as Escorts Heart Institute, New Delhi as one of the approved hospitals/institutions. Thus, for open heart surgery or heart disease the Escorts Heart Institute is an authorised and recognised institution by the Government of Punjab. Consequently, when the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is an integral part of his expenditure incurred for the treatment. Consequently, the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment, he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment. Under these circumstances, the contention of the State Government is obviously untenable and incongruous. We hold that the High Court was right in giving the direction for reimbursement of a sum of Rs 20,000 incurred by the respondent towards the room rent for his stay while undergoing treatment in Escorts Heart Institute, New Delhi.

13. In Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161, it was observed by the Hon’ble Supreme Court that Articles 21, 39(e), (f), 41, and 42 are meant to ensure a life with human dignity. The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42, and at the least, therefore, it must include protection of the health and strength of workers, men, and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements that must exist in order to enable a person to live with human dignity, and no State—neither the Central Government nor any State Government—has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

14. In Surjit Singh v. State of Punjab (1996) 2 SCC 336, it was held by the Hon’ble Supreme Court in paragraph 11 of the judgment that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and

inviolable. The importance and validity of the duty and right to self-preservation have a species in the right of self-defense in criminal law. The above observation was made in the context of medical treatment and reimbursement, more particularly in respect of a Government servant.

15. In the instant case, the petitioner had undergone treatment for heart disease. The respondents have no case that the necessary services were available at any neighboring Government Hospital. The respondents also do not have a case that they have issued directions/orders/circulars/information to their servants informing them that if they require urgent intervention due to a life-threatening disease for which treatment cannot be prolonged, they can seek treatment at a specified/named hospital in the District. A person experiencing a life-threatening illness that requires prompt assistance cannot choose between hospitals. The medical records plainly show that the petitioner was in a life-or-death situation and had no choice but to be admitted to a tertiary care facility after being referred from a Government Hospital. The situation would have been different if the intervention had been voluntary and could have been postponed to a later date. It is trite that the right to health is inextricably linked to the right to life protected by Article 21 of the Indian Constitution. The respondents' circular makes no distinction between elective and emergency interventions and hence cannot be utilized to deny the petitioner the medical reimbursement to which he is legally entitled. In view of the principles laid down and observations made above, I hold that the Government has a constitutional obligation to provide health facilities. If the Government servant has suffered an ailment that requires emergent intervention at a specialized approved hospital and, on reference, the Government servant had undergone such treatment therein, it is the duty of the State to bear the expenditure incurred by the Government servant. The request for the disbursal of medical expenses cannot be declined on account of any financial exigencies as projected in the circulars.

16. In view of the discussion above, the petitioner is entitled to succeed. Exhibit P5 is set aside. I hold that the petitioner is entitled to get medical reimbursement of the expenses incurred by him, as evidenced by Exhibit P2. The respondents are directed to reimburse the amounts incurred by the petitioner, as evidenced by Exhibit P2, expeditiously, in any event, within a period of three months from the date of receipt of a copy of this judgment.

This writ petition will stand allowed.

