

(1999) 04 DEL CK 0022

In the Delhi High Court

Case No : C.W.P.No.509/98

Narendra Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 769 : (1999) 79 DLT 358 : (1999) 50 DRJ 551 : (1999) 1 ILR Delhi 315 : (1999) ILR Delhi 315

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. Panna Lal Syngal and Mr. Bodhisatva Acharya, for the Appellant;
Mr. Ashok Bhasin, for the Respondent

Judgement

C.M. Nayar, J.—This petition is directed against the respondents for issuance of a writ in the nature of certiorari for uashing the Order dated 4th December, 1997 made by the Government of India, Office of the Additional Director, Central Government Health Scheme (Annexure-E to the petition) rejecting the case of the petitioner for reimbursement of the medical claim. The petitioner has further prayed for a writ of mandamus commanding the respondents to reimburse him the amount of Rs.93,870/- with interest at the rate of 24% from the date of discharge from hospital i.e. 22nd February, 1996 to the date of payment. The petitioner retired on 31st July, 1988 as Assistant Engineer(Mechanical) from Government of India, Security Paper Mill, Hoshangabad, M.P.-461005. He was admitted in Mayo Hospital Savli Road, Harni,Vadodara-390022 due to severe Chest Pain and Coronary Angiography was conducted on 12th February,1996. The relevant report is filed as Annexure-A to the writ petition. The petitioner was operated for Coronary Artery Bypass, Grafting (CABG) as per diagnosis-Trippl Vessel Disease (Isochem Heart Disease) on 14th February,1996 and he was discharged on 22nd February, 1996. It is stated that the petitioner had to undergo the aforesaid operation in an emergent situation and the requisite certificate dated 29th February, 1996 issued from Mayo Hospital is filed as

Annexure-C to the writ petition which reads as follows:-

"Mayo Hospital

(Promoted by GIL Hospitals Ltd.)

Regd. Office:

Savli Road, Harni, Vadodara-390022, India

Phone : 451818/559139.

Telex : 0175-6400 MAYO IN

Fax : 0265-452249

Gram : MAYOHOSP

Date: 29/02/96.

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr.N.P.Singh was admitted with chest pain on 12/02/96 after which angio was done as he had continuous pain & in view of severe tripple vessel disease he had to be operated on 14/02/96 in emergency. He had an uneventful post operative course.

Thanking you,

Sd/-

Dr. Rajesh Desai

Cardial thoracic Surgeon."

2. The petitioner incurred a total expenditure of Rs.93,870/-. The petitioner submitted his medical reimbursement claim to respondent no. 3 but the said respondent has declined to reimburse on the ground that the treatment was taken in a non-C.G.H.S. covered area. The affidavit filed by Dr.P.K.Baliar Singh, Joint Director (R&H), Central Government Health Scheme, New Delhi has been filed to deny the claim of the petitioner. Paragraph 5 of the said affidavit reads as follows:-

"5. That his claim has been considered by the concerned authorities and was regretted since he had taken the treatment in non-CGHS covered area and as per Central Government Health Scheme orders and instructions issued by Government of India, Ministry of Health and Family Planning (Department of Health) a pensioner is not entitled to the facilities of reimbursement. The respondentis filing said scheme Along with this affidavit. The relevant provision in the present case is on page 40 of the said scheme. As per para 17(iii) of the said scheme (Reimbursement) shall in the case of pensioners be limited to areas covered by the scheme. No reimbursement shall be made when pensioners and members of their families take medical treatment at a place not covered by the

scheme unless specifically authorised by the Ministry of Health. Copy of the said scheme is being filed as ANNEXURE R-1."

3. The petitioner has admittedly suffered the ailment and required urgent and immediate treatment in an emergency. The plea of the Government that he has not taken prior sanction for treatment in non-C.G.H.S. Hospital is clearly erroneous and cannot be entertained. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. It is always open for the Government to grant ex-post facto sanction subject to verification of the claim which has not been denied in the present case. Reference may be made to the judgment of the Supreme Court reported as *Surjit Singh Vs. State of Punjab and Others*, . Paragraph 11 of the judgment reads as follows:-

"11. The appellant Therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

4. Similar reference may be made to the judgment reported as *State of Punjab and others Vs. Mohinder Singh Chawala, etc.*, . Paragraphs 9, 10 and 11 may be reproduced as follows:-

"9. While the respondent was a Government servant, he had developed sudden coronary ailment. After required and gography and other reports of tripple vessets disease was diagnosed in CMC Hospital, Ludhiana and he was recommede by the said hospital to go over to Escorts Hearts Institute, New Delhi for urgent treatment. On its basis, the respondent had the treatment. The Medical Board granted by its proceedings dated January 12, 1969, expost facto sanction for treatment with one attendant. The appellant had granted

reimbursement of a sum of Rs.1,03,267/- less the rent paid for the room in the hospital for the period of stay. It is the Government's stand that the reimbursement could be allowed as per rates charged by All India Institute of Medical Sciences. Accordingly, a sum of Rs. 20,000/- paid as rent was deducted. When the respondent filed the writ petition, the High Court by judgment dated April 12, 1996 in CWP No.16570/95, the Division bench allowed the writ petition. Thus, this appeal by special leave.

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 dependents, 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 inpatient 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 October 8, 1991 to reimburse the medical expenditure incurred by the Punjab Government employees/pensioners and dependents on treatment taken abroad in 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 Punjab Government Hospitals but it is available in certain identified private hospitals, both within and outside the States. 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 dependents. 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 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 hospital/institution. Thus, for open heart surgery or heart disease the Escort Heart Institute is 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 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 aproved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and 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."

5. The law is, Therefore, well settled that right to health is an integral part to life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds. Firstly the Government does not give any proper reasoning to deny the claim of the petitioner in its communication dated 4th December, 1997 and secondly the affidavit of Dr. P.K. Baliar Singh merely states that since the petitioner had taken the treatment in non-C.G.H.S. covered area and as per Central Government Health Scheme Orders and instructions as issued by the Government, a pensioner is not entitled to the facilities of reimbursement. These reasons cannot be appreciated in view of the settled position that the petitioner isv entitled to take recourse to an emergency treatment in any area if the circumstances and the nature of disease so warrant.

6. No cogent grounds nor any rules/regulations have been cited to deny the relief to the petitioner. The petition is, Therefore, liable to succeed. The learned counsel for the petitioner has fairly stated that the petitioner is not claiming any interest for the payment which has since been withheld.

7. In view of the above, the present petition is allowed. Rule is made absolute. The respondents shall disburse the amount of Rs. 93,870/- to the petitioner within four weeks from today. The petitioner is also entitled to costs which are quantified at Rs.10,000/-.