

(2014) 09 NCDRC CK 0109

In the National Consumer Disputes Redressal Commission

O.M. Mahesree, Ias

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 562 : 2014 4 CPJ 283

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Judgement

1. REVISION petition no.4904 of 2013 has been filed against the judgment and order dated 29th November 2013 passed by the Assam State Consumer Disputes Redressal Commission, Guwahati ("the State Commission ") in First Appeal no. 62 of 2009.

2. THE brief facts of the case as per the petitioner/ complainant are that till August 2000, the salient features of the CGHS were confined to the official records only and the beneficiaries were not in a position to know them except to the extent orally made known to them by the implementing agencies. For the first time during the month of August 2000, the respondent no. 1 / OP NO. 1 made a public declaration of the CGHS for the benefit of the beneficiaries. Under the CGHS, the retired members of the All India Services, inter alia, can get a permanent card by paying requisite fees called contribution which is ten times the annual contribution based on the last pay drawn by the incumbent concerned. Respondent no. 3/ OP no. 3 has been responsible for implementing the CGHS through recognised private nursing home in those areas where the available comprehensive medical facilities provided by the Government Hospitals are either inadequate or improper or are otherwise not available conveniently. Respondent no. 4/ OP 4 being the direct representative of respondent no. 3/ OP 3 are fully responsible for the proper and adequate implementation of the CGHS in the area covered by the Guwahati Joint Director.

3. THE petitioner suffered a mild stroke on the midnight of 17.06.2004 requiring him to undergo treatment in a hospital, where the petitioner was advised to go for a by -pass surgery of the heart. The fact was duly intimated to respondent

no. 4/ OP 4 on 14.07.2004. The intimation was given to respondent no. 4 on his own verbal suggestion as is evident from the text of the intimation.

4. THE by -pass surgery was done accordingly by the world renowned cardiac surgeon Dr Bhabananda Das of the Apollo Hospital of New Delhi at a local private nursing home of international standards, but not recognised by respondent no. 4 for their vested interests. Immediately after his release from the Hospital after the by -pass surgery, the petitioner addressed a letter to the Chief Medical Officer (CMO) I/C of the CGHS Dispensary to which his card was attached. The medical reimbursement bill amounting to Rs.1,81,178.79 was duly sent to respondent no. 4 for reimbursement through the CMO I/c who in turn forwarded to the respondent no. 4 with the following certificate: ""The M/R claim bill has been scrutinised, thoroughly and found in order and correct "".

5. THE above bill was reduced to Rs.83,000/ - by respondent no. 4 thereby leaving a clear gap of Rs.98,178.79. When, the petitioner tried to contact the respondent no. 4 he expressed his inability to do so due to his preoccupation with some administrative matters.

6. THE petitioner claimed the following reliefs: (i) A clear direction to the respondents to provide comprehensive medical care facilities in terms of the policy behind the CGHS;

(ii) Till such facilities are made available, the OPs be directed to reimburse the actual expenditure certified by the CMO to which my card is attached;

(iii) A direction to the respondents to reimburse the balance amount, with due interest;

(iv) Compensation for the mental agony and harassment caused to the petitioner by activities/ in activities of the respondents;

(v) Cost of the case as may be decided by the Hon ""ble Forum.

In their written statement, the respondents/ OPs have stated that the Government of India had a fixed rate of reimbursement of almost all procedure/ test which is required and guidelines have been issued in this regard from time to time. The amount of reimbursement in respect of such tests does not depend on the whims and caprices of Joint Director, CGHS Guwahati, but on contrary depends only on Government rules and regulations and guidelines for reimbursement. In regard to the statement made that the respondents asked some queries, he had no alternative but to raise queries if the reimbursement claim was found deficient before making a final settlement to avoid any illegality or mistake. To settle the claim there are several requirements as per guidelines issued by the Government. A copy of Government letter no. S 12020/4/97 CGHS (p) Government of India date 07.04.1999 and the respondent have to fulfil those guidelines.

7. CGHS Guwahati provides only outdoor facility to its beneficiaries. For cases,

which require indoor treatment or hospitalisation are required to be referred by medical officers of the department CGHS dispensaries and in emergency cases can go to Government or pay hospital with earliest intimation to CMO I/c of dependant CGHS dispensary. Where there are no recognized private hospitals available in the area covered under CGHS then the patient who require indoor treatment are preferably referred to Government hospitals and other state run hospitals. Generally, referring a case to private hospitals is not encouraged due to objectives of CGHS.

8. THE petitioner submitted a medical reimbursement claim amounting to Rs.1,81,179/- which was finally settled for Rs.83,000/-. The petitioner's claim has been settled based upon Government prescribed rules and regulations for such reimbursement claim for which maximum ceiling rates are prescribed. The District Consumer Disputes Redressal Forum, Kamrup at Guwahati ("the District Forum ") vide its order dated 28.07.2009 allowed the complaint and gave the following order: ""The complaint is accordingly allowed with the following directions to the opposite parties:

(a)The opposite parties shall pay a total amount of Rs.1,50,000/p - to the complainant towards the harassment, mental agony and injustice suffered by him;

(b)The opposite parties shall also pay an amount of Rs.5,000/- to the complainant towards the cost of this case;

(c)The opposite parties shall make payment of the above amount within 45 days from the date of receipt of copy of this judgment and order failing which the entire amount shall carry an interest at the rate of 8% per annum from the date of this judgment till realisation of the amount "".

9. AGGRIEVED by the order of the District Forum, the respondents filed an appeal before the State Commission. The State Commission in their order dated 29.11.2013 have observed as under: ""On perusal of the impugned judgment as well as the records received from the District Forum, we are of the opinion that the following two issues have emerged for our consideration. (a)Whether inaction of the appellant Government in not recognizing the private hospital or government hospital under the coverage of CGHS Scheme falls within the purview of the Consumer Protection Act, 1986 or it falls within the realm of the Writ Court? (b)Whether comparison between the case of Shri Hiralal Gogoi and the respondent is sustainable in view of dissimilar background? The learned counsel appearing for the appellant has drawn our attention to Office Memorandum dated 07.04.1999 and the relevant portion of the Office Memorandum dated 07.04.1999 are reproduced herein below: REFERRAL SYSTEM 1.Procedures/ investigations for which there is no prescribed CGHS rate for CGHS recognized private hospitals/ diagnostic centre Permission for tests/ procedures, the estimates of which are not more than Rs.20,000/- may be granted HOD (For serving employees) and by Head of CGHS covered cities (for

pensioners) provided the tests/ procedures have been recommended by specialist. Reimbursement may be limited to AIIMS and outside Delhi. In case rates have not been fixed by AIIMS for any particular procedure/ investigation/ test reimbursement made be made as per actual. EX -POST FACTO APPROVAL 4. Emergency cases within approved ceiling rates in respect of treatment taken in private hospitals recognized under CGHS Powers are delegated to the Head of CGHS organisation in the CGHS covered cities both in respect of pensioners and serving employees to decide such type of cases.

8. Treatment taken under emergency but approval to be given above the approved rates Ministry of Health and Family Welfare may decide such type of cases in special circumstances depending upon the merits of each cases. If any member of CGHS scheme is aggrieved by any of the clauses quoted above or any other clause contained in the Office Memorandum dated 07.04.1999, he may have a right to challenge the same before Writ Court on the perceived ground of violating Article 14 and 16 of the Constitution of India, if so advised, but the correctness, legality, arbitrariness, constitutionality of Office Memorandum and the clauses therein, cannot under any circumstances, be a subject matter for adjudication before a Consumer Forum. As the case in hand is a matter of policy decision of the Government, there may even be little scope for challenging the same before the Writ Court. We make no further comment on this. Though the District Forum has not clearly spelt out the ground and justification in the impugned judgment for granting an award of Rs.1,50,000/-, it would necessarily presuppose that the aforesaid condition of the Government policy were impliedly held illegal, otherwise, such a huge amount would not have been granted by way of compensation. We are of the opinion that the District Forum while passing the impugned judgment, had usurped itself the power of a Writ Court, which is not permissible in law and this fact is manifested in the award itself, therefore we hold that this direction cannot stand in law. With regard to the second issue, Sri Hiralal Gogoi took his treatment at Apollo Hospital, New Delhi between 13.06.2002 to 26.06.2002 and his reimbursement claim was settled as per CGHS rate of Delhi. If a Member covered by the scheme, took treatment and had undergone surgical operation in one of the empanelled hospitals in Delhi, rate of reimbursement has to be in accordance with clause 7, 7A and 7B of the Office Memorandum dated 07.04.1999. However, in the case of surgery undergone by the respondent at GNRC Hospital, under the supervision of one Dr Bhabananda Das, GNRC not being a hospital empanelled by CGHS Scheme, rate of reimbursement has to be in terms of clause I of the Office Memorandum dated 07.04.1999. In other words, in the case of Hiralal Gogoi the treatment was done in an empanelled hospital in Delhi so there was no difficulty in determining the rate of reimbursement, whereas in the case of the respondent, surgery was done at Guwahati in a hospital not empanelled under the coverage of the aforesaid scheme, therefore, rate has to be determined as per clause 1 of the Office Memorandum dated 07.04.1999. These two officers, in so far as their treatments are concerned as reflected in the impugned judgment, were not placed in similar

circumstances and the two cases are not comparable for the reasons discussed above and this proposition is fortified by the doctrine "unequals cannot be treated equally" and cannot be expected also. In such circumstances, question of discrimination does not arise. There was no averment and allegation in the complaint nor was there any finding in the impugned judgment and quantum of reimbursement arrived by the appellant was factually erroneous and relevant considerations were ignored. The only contention is about difference in the quantum of reimbursement between Hiralal Gogoi and the respondent. This argument cannot hold good in view of our finding above. In the facts and circumstances stated above, we are of the opinion that the impugned judgment was passed in wrong premises and also on irrelevant consideration and as such, the impugned judgment dated 28.07.2009 is liable to be interfered with consequently, the same is hereby set aside. In the result, the appeal allowed.

10. HENCE, the petitioner has filed this present revision petition. The grounds for the revision petition are that: ·The State Commission framed some issues which were neither specifically pleaded by the appellants in the appeal petition nor specifically pressed. ·The State Commission overlooked/ ignored admitted facts elaborately recorded in the impugned judgment of the District Forum in its judgment dated 28.07.2009. ·Writ Court Jurisdiction has been wrongly invoked in respect of the Office Memorandum no. S - 12020/4/97 (P) dated 07.04.1999. The petitioner had sent a letter that because of his old age he is unable to come and the case may be disposed of on merits. We have gone through records of the case.

11. THE facts of the case are not disputed. The main grievance of the petitioner is that he has spent Rs.1,81,178.79 of which reimbursement of only Rs.83,000/- was made leaving a clear gap of Rs.98,178.79. He alleges discrimination in the treatment given to him. In a similar case of by -pass surgery in respect of another IAS Officer he was allowed Rs.1,54,000/-. All these issues have been dealt with in great detail in the order of the State Commission. We do not feel that the State Commission has over looked or ignored the admitted facts and they have correctly based their opinion on the rules and provisions of the CGHS Scheme. The State Commission has given a well -reasoned order and we find no reason to disagree with the same.

12. THE Hon "ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed: "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different

(and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora. ""

Thus, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed with no order as to cost.