

(2006) 03 DEL CK 0181

In the Delhi High Court

Case No : WP (C) No's. 2244-45 of 2006

M.I. Singh and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Citation : (2006) 03 DEL CK 0181

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : J.P. Seng, for the Appellant; Rita Kaul, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The medical profession is a noble and learned one, regarded with deep respect from time immemorial. Its motto is service and care for the suffering humanity. The Supreme Court, in its judgment reported as State of Punjab Vs. Shiv Ram and Others, , described the profession as follows :

The medical profession is one of the oldest professions of the world and is the most humanitarian one. There is no better service than to serve the suffering, the wounded and the sick. Inherent in the concept of any profession is a code of conduct, containing the basic ethics that underline the moral values that govern professional practice and is aimed at upholding its dignity.

This case throws up, in stark relief, how the foundation of all that is good and noble, can be destroyed by red-tape, how bureaucratic delay can undermine service.

2. Notice had been issued in these proceedings on 17.2.2006. Having regard to the urgency in the case, short time was granted to the respondents to file the return. When the case was listed on 8.3.2006, no response was forthcoming. Consequently, a direction was issued to the Additional Director, Central Government Health Service (CGHS) to be present in Court today. None is present

in spite of the directions. Learned counsel for the respondent states that despite her best endeavors neither any file has been made available nor has any representation of the respondents come to the Court. It is also stated that a copy of the order was communicated to the respondents on the same date, viz. 8.2.2006.

3. The petitioner is a Central Government pensioner having retired as Joint Director in the Directorate General of Civil Aviation in the year 1989. As per the averments and the materials on record he is pensioner entitled to benefits and facilities under the Central Government Health Scheme (CGHS), being holder of a full life-time card which is valid for his entire life. This entitles him and his dependent family treatment to free medical treatment in the hospitals managed under the Scheme, and in addition, to medical treatment in recognized private hospitals, as per the terms and conditions applicable in that regard.

4. The petitioner is 75 years old and it is contended that he is suffering from various ailments, the most acute of which are gall bladder stone and growth in the prostate gland. It is averred by him and contended on his behalf that repeated attempts to secure appointments for a proper referral to a hospital to enable surgical treatment in this regard has been virtually stonewalled by the respondents. He has relied upon the medical records bearing out the condition, including copies of the letter dated 25.2.2003 to the Ganga Ram Hospital, enabling him to medical treatment. It is stated that subsequently he was advised to undergo surgery for removal of gall bladder stone. His request for clearance/reference, to undergo surgery appears to have been pending since August, 2003. A letter dated 14.8.2003 has been relied upon for the purpose.

5. Besides the petitioner's own condition, his wife is suffering from cancer of the bone marrow. She was referred for treatment to the Rajiv Gandhi Cancer Institute in 2002. She is undergoing treatment ever since in her case the grievance is that the Chief Medical Officer has been issuing letters which are valid only for three months. Copies of letters dated 7.3.2003, 30.4.2002 and 25.9.2003 etc have been placed on record. Counsel for the petitioner also relies upon a letter dated 19.8.2004 written by the petitioner upon which the CMO appended an endorsement to the effect that for getting treatment for any procedure, he had to furnish fresh prescription and recommendations from the CGHS specialist. Since the previous recommendations of the year were of 2002, the petitioner has placed on record several representations which highlighted his plight in the sense that his condition and also the serious condition of his wife, they are made to run around to secure letters which are valid for short terms.

6. It is contended that the very nature of the ailment of the petitioner's wife is such that the patient has to be constantly monitored by the doctor. It was submitted that once the respondents were satisfied that the second petitioner was suffering from cancer, and it necessitated treatment from a recognised private hospital, they were under a duty to ensure that the referral or clearance was of an enduring nature, enabling the patient to secure effective long term

treatment. The practice of granting short-time approval, thus driving the patient in such cases back to the CGHS, (which in the first instance had found the case to be genuine) entailed delay, and adversely told on the health of the patient.

7. Learned counsel for the respondent appears to be considerably handicapped in the absence of any instructions. She, however, stated that the validity of the letters which have been placed on record indicate that the card holder had to necessarily present himself from time to time in order to get fresh referral letters. This she has contended, was the normal procedure.

8. I am of the opinion that in the peculiar facts of the case the attitude and the insensitivity displayed by the respondents is shocking. Both the petitioners are advanced in age and are suffering with old age problems; the second petitioner is suffering from a life threatening condition. It was contended that the petitioners are facing considerable hardship even for securing appointment with the medical specialist in the RML Hospital and the other hospitals which have to make the reference.

9. The Central Services (Medical Attendance) Rules which have been relied upon these proceedings reads as under :-

3(1). A Government servant shall be entitled, free of charge, to medical attendance by the authorised medical attendant.

3(2). Where a Government servant is entitled sub-rule (1), free of charge, to receive medical attendance, any amount paid by him on account of such medical attendance shall, on production of a certificate in writing by the authorised attendant in this behalf, be reimbursed to him by the Central Government....

6(1). A Government servant shall be entitled, free of charge, to treatment-

(a) in such government hospital at or near the place where he falls ill as can in opinion of the authorised medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause (a) in such hospital other than a government hospital at or near the place as can in the opinion of the authorised medical attendant, provide the necessary and suitable treatment.

6(2) Where a Government servant is entitled under sub-rule (1), free of charge, to treatment in hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government....

10. The Circular of Government of India Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi, dated 7.9.2001 (F.No : REC- 24/2001/JD(M)/CGHS/Delhi/CGHS (P)) also deals, with the issue of recommendation of private hospitals and Centres under the CGHS pattern or Scheme for the treatment. This entitles every public servant and pensioners to treatment as per the rules set out and applicable. The annexure to the Memorandum, discloses that both the Ganga

Ram Hospital and the Rajiv Gandhi Cancer Institute are referral hospitals.

11. This Court as well as the Supreme Court has been often holding that it is the obligation of the respondent Government to ensure that the medical treatment of the public servant CGHS card holders entitled under the Scheme are fully extended and that even their bills are paid promptly. In many circumstances the unjustified delay in clearance of such bills has been adversely commented upon and the Government has been directed to pay interest.

12. The Court has held that even if membership of the CGHS Scheme are under process, the pensioner is entitled to benefits. Mahendra Pal Vs. Union of India (UOI) and Others, full amounts incurred for treatment have to be re-imbursed Milap Singh Vs. Union of India (UOI) and Another, ; Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI), and the pensioner/ card-holder is entitled to full reimbursement so long as the hospital is in the approved list (PN Chopra v. Union of India (111) 2004 DLT 190).

13. In view of the above and having regard to the facts of this case, a direction is issued to the respondents to ensure that appropriate referral letter is issued in the case of the second petitioner, having regard to her medical condition and the need for continues patient monitoring. The letter shall not be valid merely for three or six months; in view of her medical condition it and shall be valid for at least a year at any given point of time. This would enable her to not only obtain medical treatment but also to undergo diagnostic tests and procedures. Likewise, a direction is issued to the respondents to ensure that the petitioner no.1 is issued a proper referral with regard to his medical condition regarding gall bladder and prostate glands. The Medical Superintendent of the RML Hospital is directed to ensure that the first petitioner is examined by the concerned specialist within a period of two weeks from today and an appropriate reference letter is issued within the said period.

14. The respondents have not chosen even to file a counter affidavit; the Additional Director (CGHS) did not appear in the Court in spite of notice. This conduct is contumacious; however instead of initiating action on that score, I direct that the petitioners are paid Rs.25,000/- towards costs of these proceedings. The Director, CGHS shall hold an enquiry into non-compliance with the Court's directions to ensure that the responsibility is fixed in that regard and the cost shall be recovered from the concerned officials in an appropriate manner. A compliance affidavit shall be filed for the purpose within six weeks from today, to indicate the implementation of all direction.

15. The Writ Petitions are allowed to the extent indicate above.

16. Order dusty under +the signatures of Court Master.