

(2014) 09 DEL CK 0209

In the Delhi High Court

Case No : W.P.(C) 2790/2014, C.M. Nos. 5796 and 5797/2014

North Delhi Municipal Corporation

APPELLANT

Vs

Rajinder Sharma

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2014) 09 DEL CK 0209

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Prabhsahay Kaur and Manav Gupta, Advocate for the Appellant; T.D. Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The North Delhi Municipal Corporation [hereafter "the Corporation"] has approached the Court under Articles 226 of the Constitution, assailing an order of the Central Administrative Tribunal (CAT) dated 16th December, 2013. The CAT directed the Corporation to reimburse the medical expenses of the Respondent, its employee [hereafter "the Applicant"], who had undergone a surgery in a private, non-empanelled hospital.

2. The Corporation provides medical facilities to its employees under the C.S. (MA) Rules of 1944 [hereafter "the Rules"]. Under these Rules, employees can undertake treatment at recognized or empanelled Government hospitals, or private hospitals if recommended to do so by an authorized medical officer. In cases of emergency, prior authorization is inessential. In 2006, the Corporation amended the Rules, extending cases in which unauthorized medical treatment at private hospitals could be undertaken, to "real emergencies, accidents and other deserving cases."

3. In March 2010, the Applicant was advised by a doctor at Gangaram Hospital to undergo a cardiac evaluation. Consequently, he went to Indraprastha Apollo

Hospital, and underwent a bypass surgery. In June 2010, his representation for reimbursement of medical expenses was rejected by the Expert Committee set up by the Corporation to look into such claims. The Applicant then obtained an Emergency Certificate from the Hospital, and made a second representation. This too was rejected.

4. The Applicant approached the CAT. In August 2011, the CAT issued an order directing the Expert Committee to consider the Applicant's claims, while limiting them to the Central Government Health Service's (hereafter "CGHS") prescribed rates. In December 2011, the Committee did so, and rejected the claim once again.

5. In 2013, the Applicant filed another application before the CAT. The CAT decided in his favour, and directed the Corporation to reimburse the medical expenses, as limited by CGHS rates. This order is questioned in these proceedings.

6. It was pointed out before the CAT that the Corporation's Expert Committee decided the question of reimbursement on the ground that the Applicant had planned his surgery and that the hospital was miles away from his residence; if the case was one of real emergency, there were several hospitals near the vicinity of his house. In its first rejection of the Applicant's claim, the Experts Committee's remarks include "planned procedure; unrecognized centre; no emergency " not recommended." In its third " and final " rejection of the Applicant's representation, the Committee has stated that

"treatment taken from Apollo Hospital in emergency ward does not mean that he was having any emergency situation Expert Committee is of the view that after having a coronary angiography done from Sir Ganga Ram Hospital and a By-Pass Surgery from Apollo Hospital Sh. Rajinder Sharma opted for a planned procedure from an unrecognized hospital hence his claim cannot be recommended for reimbursement by the expert committee."

This claim is repeated on many occasions.

7. The CAT overturned the decision of the Expert Committee. Its order, requiring the Corporation to reimburse the Respondent was based on two grounds. The CAT found, on fact that the Respondent's situation was one of emergency. Independently of that, the CAT also held that:

"7. As can be seen from the observations of the Committee, the claim of the applicant for reimbursement is not found tenable because the procedure of bypass surgery from Indraprastha Apollo Hospitals opted by the applicant was a planned procedure and instead of undergoing such procedure from a hospital, which is not recognized by the MCD, he could have very well gone to AIIMS, J. B. Pant Hospital and Dr. R. M. L. Hospital.

8. It is true that being at Chandni Chowk, the applicant could have been taken to any of the nearby hospitals, which were also recognized by the MCD. However, in

the admission slip, it is clearly indicated that the applicant was admitted in emergency. Also in the certificate issued by Dr. Ganesh K. Mani, Senior Consultant, Indraprastha Apollo Hospitals dated 23.7.2010, it is indicated that the applicant, a 57 years old male working in Accounts Department, MCD, was admitted in Indraprastha Apollo Hospitals on 23.3.2010 in emergency with the presenting complaints of recurrent angina. It is admitted by the learned counsel for the respondents that in a number of cases (page 44 of the paper book), the respondents have recommended the reimbursement of the expenses, the cases being emergent. Merely because there were nearby recognized hospitals and the applicant was taken to Indraprastha Apollo Hospital, it cannot be concluded that he was not in emergent need of medical treatment.

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11. As can be seen from the observations of the Committee (ibid), it is nowhere mentioned that the applicant was not suffering from the serious nature of the disease. What is observed is that there were certain hospitals, which were recognized and the applicant had opportunity to take opinion from Sir Ganga Ram Hospital. Another reason indicated is that the procedure opted was a planned procedure. In view of the aforementioned judgments of this Tribunal and the Hon'ble Apex Court, i.e., right to self-preservation has a species in the light of self-defence in criminal law, in order to preserve his life and body, one could not take the risk to stand in queue in the Government hospital of AIIMS and he would be well advised to avail the treatment wherever it is available without there being any need to stand in the queue, the respondents are not justified in denying reimbursement of medical expenses incurred by the applicant on treatment of serious ailment he was suffering from. Paragraph 12 of the judgment passed by the Hon'ble Supreme Court in Surjit Singh's case (supra) reads as under:-

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12. Though learned counsel for respondents has tried to distinguish the aforementioned two decisions taking the plea that the facts of those cases are different from the one in hand. It is very rare situation that the facts of two cases are exactly identical. When we follow the law of precedent we need to go by the ratio decidendi and not by facts of the case. The ratio of two judgments is that a person has not only the liberty but also a duty to preserve his life and need to make all possible efforts for the purpose and that he need not to stand in queue to avail the treatment in Government hospital and he can take the treatment wherever available without there being requirement to stand in the queue. For easy reference, paragraphs 7 and 8 of the Order of this Tribunal in Rekha Saxena's case (supra) read as under:-

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13. I am also not impressed by the submission of learned counsel for respondents that if a direction is issued to the respondents to reimburse the

expenses incurred by the applicant on medical treatment, the floodgate would be opened. It is not so that in the present case the applicant was not suffering from serious ailment and he was not admitted in Indraprastha Apollo Hospitals in emergency. Besides it is quite unnatural that a large number of employees would be suffering from cardiology risk and go for aorto coronary artery bypass grafting surgery in emergency. Besides even if the cases are large in number, once an employee is member of a health scheme introduced by his employer, the expenses incurred by him on the treatment need to be reimbursed unless the claim is found false or in excess of the prescribed rates. It is true that in such cases where the ailment is not serious and the treatment is not availed as per the conditions mentioned in the scheme, the reimbursement may be denied. In the present case, it is not so that the ailment from which the applicant was suffering is considered as not serious."

This order of the CAT has been questioned in the present proceedings under Article 226 of the Constitution of India.

8. Learned Counsel for the Corporation urges that the Expert Committee "denied reimbursement on the ground that the Applicant's situation was not an emergency, but a planned procedure. In this context it is contended that in the amended rules (relied on in the Corporation's Memorandum of Appeal), clearly provide reimbursement for expenditure incurred on treatment in respect of deserving cases, where treatment has been taken from Private/non- recognized Nursing Homes/Hospitals in real emergency and unavoidable cases. The Corporation's counsel further argues that the Applicant deliberately and consciously opted for a planned procedure by himself and underwent a heart surgery from an unrecognized private hospital, being Indraprastha Apollo Hospital, Sarita Vihar and thereby disentitled himself from any reimbursement in terms of the said Rules/Resolution. To support this claim, the Corporation argues that a number of reputed government and private hospitals are in close proximity to the Applicant's place of residence. Consequently, his decision to go to Sarita Vihar, which is much further away, undermines his claim that this was an "emergency situation". This Court notices that an identical argument was made before the CAT.

9. Counsel for the Applicant/Respondent urges that the facts of the present case do not reveal that interests of justice lie in interfering with the order of CAT. While it may be a fact that the Applicant went to a non-empanelled hospital, that it was in a medical emergency cannot be doubted. Underlining that when the surgery is not and cannot be in doubt and all that the Applicant seeks is reimbursement in terms of the CGHS rates and no more, it was argued that the CAT relied on the authority of the Supreme Court's rulings in this case.

10. The narrow question which has to be decided is whether the CAT's determination that there was an emergency which warranted the Applicant approaching the Indraprastha Apollo Hospital, suffers from infirmity, given the prevailing policy of the Corporation with respect to reimbursement in the case of

emergency medical treatment. The Corporation- and its Expert Committee place emphasis on the circumstance that the Applicant chose to go to a far off hospital instead of approaching a nearby empanelled institution. The Applicant's argument, however, is that there was an emergency and he was rushed to Indraprastha Apollo Hospital. Two objective aspects have to be noted; one is that the Applicant had consulted an MCD (Corporation) doctor on 22-03-2010; he confirmed the coronary artery disease; however, the applicant did not get admitted to any hospital that day. The next day, he was rushed to Apollo. The discharge summary issued by the Indraprastha Apollo Hospital clearly states that the patient was brought in an emergency. Now, there is no material on the record that indeed the Applicant had approached the Indraprastha Apollo hospital after consulting the doctor at Ganga Ram hospital, and later, the MCD doctor. The inference by the Expert Committee is based on its surmise that the Applicant must have consulted with doctors at Indraprastha Apollo Hospital beforehand and planned the surgery. While the applicant's conduct, no doubt, does not explain why he was not removed to a nearby hospital, the fact that he was taken to the Apollo hospital on the concerned date, in the opinion of this court, cannot result in the conclusion that he had planned the surgery. There is no independent evaluation by the Expert Committee, through any medical or diagnostic test, that the surgery did not take place; in fact its view is based on the surgery having been undergone by the Applicant. The clear statement in the document that the patient was brought in an emergency, there should not have been disbelieved without any objective material.

11. As observed earlier, the Applicant did not explain why the empanelled hospitals near the vicinity of his residence were not approached because it would have been logical to do so. That, however, can lead to no conclusion because in an emergency, the concern of the patient's relatives and those most proximate would be to rush him to a place which is best equipped to treat him; may be those who had to take that decision, did so, given that the Applicant was not in the fittest condition to decide for himself. In such eventualities, a fine balance between the need to follow established protocol (to claim reimbursement in accordance with rules), on the one hand, and the anxiety to alleviate the patient's critical condition at the earliest point in time cannot be weighed in golden scales, in favour of the former.

12. This Court notes that the CAT relied on the authority of the Supreme Court's decision in *Surjit Singh Vs. State of Punjab and Others*, . In that case, an employee with the Punjab Police force fell ill while in London, and had a bye-pass surgery, which cost an estimated Rs. 3 lakhs. On his return to India, he claimed reimbursement. The government refused. During litigation, however, it was stated that the government was willing to pay the expenses for the bye-pass surgery to the extent of the cost of such treatment at AIIMS (Rs. 40,000/) . The High Court accepted this proposal, and directed the payment of the money. Aggrieved at this order, the Corporation approached the Supreme Court.

13. The Court found that according to the State's own policy, there was a list of diseases for which specialized treatment was unavailable in Punjab government hospitals, but available in certain private hospitals. Those hospitals were "recognized" by the government for the purposes of treatment. One listed treatment was open-heart surgery, for which the relevant private hospital was Escorts, at Delhi. Consequently, the Court held that the Corporation ought to be reimbursed based on the price charged by Escorts, since if " based on the List " he had undertaken treatment there, he would have received reimbursement. The Court invoked Article 21, and then cited, with approval, a Punjab and Haryana High Court opinion, which had stated:

"we cannot loose sight of factual situation in the AIIMS New Delhi, i.e. with respect to the number of patients received there for heart problems. In such an urgency one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved."

14. The Court further noted:

"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."

15. It is important to note that the Court expressly remained agnostic on the question of whether or not this was a case of emergency. The Court held that "since [the Appellant] has now brought down his claim to the rates prevalent in the Escorts in place of that of AIIMS, further reference to emergency treatment etc. would not be necessary. It would hypothetically have to be assumed that the appellant was in India, had not subjected himself to Medical Board examination, and had gone on his own to the Escorts and got himself operated upon for Bye-Pass Surgery."

16. The logic of the Surjit Singh (supra) decision seems to be that a Government policy which provides a procedure for treatment and reimbursement in cases of certain ailments, creates a threshold entitlement for its employees (flowing from

Article 21) . If the applicant runs up a bill higher than that contemplated by the Policy, because he goes to a hospital not on the official list " then while the Government is not obligated to reimburse him the full cost of his treatment, it is nevertheless obligated to provide him the amount of reimbursement contemplated in the policy, for that particular ailment. In *Surjit Singh (supra)*, the applicant underwent a treatment that was specifically referred to in the Policy, but not at a listed hospital. The Court's answer was not to deprive him of reimbursement altogether, but to allow reimbursement to the extent that the Policy contemplated.

17. The situation in *Surjit Singh (supra)* is analogous to the situation in the present case. As in *Surjit Singh (supra)*, in this case as well, the applicant has undergone treatment at a non-recognised hospital, while the government policy recognise public as well as other private hospitals. Furthermore, the fact that in its submissions, the Corporation argues that the same kind of treatment is available in private, empanelled hospitals, implies that the Corporation would not have been averse to paying for the same treatment, had it been undertaken in an empanelled hospital.

18. It might be argued that in *Surjit Singh (supra)*, the applicant had no realistic way of undertaking treatment at a recognised hospital (such as Escorts), since he was in London when the disease struck. Here " as the Corporation has argued " the Respondent could have undergone treatment at any number of public or private hospitals in the near vicinity, instead of going all the way to Sarita Vihar. However, this distinction would have been relevant if, in *Surjit Singh (supra)*, the Court had decided the case on the ground that there was an emergency. As we have seen above, the Court saw fit not to rule on the matter. Therefore, the presence or absence of viable (recognised) alternatives makes no difference to whether an applicant should be allowed to claim the threshold level of reimbursement contemplated by the Policy. In the instant case, that threshold level is the CGHS rates, which is what the Tribunal ordered.

19. The Respondent has also relied on the Supreme Court's judgments in *State of Punjab and others Vs. Mohinder Singh Chawala, etc., ,* and *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., .* Neither of those cases are of particular relevance to this matter. In *Mohinder Singh Chawla (supra)*, the same Punjab Policy was at issue. The State agreed to pay the cost of the open heart surgery at Escorts, but paid the room-rent at the rate charged by AIIMS. The Court held that:

"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."

Accordingly, the government was directed to pay room rent as well.

20. In *Ram Lubhaya Bagga (supra)*, the policy itself had been changed, and was

now limited to "rates fixed by the Director, Health and Family Welfare, Punjab, for a similar package treatment or actual expenditure whichever is less." Specifically, for an open- heart surgery, AIIMS rates were reimbursed. The policy was challenged. The Court declined to enter into the realm of policy formulation, holding that it was based on a number of factors that it was not competent to evaluate. The basic scheme of the Policy was found to be reasonable and constitutional. Ram Lubhaya Bagga (supra) neither helps nor hinders the Respondent's case, because no challenge is being made to the existing policy; rather, it is the interpretation of the terms of the existing Policy that are at issue.

21. It is important to note that in none of the three cases discussed above, was reimbursement denied entirely. Rather, it was limited to amounts in accordance with whatever Policy was in force.

Guidelines

22. Notwithstanding the merits of this individual case, it is clear that the term "other deserving cases" is vague. The fact that it is preceded by "real emergencies" and "accidents" does not help in its interpretation. Of course, on a plain reading of the rule, cases that are "deserving" must share certain characteristics with "real emergencies" and "accidents". However, there are many characteristics that could potentially be common to emergencies and accidents: severity, urgency, taking away the patient's ability to make a reasoned choice, and so on. Without any further qualification, the term "other deserving cases" vests too much discretionary power with the implementing authority (in this case, the Expert Committee).

23. Following the American Supreme Court case of *Grayned vs Rockford*, the Indian Supreme Court in *Kartar Singh Vs. State of Punjab*, described the impact of vague statutes or policies upon the rule of law:

"It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."

24. The same problems apply in the present case, because it is impossible for an applicant to know beforehand whether or not his case will "subsequently" be ratified by the Expert Committee to be a "deserving case", without any further indication of what that might be.

25. In *Anil Sabbarwal v. State of Haryana*, ILR 1997 (2) P and H, the Punjab and Haryana High Court held that a Policy which required the allotment of plots to "distinguished and needy persons", as determined by the Chief Minister, was

unconscionably vague in the absence of any guidelines for the exercise of administrative discretion. In manner and import, "deserving cases" is strikingly similar to "distinguished and needy persons".

26. In cases where there is a gap, or a lacuna, in a set of rules, which raises possible constitutional problems, the Court is empowered to direct the statutory authority to frame appropriate guidelines to deal with the matter. This proposition was affirmed by the Supreme Court as recently as 2013. In *State of Punjab Vs. Salil Sabhlok and Others*, , the Court held that:

"the administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairperson and members of the Punjab Public Service Commission. That it has failed to do so does not preclude this Court or any superior Court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or member of the Punjab Public Service Commission, does not imply that this Court cannot direct the Executive to frame guidelines and set the parameters. This Court can certainly issue appropriate directions in this regard."

27. Consequently, the Corporation is required to frame guidelines for deciding the import of the term "other deserving cases".

Conclusion

28. Following the decision in *Surjit Singh (supra)*, and the other cases discussed above, the existing precedent provides at least an arguable defence of the CAT's decision to award reimbursement at CGHS rates. On the other hand, the Corporation has not demonstrated sufficient reasons as to why that decision should be set aside. Therefore, the Petition has to fail.

29. The Corporation is also directed to frame appropriate guidelines for the exercise of the Expert Committee's discretion in deciding what cases qualify as "other deserving cases", and merit reimbursement. The writ petition is, therefore, dismissed along with the pending applications without order on costs.