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**(2014) 05 RAJ CK 0162**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 8759/2011

Pehap Singh — APPELLANT

Vs

State of Rajathan and Others — RESPONDENT

**Date of Decision :** 05-05-2014

**Acts Referred:**

**Citation :** (2014) 05 RAJ CK 0162

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** C.S. Kotwani, Advocate for the Appellant; Anil Bissa, Advocate for the Respondent

**Final Decision :** Disposed Off

## Judgement

Vineet Kothari, J.—The petitioner has filed the present writ petition for reimbursement of medical expenses incurred in relation to head injury by the petitioner at Manidhari Hospital, Jodhpur. The petitioner incurred a sum of Rs. 1,06,289/- for the medical treatment given to him. The respondent-State has not paid anything towards the same.

2. The learned counsel for the petitioner has relying upon the recent decision of this Court in the case of Jawahar Lal Bohra Vs. State of Rajasthan and Ors. (SBCWP No. 6350/2005, decided on 26.03.2014) submitted that the respondents may be directed to reconsider the claim of the petitioner in the light of said judgment. This court in the case of Jawahar Lal Bohra (supra) held as under:

18. The contention raised by the learned counsel for the respondent that since the Asian Heart Institute, Mumbai was not the recognized hospital by the State Government, and therefore, the claim of the petitioner could not be accepted, is also a contention not worthy of acceptance. Firstly, as aforesaid the limited number of hospitals outside the State of Rajasthan, which have been included in the 1970 Rules, makes it a miserably narrow list of such speciality hospitals, which can provide the treatment in complicated cases. Prescribing the hospitals

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of only at two stations of Delhi and Mumbai also does not seem to have any rational nexus. The point of time at which the list of these hospitals were prescribed also goes back to many years before the treatment in the present case was taken by the petitioner or may be taken by other similarly situated persons later on. It is true that 1970 Rules have since been replaced by the State Government by another set of Medical Attendance Rules in the year 2008 and then again by the another set of new Rules in the year 2013 but the fact remains that the present case is covered by the Rules of 1970 which held the field up-to the year 2008 and in the present case, the petitioner having undergone that treatment for his heart ailment in the year 2004 will be admittedly covered by the Rules of 1970. Therefore, if the aforesaid list of Hospitals for Rules 6 or 7 of the 1970 Rules was to restrict the claims of the Government Servants or the retired Government servants/pensioners, the very purpose of making of provisions for the reimbursement of such medical expenses under the 1970 Rules will be frustrated, if the State was to be allowed to negate such claims in all other cases. Such cannot be the intention of the medical attendance rules in question. Therefore, on the principles of the harmonious construction in the present case, the petitioner is held entitled to the reimbursement of his medical expenses incurred by him.

19. Apparently and avowedly, these medical attendance Rules providing for reimbursement of the medical expenses to the Government servant and retired pensioners, is a beneficial and welfare legislation meant for the welfare of the Government servants and, therefore, a liberal, sympathetic and objective interpretation for the applicability of these Rules, has to be made by the Courts and not a pedantic or narrow approach of the matter would subserve the interest of justice.

20. In the aforesaid facts and circumstances the case, this Court would have directed the complete reimbursement of the expenses incurred by the petitioner and as claimed by him, because the relevant facts are not being disputed by the respondent State of his disease, treatment in the Asian Heart Institute, Mumbai, or actual incurring of the expenses but as the Rule exist, the aforesaid harmonious construction of the two Rules is possible in the facts of the present case and that is why this Court would dispose of this writ petition by directing the respondent-State to re-consider the medical reimbursement claim made by the petitioner to the extent of the expenditure, if such actual treatment had been taken by the petitioner in the specified recognized Government Hospital, namely, Bombay Hospital, at Mumbai. The reimbursement of claim to that extent cannot be disputed and denied by the respondent-State, otherwise it will be negation of the rights of the pensioner or the Government servant to claim such reimbursement under the 1970 Rules. It may be noted here that the applicability of these Rules has not been questioned by the respondent-State except the contentions raised to the extent of sub-rule (2) of Rule 2, which has already been negatived by this Court above. Therefore, the State is bound to reimburse the medical expenses, where a case is covered by either of the Rule 6 or 7 of the

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Rules of 1970 at least at the rates of nearest recognized hospital under any of the Rule 6 or 7 outside the State of Rajasthan, where the patient or Government servant has taken the treatment in a hospital outside the State of Rajasthan in an emergency and such claims cannot be altogether rejected.

21. The details and the range of expenditure at the Bombay Hospital, the recognized hospital, is however not available on the record of the Court. Therefore, any specific direction to reimburse the claim of the petitioner to a particular extent, cannot be made in the present case. Though the learned counsel for the petitioner submitted that he has available those rates of the Bombay Hospital, of the year 2002 but in the present case, the treatment was taken by the petitioner in the 2004, when the rates may be and presumably would be different, depending on the facility of such treatment available in Bombay Hospital at that point of time. Therefore, it remains to be verified as to what were the rates applicable for such treatment, which the petitioner actually undertook in the Asian Heart Institute, in the year 2004 in Bombay Hospital, at that point of time. The respondent-State through its Medical & Health Department, can very well verify such rates and ascertain such information from the authorities of the recognized hospital, namely, Bombay Hospital, Mumbai, even now. If the Bombay Hospital, Mumbai, does not provide any such information or verification within stipulated time frame, the entire claim of the petitioner of actual expenditure incurred by him for Rs. 3,13,016/- shall be reimbursed to him.

22. Therefore while holding the petitioner entitled to the reimbursement of his medical expenses for his treatment for heart ailment, which he took in Asian Heart Institute, Mumbai, for such reimbursement as per Rule 6 of the 1970 Rules, this writ petition is disposed of by directing the Director of the Medical and Health Department of the State Government to forward the relevant papers of the actual treatment taken by the present petitioner at the Asian Heart Institute, to the Bombay Hospital, Mumbai and request them to supply the information with regard to the expenses which would have been incurred in the Bombay Hospital, had the petitioner taken this treatment actually in Bombay Hospital itself at that point of time. Upon such information being received, the amount as permissible and chargeable by the Bombay Hospital, may be paid to the present petitioner against his claim of actual expenses incurred by him for his treatment in Asian Heart Institute, Mumbai. It is needless to say that if such charges by Bombay Hospital are shown to be more than the claim raised by the petitioner, only the amount as claimed by the petitioner shall be reimbursed to him and on the other hand, if the charges quoted by the Bombay Hospital are less, than the amount claimed by the petitioner, then such lesser amount would be reimbursed to the petitioner. If the amount so ascertained and paid to the petitioner is significantly less than the amount claimed by the petitioner, the petitioner will be free to make appropriate representation to the respondent Joint Director of Medical and Health Department, Jodhpur, who shall decide such representation by a speaking order and direct complete reimbursement to the petitioner or his

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authorised representative as per his aforesaid claim exercising the powers of relaxation under Rule 12(2) of the Rules of 1970. The aforesaid exercise may be undertaken and completed within a period of 3 months from today since already a long period of 10 years has already passed by since the petitioner underwent the said treatment at Mumbai in the year 2004.

23. The writ petition is, accordingly, disposed of. No costs. A copy of this order be sent to the concerned parties forthwith.

3. The present writ petition is accordingly disposed of with a direction to the respondents to decide again the medical claim of the petitioner in the light of aforesaid judgment within a period of three months from today. No order as to costs. A copy of this order be sent to the parties concerned forthwith.

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