

(2013) 03 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : CWP No. 3984/ of 2011-D

Narvada Chauhan

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 23-03-2013

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2013) 03 SHI CK 0001

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Ranjana Parmar, for the Appellant; R.S. Verma, Additional Advocate General, Mr. Ram Murti Bisht and Ms. Parul Negi, Deputy Advocates General, for the Respondent

Judgement

Sanjay Karol, J.—Petitioner has prayed mainly for the following relief:-

(i) That the respondents may be directed to accept the medical claim of the petitioner to the tune of Rs. 3,07,411/- and directions be issued to the respondents to pay the aforesaid claim bill to the petitioner forthwith without any further interest alongwith interest.

On 9th April, 2010, petitioner who is working as the Deputy Secretary (Law and Records), to the Government of Himachal Pradesh, went to Mumbai to attend the reception of her son. As the petitioner was already suffering with heart ailment, she could not bear the tension and stress of long journey and developed severe pain in her heart and under emergent situation had to be hospitalized at L.H. Hiranandani Hospital at Mumbai, where she had to undergo surgery on emergent basis. After discharge from the hospital and on her return to Shimla, petitioner submitted her bills for medical reimbursement which stands rejected by the State for the reasons that "there is no sufficient ground to prove the emergency".

2. According to the State, the hospital in question is not empanelled with the Department of Health, Govt. of Himachal Pradesh and as such petitioner is not

entitled for reimbursement. Also, it is urged that petitioner was suffering from backache and was on leave. The doctor of Regional Ayurvedic Hospital, Shimla declared her fit to resume duties, which she did on 9.4.2010 (A.N.). As such, petitioner was not suffering from any ailment, necessitating her undertaking treatment from a non empanelled hospital and that too at Mumbai. Still further, it is urged that petitioner had been undergoing treatment at P.G.I. Chandigarh and there also doctors did not opine for any surgical operation.

3. Having heard learned counsel for the parties as also perused the record, I am of the considered view that the Government has seriously erred in not considering the petitioner's case, in accordance with the rules so framed by the State, in the correct perspective.

4. No doubt, petitioner was declared fit to resume duties by the doctor at the Regional Ayurvedic Hospital, Shimla, but this was not for the ailment of the heart. It was for backache. In fact, record reveals, as is so evident from Annexure P-1, that even at PGI, Chandigarh, petitioner was actually undergoing treatment for heart ailment. The prescription slip relates back to the year 2010, since when petitioner was taking treatment for her heart ailment.

5. It was only when petitioner went to Mumbai and not without any purpose, but to attend the wedding reception of her son that under emergent condition and unavoidable situation and circumstances, she had to be hospitalized at Dr. L.H. Hiranandani Hospital where she had to be treated for her heart ailment and undergo Peripheral Angiography and Coronary Angiography. She could not even attend the wedding reception of her son. For undergoing such treatment, she had to incur an expenditure of Rs. 3,07,411/-. It is not that petitioner otherwise used to visit Mumbai or was generally taking treatment there and had not obtained any prior permission for undergoing surgery. Petitioner resides in Shimla and has been taking treatment from the hospitals here and at Chandigarh.

6. The Apex Court in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , has upheld the right of an employee to medical treatment, based on the rules so framed by the State, to be one falling within the ambit and scope of right to life enshrined under Article 21 of the Constitution of India. However in the said decision itself, the Court has restricted such right to be not absolute but subject to justifiable limitations and restrictions so imposed by the State.

7. Further the Constitution Bench of the Apex Court in Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others, while repelling the contentions raised by the petitioner of having right of medical reimbursement to be a facet of life under Article 21 of the Constitution of India, has held as under:-

To get free and full medical facilities is not a part of the fundamental right of ex-servicemen. The policy decision in formulating contributory scheme for ex-servicemen is in accordance with the provisions of the Constitution and also in consonance with the law laid down by the Supreme Court. Though the right to

medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay "one-time contribution" neither violates Part III nor is it inconsistent with Part IV of the Constitution.

The State has to cater to the needs of its employees-past and present. It has also to undertake several other activities as a "welfare" State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex-defence personnel by allowing them to become members of contributory scheme and by requiring them to make "one-time payment" which is a "reasonable amount", it cannot be said that such action would violate the fundamental rights. The contributory scheme cannot be held illegal, unlawful, arbitrary or otherwise unreasonable.

8. These principles have been subsequently reiterated by the Apex Court in *State of Karnataka and Another Vs. Sri R. Vivekananda Swamy*, *State of Uttaranchal Vs. Alok Sharma and Others*, *The Secretary to the Government of Haryana and Others Vs. Vidya Sagar*, and *State of Rajasthan Vs. Mahesh Kumar Sharma*,

9. Also, in all these decisions, the Apex Court has taken a view that an employee who under emergent situation has to undertake medical treatment in a non empanelled hospital within or outside the State would be entitled to medical reimbursement of the bills in terms of the policy/rules framed by the State and also to the limits so prescribed there under.

10. The Department of Health, Government of Himachal Pradesh has framed rules for medical reimbursement to its employees. The State Government has also empanelled certain private hospitals where the employees can undertake medical treatment. Such hospitals are both, within and outside the State. Under emergent conditions, where medical treatment is taken in other institutions, the Government has powers to relax and order reimbursement. But however, the State has restricted reimbursement of the amount to the extent as is payable at par with the Premier Government Run hospitals of repute such as AIMS and PGI.

11. Therefore, taking into account the over all attending facts and circumstances, it cannot be said that there are no sufficient grounds to prove the urgency/emergency for the petitioner to have undergone medical treatment and surgery at Mumbai. Hence, the action of the State is totally unsustainable on facts and law. The question is as to what amount of reimbursement is the petitioner entitled for.

12. This Court in *N.C. Trehan Vs. State of H.P. and Others*, where an employee who had taken prior permission to take medical treatment at Batra Hospital, New Delhi, but under emergent conditions had to undertake treatment at Fortis Heart Institute, Mohali (Punjab), directed reimbursement of the medical expenses incurred by the employee, to the extent it was payable at the rates fixed by the All India Institute of Medical Sciences, New Delhi.

13. Now emergency has to be considered, based on the opinion of the doctors. There cannot be any dispute that the petitioner had in fact travelled to Mumbai for a justifiable cause and reason. Surgery was conducted on the advice of the doctors in order to save her life. Emergency can arise at any time and place. It does not give a prior notice or intimation. It suddenly knocks the door and at times does not even give time to comprehend and think clearly, properly and effectively. In view of the aforesaid observations, the present petition is allowed and the respondents are directed to process the petitioner's bills for medical reimbursement and pay the amount to the petitioner at the rates payable for medical reimbursement at par with All India Institute of Medical Sciences, New Delhi. Needful shall positively be done within a period of two months from the date of production of certified copy of the judgment by the petitioner, failing which, then thereafter, petitioner shall be entitled to interest @ 9% per annum, which shall be personally recovered from the erring official(s). Pending application(s), if any, also stand disposed of.