
(2015) 08 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2997 of 2004

Rakesh Kumar Kalra

APPELLANT

Vs

Rajasthan Rajya Vidhyut Prasaran Nigam Limited and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 RAJ CK 0081

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : B.S. Sandhu, for the Appellant; Dhanesh Saraswat, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J—By way of the instant writ petition, the petitioners being the legal representatives of late Shri Rakesh Kumar Kalra a former employee of the respondent Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. have approached this Court assailing the legality and validity of the order Annexure-9 dated 13.5.2004 and Annexure-10 dated 21.5.2004 issued by the respondent Nigam.

2. Succinctly stated the facts relevant for the disposal of the writ petition are narrated hereinbelow.

3. Late Shri Rakesh Kumar Kalra was an employee of Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. (hereinafter referred to as the Nigam). He suffered a cardiac problem in the month of June, 2002 and was admitted at the Mahatma Gandhi Hospital, Jodhpur in the unit of Dr. R.S. Gehlot. He was diagnosed to be suffering from VSD with REFRACTORY CCF (Ventricular Septal Defect with Refractory Congestive Cardiac Failure). He was discharged on 26.6.2002 and was referred to Escorts Heart Institute & Research Centre, New Delhi for further treatment. The reference note in the discharge ticket mentions about the patient's earlier surgery for VSD at the Escort Hospital in the year 1992. After being discharged, Shri Kalra immediately approached the Principal, Dr. S.N. Medical College,

Jodhpur for being referred to another hospital for the treatment of his ailment. The Principal, Dr. S.N. Medical College issued a reference letter Annexure-2 dated 26.06.2002 to Shri Kalra mentioning therein that treatment for his ailment was not available at any Government Hospital in Rajasthan. Urgent action was recommended because the ailment was considered to be of severe nature. The patient was referred to the Escorts Heart Institute & Research Centre, New Delhi for treatment. The expenditure of treatment was estimated at Rs. 3 lacs.

4. The respondent Nigam, thereupon, sanctioned advance amounts of Rs. 10,000/- & Rs. 3,25,000/- to the employee by orders dated 29.6.2002 & 27.7.2002 respectively. Shri Kalra thereafter got admitted at the Escort Heart Institute & Research Centre, New Delhi and was subjected to Valve Replacement and other cardiac procedures and was discharged from the hospital on 24.8.2002. A total expenditure of Rs. 4,58,802/- was incurred in his treatment at the Escorts Heart Institute & Research Centre. Upon return, Shri Kalra submitted a claim for reimbursement of the expenditure incurred in his treatment to the respondent Nigam.

5. The authorities by taking recourse to rules and regulations applicable in the Nigam made an assessment of the expenditure which would be incurred for a similar treatment at AIIMS and thereafter by order Annx. 9 dated 13.5.2004, a sum of Rs. 1,91,184/- was sanctioned in favour of Shri Kalra. Vide order Annexure-10 dated 21.5.2004, Shri Kalra was directed to refund the difference amount of Rs. 1,43,816/- which had been sanctioned and paid in excess to Shri Kalra by way of advance. Shri Kalra submitted representations against the said orders and prayed for full reimbursement of the remaining expenses to the tune of Rs. 1,23,802/- but the same did not meet any response upon which he approached this Court by way of the instant writ petition. Shri Kalra passed away during pendency of the writ petition upon which his legal representatives were allowed to pursue the writ petition.

6. It is averred in the writ petition that the respondent Nigam has adopted the Rajasthan Civil Services (Medical Attendance) Rules, 1970 (hereinafter referred to as the Rules of 1970) for dealing with the medical claims of its employees. It is asserted that the employee's case is fully covered by Rule 7 of the Rules of 1970 and thus full reimbursement of the medical expenses incurred in employee's treatment at Escorts is required to be made. Attention of the Court was drawn to the notification dated 7.8.2002 issued under the Rules of 1970 whereby Escort Heart Institute & Research Centre was included in the list of recognized referral hospitals.

7. The respondents have filed a detailed reply to the writ petition wherein much stress has been laid on the circular dated 7.8.2002 adopted by the Corporation which reads as under:--

"The Board of Directors, RVPN in its 42nd meeting held on 11.7.2002 has decided to allow, hence-forth, the reimbursement of the expenses incurred by an

employee on taking treatment of himself/herself or members of his/her family, of such a disease treatment of which is available in the Govt. Hospital within the State but the employee opts to take treatment in a hospital/institution (other than a Govt. Hospital) within/outside the State.

Reimbursement of such expenditure shall be subject to the following conditions:--

I) The amount to be reimbursed shall be restricted to the estimated amount indicated in the certificate to be issued by the Principal of Govt. Medical College/ Director, Medical and Health Services, to expenditure for similar treatment taken at a Govt. Hospital.

II) In case the treatment is not taken in a Govt. Hospital in the State at patient's choice, the reimbursable amount would be equivalent to expenditure admissible in the Govt. Hospital. The hospitals at which treatment may be taken and the diseases identified for such treatment shall be the following:--

A. HOSPITALS

1. Santokbha Durlabhji Memorial Hospital, Jaipur.
2. Bhagwan Mahaveer Cancer Hospital and Research Centre, Jaipur.
3. Monilak Hospital and Research Centre, Jaipur.
4. Tongia Heart & General Hospital, Jaipur.
5. AIIMS, New Delhi.
6. Escort Hospital and Research Centre, New Delhi..... "

8. The above circular was issued on the basis of a resolution dated 11.7.2002 drawn up in a meeting of the Board of Directors. Under the resolution, reimbursement of expenses incurred by an employee for the treatment of a disease of which, treatment was available in a Government Hospital within the State but the employee opted to take treatment in a hospital/institution other than a hospital within/outside the State, was made admissible at the rate equivalent to expenditure incurred for a similar treatment in the Government Hospital. Further reference is made in the reply to the circular dated 6.3.2002 issued by the State Government, as per which, in cases where treatment of the ailment of a Government employee is not possible in a Government Hospital in the State, then all such employees are compulsorily required to be referred to AIIMS. In case, the employee did not agree for treatment at AIIMS and takes treatment in any other recognized hospital, the reimbursement of the medical claim of such employee was made permissible only to the extent of the expenditure incurred for similar treatment at the AIIMS. Reliance is also placed upon the undertaking submitted by the employee before receiving the advance amount and the prayer made in the writ petition is strongly opposed.

9. Mr. B.S. Sandhu, learned counsel for the petitioner strenuously contended that neither the circular Annexure R/1 dated 7.8.2002 nor the circular Annexure R/2

dated 6.3.2002 adopted by the respondent Nigam can affect or curtail right of the petitioners to claim full reimbursement of the expenses incurred in the treatment of Shri Kalra at the Escorts Heart Institute & Research Centre, New Delhi. He contends that the employee's case is squarely covered by Rule 7 of the Rules of 1970 and thus while quashing the impugned orders Annexures 9 & 10, the respondents be directed to make full reimbursement of the medical expenditure incurred in the treatment of employee late Shri Rakesh Kumar Kalra.

10. Per contra Mr. Dhanesh Saraswat, learned counsel for the respondents, vehemently opposed the submissions advanced by the petitioner's counsel by placing reliance upon the circular dated 7.8.2002 adopted by the Nigam and the circular dated 6.3.2002 issued by the State Government and prayed that the writ petition should be dismissed. He, however, candidly conceded that the Rules of 1970 have been fully adopted by the RRVPNL.

11. Heard and considered the arguments advanced by the learned counsel for the parties. Perused the material available on record.

12. From the admitted case of the parties, the following facts are undisputed:--

"A. That the employee Shri Rakesh Kumar Kalra was suffering from a disease for which no treatment was available in any of the Government Hospitals in the State of Rajasthan.

B. The treating doctor at the Mahatma Gandhi Hospital, Jodhpur as well as the Principal, Dr. S.N. Medical College, Jodhpur, after diagnosis, pointedly referred the employee for treatment to the Escorts Heart Institute & Research Centre, New Delhi with the finding that treatment was urgently required as the case was of severe nature and that no treatment for the ailment suffered by the employee was available in any of the Government hospitals within the state.

C. The employee thereafter proceeded to Escort Heart Institute & Research Centre, New Delhi and got himself treated there.

D. That the Rules of 1970 have been adopted by the respondent Nigam for dealing with medical claims of its employees.

E. The Escorts Heart Institute & Research Centre, New Delhi had been recognized under the Rules of 1970 in the Appendix-11 well before Shri Kalra undertook treatment at that institute."

13. Rule 7 of the Rules of 1970 has a material bearing for deciding the controversy in hand and is reproduced hereinbelow for the sake of ready reference:--

"7. Treatment of a disease for which treatment is not available in the State.--(1) A Government servant and the members of his family suffering from a disease for which treatment is not available in any Government hospital in the State shall be entitled to medical attendance and treatment to the extent indicated in sub-rule (2) of this rule in a Hospital/Institution outside the State recognized by the

Government provided that it is certified by the Principal of a Medical College/ Director of Medical & Health Services on the basis of opinion of the Authorised Medical Attendant to the effect that the treatment of a particular disease from which the patient is suffering is not available in any Government Hospital in the State and it is considered absolutely essential for the recovery of the patient to have treatment at a hospital outside the State.

(2) The following charges/expenses shall be reimbursable:--

(a) Cost (Including Sales Tax) of Allopathic Drugs, Medicines, Vaccines, Sera or other therapeutic substances reimbursable under these rules.

(b) Sums actually paid to the Hospital/Institution on account of medical attendance and treatment including charges for surgical operations and ordinary nursing facility.

(c) Travelling allowance for journey by rail/road from duty point at the station at which the patient falls ill to the place of treatment outside the State and back to a single fare of the class to which his classification entitles him under Rajasthan Travelling Allowance Rules. Such travelling allowance shall also be admissible for an attendant, if the Authorised Medical Attendant certifies in writing that it is unsafe for the patient to travel unattended and that an attendant is necessary to accompany the patient to the place of treatment and back.

(3) The facility of medical attendance and treatment in the type of cases mentioned in sub-rule (1) can be had at any of Hospitals/Institutions mentioned in Appendix 11.

(4) For the purpose of reimbursement, the original receipts issued by such Hospital/Institutions and vouchers of medicines etc. shall be countersigned by the Authorised Medical Attendant of Government Hospital on whose advice the treatment outside the State was undertaken."

14. On going through the language of Clause (1) of Rule 7, it is evident that if a Government servant or his family member is found suffering from a disease for which treatment is not available in any Government hospital in the State, in such a situation, the employee is entitled to take treatment in any recognized hospital/ institution outside the State after procuring a certificate of reference from the Principal of Medical College/Director of Medical & Health Services to this effect.

15. In the cases covered by Clause (1), reimbursement of the expenditure is permissible to the extent provided under Clause (2). The break-up of Clause (2) is in three parts; (a) Cost of drugs, medicines, vaccines, sera or other therapeutic substances, (b) sums actually paid to the Hospital/Institution on account of medical attendance and treatment including charges for surgical operations and ordinary nursing facility, and (c) travelling allowance for journey by rail/road and in addition thereto travelling allowances for an attendant. As per Clause (3), the facility of medical attendance and treatment in the type of cases mentioned in sub-rule (1) can be had at any of the Hospitals/Institutions

mentioned in Appendix-11.

16. Thus, the case of the employee falls squarely within the four corners of the aforesaid provision. The resistance offered by the respondents to the employee's claim is mainly founded on the resolution dated 7.8.2002 adopted by the Nigam. The resolution apparently does not apply to the case at hand for the simple reason that it deals with the situation where treatment of the disease is available at a Government Hospital within the State but the employee opts to take treatment in a Hospital/Institution outside the State. Indubitably, the treatment of the employee's ailment was not available in any Government Hospital within the State. Thus, the said order does not curtail or restrict the employee's claim for reimbursement in any manner. The circular dated 6.3.2002 issued by the State Government also does not apply to the case of the employee as the said circular is simply a guideline issued by the State Government and stipulates that in cases where the treatment of an ailing employee is possible in a Government Hospital in the State, he should not be referred to any hospital (recognized or unrecognized) outside the State. It is further stipulated in the circular that where treatment of such ailment is not possible in the State then, such cases should be referred for treatment to AIIMS and in case, the employee voluntarily chooses not to undertake treatment at AIIMS, then he would be entitled to claim reimbursement to the extent of expenditure incurred for similar treatment at the AIIMS. The above circular also does not restrict the employee's claim for reimbursement in any manner. It is undisputed that the employee was not referred to the AIIMS. Thus a situation was not even created where he was required to exercise an option whether or not to take treatment in that Institute. The case is thus squarely covered by Rule 7 which allows for full reimbursement of medical claims submitted in the situations mentioned therein. In this background, this Court is of the firm opinion that the employee's medical claim cannot be curtailed/restricted by the aforesaid circular also and he is entitled to full reimbursement as per Rule 7.

17. In view of the aforesaid discussion, the action of the respondent Nigam in refusing full reimbursement of medical claim submitted by the petitioner is absolutely illegal and contrary to the provisions of Rule 7 of the Rules of 1970.

18. The writ petition thus deserves to be and is hereby allowed. The impugned orders Annexure-9 dated 13.5.2004 and Annexure-10 dated 21.5.2004 are declared illegal, quashed and set aside. The respondents are directed to reimburse the medical claim of the petitioner to the maximum permissible limit in terms of Rule 7 of the Rules of 1970.

19. No order as to costs.