
(2008) 05 DEL CK 0123
In the Delhi High Court
Case No : C.W.P. No. 3763 of 2002

K.N.S. Bindra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 41, 47

Citation : (2009) 1 ILR Delhi 75

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : Sunil Kumar, for the Appellant; S.B. Sharma and Mr. Manoj Ohri, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The saga of aggrieved persons not being paid the full reimbursement for medical expenses incurred and thus being compelled to approach this Court does not seem to end as the respondents and other authorities continue to ignore the legal principles settled by this Court in various pronouncements. The facts of the present case: The petitioner has been working as a Senior Auditor in the Department of Deputy Controller of Defence Accounts (Air Force) and while in service had to undergo an open heart surgery at the Escorts Heart Institute & Research Centre Limited, New Delhi (for short "Escorts Hospital"). The petitioner, in fact, sought permission from the Department for an angiography test as he was having frequent heart pains and permission was granted on 26.4.2001. The petitioner went to the Escorts Hospital on 21.6.2001 when the angiography test was carried out and the petitioner was advised immediate operation. The petitioner underwent medical treatment of open heart surgery after obtaining the due approval from the Head of the Department vide letter dated 26.4.2001 & 22.6.2001.

2. The medical expenses of the petitioner were estimated initially at Rs. 2.00 lakh and the petitioner was advanced a sum of 90 per cent of the said amount

(Rs. 1,80,000.00 + Rs. 14,400.00 = Rs. 1,94,400.00). The total medical bill raised by the Escorts Hospital, however, came to Rs. 2,65,660.00.

3. The respondents claim that the amount assessed by the office was Rs. 1,68,160.00 and thus the petitioner had been given an extra amount of Rs. 26,240.00. There was some further amount also passed and the balance outstanding due from the petitioner was stated to Rs. 24,940.00. An order was, thus, passed seeking to recover the said amount in installments.

4. The petitioner filed the present writ petition seeking a direction for compensation of the full amount incurred towards medical expenses since Escorts Hospital is a recognized hospital under the CGHS and prayed for a further relief that the amounts being deducted ought not to be so deducted. Interim relief was granted in favour of the petitioner against deductions of the amount which was confirmed during the pendency of the petition.

5. In our considered view the matter in issue is no more *res integra* in view of the plethora of pronouncements of this Court dealing with the identical situation where in CGHS approved hospitals Government servants have availed of medical facility and the bills, which have been made are alleged to be more than what is stipulated in the circulars of the Government of India. The counter affidavit in the present case only states that the amount calculated by the respondents is as per the rates approved by the Ministry of Health and Family Welfare vide its letter No. 11022/1/98/CGHS (P) dated 4.9.1998 and thus neither is the balance amount payable nor is the petitioner entitled to the relief of restraint of deductions of the amount.

6. A similar circular has been discussed in the judgment of this Court rendered by one of us (Sanjay Kishan Kaul, J.) in *Shri Prithvi Nath Chopra Vs. Union of India (UOI) and Another*, Interestingly, the defence raised in the said case was also on the basis of the judgment of the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, which is the case referred to in the counter affidavit (without citation given). The Apex Court in the said judgment has observed that there was a right to healthy life under Articles 21, 41 & 47 of the Constitution of India but the Government was justified in limiting the facilities to the extent permitted by its financial resources. It is not necessary to discuss all the judgments referred to therein both of the Apex Court and this Court but the controversy as noted in paragraph 23 of the judgment was that whether the petitioner therein was entitled to reimbursement only at rates specified in the circular of 1996 or as charged by the hospital. It was observed that the Apex Court had only set out that it may not be possible to make available unlimited resources for grant of such medical treatment but it simultaneously emerged that the circular was not even strictly adhered to in all cases in view of the observations made in *Shri V.K. Gupta Vs. Union of India (UOI) and Another*, In fact, it was noticed in the said judgment that reimbursement was being regularly done as per actual expenses and not restricted to the 1996 circular but the same occurred only when there were specific directions of the Court. It was noticed

that this was hardly a satisfactory state of affairs where an aggrieved person had to come to court every time to get the amount for the medical treatment released. Incidentally that was also a case of the Escorts Hospital.

7. Another factor which emerged from the judgments was that the Memorandum had a lifetime of two (2) years and was required to be revised from time to time. The revisions did not take place for quite some time which created its own difficulty in respect of the rates charged by the hospitals. An important aspect was that the procedure followed was such that a petitioner was compelled to pay charges first and thereafter seek reimbursement while actually the whole policy had envisaged that there should be a system of direct billing by the approved hospitals to the Government since at times a patient may not have readily the finance to obtain the treatment. A writ was issued whereby the full amount was directed to be reimbursed.

8. In *Milap Singh Vs. Union of India (UOI) and Another*, once again the issue of a higher rate being charged by the hospital than the packaged rate came up for adjudication. Reference was made to *Prithvi Nath Chopra case (supra)* and a writ of mandamus was issued once again directing full reimbursements. The option was left to the Government to settle the matter with the hospital in case it was found that any amount was in excess.

9. Learned counsel for the petitioner has brought to our notice a Division Bench judgment of this Court in *Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI)*, where a direction for full reimbursement of medical expenses was made in respect of the treatment at the same Escorts Hospital subsequent to the recommendation for the said purpose and it was observed that if the hospital charges over and above the packaged rates and the respondents feel that there is any excess payments, the same is a matter which ought to be settled between the hospital and the Government but the petitioner cannot be deprived of the reimbursement of the same.

10. The result of the aforesaid is that a writ of mandamus is issued directing the respondents to pay the full medical expenses of the petitioner as per the bills raised by the Escorts Hospital amounting to Rs. 2,65,660.00 less (-) the amount already paid of Rs. 1,94,400.00. The petitioner should also be given credit for the deductions from salary made stated to be to the extent of Rs. 6,000.00 which should also be reimbursed to the petitioner. The needful be done within a maximum period of two (2) months from today.

11. The total costs are assessed at Rs. 10,000.00 out of which Rs. 5,000.00 should be paid to the petitioner and the balance of Rs. 5,000.00 be deposited with the Delhi High Court Legal Services Committee in view of the fact that the respondents continue to act contrary to the judgments rendered by this Court and unnecessarily burden the docket of the Court & causes inconvenience to its employees/patients. The petition is allowed in the aforesaid terms.