

(2018) 04 J&K CK 0055
In the Jammu And Kashmir High Court
Case No : OWP No.1697 OF 2015,
MOHD AZAM.Vs STATE AND ORS

Date of Decision : 02-04-2018

Acts Referred:

Citation : (2018) 04 J&K CK 0055

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Allowed

Judgement

1 Impugned in this petition is a communication dated 07.03.2015 issued by respondent No.3 whereby the claim of the petitioner for medical reimbursement has been rejected.Â

2 The case set up by the petitioner in this petition is that somewhere in the month of July, 2014, he fell ill and was admitted in J&K Medicity, Super Specialty Hospital on 18.07.2014. He was treated in the aforesaid Hospital and was discharged on 19.07.2014. It is claimed that the petitioner, after his discharge from the aforesaid Hospital, remained well and did not notice any complication.

3 On 18.08.2014, he claims to have set out for pilgrimage to â??Ajmerâ??. It is stated that while on pilgrimage, when the petitioner reached New Delhi on 23.08.2014, he abruptly experienced severe pain. He was immediately shifted to Rajiv Gandhi Cancer Institute and Research Centre, New Delhi on 24.08.2014 for immediate treatment. Keeping in view the urgency of immediate surgical intervention, the petitioner was admitted and was operated in the aforesaid Institute. After successful operation, the petitioner claims to have been discharged on 05.09.2014. 3 It is submitted by the petitioner that he incurred a sum of Rs.3,65,036/- on account of medical

expenses in the aforesaid Institute and, therefore, lodged his claim with the respondents for reimbursement under the Medical Attendancecum-Allowance Rules of 1990 ((hereinafter referred to as "Rules of 1990").

4 The grievance of the petitioner is that his claim was rejected by the respondents vide impugned communication by misinterpreting the provisions of Rule 6(5) of the Rules of 1990. The respondents have filed their objections in which they have taken a stand that the claim of the petitioner for

medical reimbursement was received in the office of respondent Nos. 2 and 3 from the Director School Education, Jammu vide communication No.

DSEJ/Accts/19948 dated 12.02.2015 and the same was placed before the Medical Reimbursement Verification Committee (MRVC) which was

constituted by respondent No.2 for the said purpose. It is submitted that the said Committee, after examining the case of the petitioner, observed that

the treatment taken by the petitioner, though genuine did not fall within the purview of Rule 6(5) of Rules of 1990 on the ground that the discharge

Summary of Rajiv Gandhi Cancer Institute and Research Centre New Delhi indicated that the petitioner was already suffering from Hematuria and

had already undergone biopsy for the same elsewhere. This is how the respondents in their reply justified the rejection of the claim of the petitioner for medical reimbursement.

5 I have heard learned counsel for the parties and perused the record.

6 Before proceeding further in the matter, it would be appropriate to take note of the salient provisions of Rules of 1990. It may not be out of place to

mention here that Rules of 1990 is a beneficial subordinate legislation aimed at eradicating the difficulties of its employees who may have to incur huge

expenses on account of their medical treatment.

7 Keeping in view the object for which the Rules of 1990 have been promulgated, its provisions are required to be interpreted liberally so as to achieve

the object underlying such provisions. Relevant extract of Rule 5 of the Rules 1990 in so far as its germane to the disposal of the controversy

projected in this petition is reproduced hereunder:

"5. Medical Attendance within the State.

(1). Every Government servant shall be allowed reimbursement of the amount, if any, charged by the Hospital authorities, including cost of drugs

purchased from the market during the period of hospitalization in Government Hospital within the State of the employee himself or any member of his family, wholly dependent on him.

(2) Reimbursement of the expenses in the manner indicated in sub-rule (1) above shall also be allowed in respect of hospitalization in non-Government

Hospitals within the State provided the following conditions are fulfilled-

(a) where it is recommended by the Principal, Government Medical college/Skims college or Director SKIMS/Director Health Services that the

treatment is not available in Government Hospital or Institute of the State.

(b) if the concerned authority (Principal, Government Medical College/Skims College or Director Health Services/SKIMS) is of the opinion that

regardless of the availability of the treatment in a Government Hospital within the State, the nature of the surgery is such as would require

sophisticated theatre and a congenial surgical atmosphere for the prevention of infection in respect of operations, of heart, lungs and brain and can be

had in private hospital within the State.

(c) Expenditure incurred in such cases shall be reimburseable as under:

(i) Charges for operation and drugs and other expenses like room rent etc. excluding diet as may be charged from the beneficiary by the hospital

authorities.

(ii) The beneficiary shall be allowed 50% of the estimated cost of the hospital charges as advance.Â

8 In terms of Rule 5 of Rules of 1990 reproduced above, a Government servant is entitled to reimbursement of medical expenses incurred by him

during the period of hospitalization in the Government Hospital within the State. Under certain circumstances, even the reimbursement of expenses

can be allowed in respect of hospitalization in non-Government Hospital within the State. However, RuleÂ 6Â of Rules of 1990 provides for a

contingency where an employee has to take the medical treatment outside the State. Relevant extract ofÂ Rule 6Â of Rules of 1990 is reproduced

hereunder:

â??6. Treatment outside the State.

(1) Treatment outside the State may be authorized in respect of a beneficiary by the Administrative Department concerned on production of a

certificate on the prescribed proforma (Annexure D) by the Head of concerned Specialty not below the rank of Associate Professor. The

references/recommendations of the Head of the specialty outside the State should be countersigned by the Principal of Government Medical

College/SKIMS College or Director SKIMS as the case may be.

(2) The beneficiary should be a resident of the State and should be suffering from a disease which is not curable by the medical facilities available in the State.

(3) The beneficiary should be a resident of the State and should be suffering from a disease which is not curable by the medical facilities available in the State.

(4) The beneficiary should be a resident of the State and should be suffering from a disease which is not curable by the medical facilities available in the State.

(5). Where a beneficiary resides temporarily outside the State and falls ill there suddenly and is advised admission in a hospital, he will, on

production of necessary vouchers and certificates, be allowed reimbursement of hospital charges including cost of drugs and charges for

investigations, provided it is recommended by the Director Health Services of the State after being satisfied that the beneficiary had suddenly fallen ill

outside the State where he resided temporarily and was not already suffering from it before his departure from his home town. The Director Health

Services will certify that drugs and services charged for are reasonable and the beneficiary could not wait for treatment in his home town.

9 From the perusal of aforesaid Rules, it is abundantly clear that if the beneficiary resides temporarily outside the State and falls ill suddenly and is

advised admission in a Hospital, he will be entitled to reimbursement of the medical expenses, provided it is recommended by the Director, Health

Services of the State that the beneficiary had suddenly fallen ill outside the State where he resided temporarily and was not already suffering from the

same before his departure from his home town.

10. Although it is pleaded by the petitioner that after his discharge from JK Medicity, he was not suffering from any ailment and suddenly fell ill while

he was on his pilgrimage to Ajmer, but the story projected by him does not inspire confidence. No doubt, after giving him preliminary

treatment at JK Medicity, he was discharged, but at the same time, he had been advised biopsy. It is after knowing the results of the biopsy, the

petitioner came to know that he was suffering from Cancer. It is, thus, clear that

the petitioner was already suffering from the disease before his departure from his home town. The findings recorded by the MRVC that the case of the petitioner was not strictly covered under Rule 6(5), cannot be said to be erroneous. In the aforesaid circumstances as also keeping in view the beneficent nature of Rules of 1990, it needs to be seen as to whether the expenses incurred by the petitioner for treatment of his disease in the Rajiv Gandhi Cancer Institute are liable to be reimbursed. Needless to say that in terms of Rule 6(1), the treatment outside the State also can be authorized but this is subject to production of a certificate on the prescribed proforma to be given by the Head of concerned Specialty not below the rank of Associate Professor and countersigned by the Principal of the Government Medical College/SKIMS or Director SKIMS as the case may be.

11. That being so, the treatment outside the State is not altogether barred nor the beneficiary can be denied the reimbursement only on the ground that he has taken the treatment in a Hospital situated outside the State though there are certain pre-requisite formalities which are required to be complied with. It would also be relevant to take note of the provisions of Rule 6-A.

6-A. Treatment outside the State for heart ailment, kidney transplantation, cancer and other life consuming diseases shall be taken at private hospitals indicated below and reimbursement of expenditure shall be subject to the conditions that-

- (a) There is no arrangement for the treatment/surgery for the said disease in the State Government Hospitals;
- (b) a certificate is obtained from the competent medical authority as specified in rule 6 of these rules.

The private hospital shall include:-

- (i) Tata Memorial Hospital Bombay.
- (ii) Christian Medical College and Hospital, Vellore/Ludhiana.
- (iii) Batra Hospital, Delhi
- (iv) Mool Chand Charitable Hospital Delhi.
- (v) Sri Ganga Ram Hospital, Delhi.
- (vi) N.M.Wadia Institute of Cardiology, Pune.
- (vii) Southern Railway Hospital, Pambur, Madras.

(viii) KEM Hospital, Bombay.

(ix) Bombay Hospital Bombay.

(x) Sri Chitra Tribunal Institute of Medical Sciences and Technology, Trivandrum.

(xi) S.S.K.M Hospital, Calcutta.

(xii) Kasturba Hospital Bhopal.

(xiii) Samaritan Hospital, Alway, Kerala.

(xiv) ****

(xv) The Heart Centre, New Delhi.

(xvi) Rajiv Gandhi Cancer Institute, New Delhi.

(xvii) Ranbaxy Heart Institute, Chandigarh??.

12 In the aforesaid provisions, it is, inter alia, provided that the treatment outside the State for heart ailment, kidney transplantation, cancer and other

life consuming diseases can be taken at private hospitals which, inter alia, include Rajiv Gandhi Cancer Institute, New Delhi as well. This, however, is

only subject to the condition that there is no arrangement for the treatment/surgery for the said disease in the State Government Hospitals and a

certificate in this regard is issued by the competent medical authority as specified in Rule 6. Again the said Rule provides that the treatment with

regard to certain ailments including Cancer can be taken outside the State, but only in the specified Hospitals. Rajiv Gandhi Cancer Institute, New

Delhi does find place in the aforesaid Rule. Although it has not come in the pleadings as to whether the surgical treatment of Cancer is available or not

in the State Government Hospitals, yet the Court can take a judicial notice of the fact that even the present facilities available in the State Government

Hospitals, where there is no Oncologist (Surgery) in place, cannot be said to be adequate for surgery of Cancer in the State.

13 Taking into account the totality of circumstances and the different provisions of the Rules of 1990, particularly Rule 8(2), providing the Government

enough power to relax the operation of the Rules to mitigate the hardship in a particular case, I find that the petitioner is entitled to the reimbursement

of medical expenses incurred by him in the Rajiv Gandhi Cancer Institute, New Delhi for treatment of his disease. In the view which I have taken, I

am supported by a Division Bench judgment of this Court rendered in State of

J&KÂ vsÂ Sakhi Willayat (2004(3) JKJ 412.)

14 Accordingly, this petition is allowed andÂ communication dated 07.03.2015 is quashed. Respondent No.1 is directed to consider the claim of the

petitioner for medical reimbursement, disposed of by respondent No.3 vide impugned communication dated 07.03.2015 and take a decision in the

matter in the light of the observations made hereinabove. Let a decision in this regard be taken by respondent No.1 within a period of four weeks from

the date certified copy of this order is made available to him.