
(2008) 03 DEL CK 0278

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8891 of 2007

R.K. Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 104 DRJ 242

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : S.K. Pandey and A.P.S. Rawat, for the Appellant; Rajesh Banati, Babli Kala, Arun Mehta and D.K. Sharma, for the Respondent

Judgement

Sudershan Kumar Misra, J.—The petitioner was working as a Director in the Ministry of Rural Development. He retired on 31st January, 1992. His wife is suffering from Cancer. It is the petitioner's case that he is entitled for reimbursement of all medical expenses incurred by him on the treatment of his wife in terms of the Central Government Health Scheme ("CGHS") for treatment in approved hospitals which, according to him, has been turned down on flimsy grounds. The petitioner opted for the benefit of CGHS on 27th June, 1996 through the CGHS Dispensary No. 79, Vivek Vihar, Delhi. An Identity Card, bearing Token No. P050093, was duly issued to him. This card is valid both for himself and his wife. It is stated that on 24th April, 2006, the petitioner's wife was diagnosed with Breast Cancer. Consequent upon this, she was admitted to the All India Institute of Medical Sciences ("AIIMS") on 28th April, 2006 where she underwent surgical intervention. She was also advised to undergo chemotherapy, to be followed up by radiotherapy. Petitioner states that he was also advised that any delay in chemotherapy or in the radiotherapy procedure, as advised, could be dangerous for his wife. He states that during that period, intermittent strikes were going on in the AIIMS and Therefore, since the same was urgently required, he thought it fit to take his wife to the Rajiv Gandhi Cancer Institute & Research Centre for chemotherapy. The petitioner's wife

underwent treatment consisting of seven cycles of chemotherapy at the Rajiv Gandhi Cancer Institute & Research Centre from 20th May, 2006 to 18th December, 2006. On completion of the same, the petitioner applied to the Competent Authority for reimbursement of medical expenses incurred in terms of the Central Government Health Scheme. He had raised a claim for a total sum of Rs. 1,20,894.17 in this behalf.

2. On 14th February 2007, the petitioner's claim for reimbursement of the aforesaid expenses was returned by respondent No. 2 with the request that the requisite information/documents mentioned in the said letter be furnished for further processing of the case. According to the petitioner, after he furnished this requisite information, the respondents have issued another letter dated 30th July 2007 containing a fresh set of objections. He states that the only common objection forthcoming in the aforesaid letters dated 14th February, 2007 and 30th July, 2007 issued by the respondents is with regard to the time within which the claim has been made. Whilst in the letter dated 14th February, 2007, it is stated that, "claim is to be preferred within 3 months of discharge from the hospital"; in the other letter dated 30th July, 2007, it is stated that, "the time bar of 90 days to be followed for submission and resubmission". The claim was returned with the request to furnish the particulars sought to enable the respondents to proceed further in the matter. Counsel for the petitioner states that apart from the items listed at sub-para (f) and sub-para (2) and (3) in the letter dated 30th July, 2007, all the other particulars had already been furnished to the respondents. He states that as regards the emergency certificate required in terms of sub-para (f) also, a certificate dated 3rd February, 2007 issued by the Senior Consultant, Medical Oncology, at the Rajiv Gandhi Cancer Institute & Research Centre certifying that the petitioner's wife underwent treatment at that institute and that, "in view of poor prognostic features, chemotherapy was required on urgent basis" has already been submitted by him. He states that this certificate satisfies the requirements. As regards the objection in sub-para (2), learned Counsel for the petitioner points out that in the Rajiv Gandhi Cancer Institute & Research Centre, where his client's wife underwent the necessary chemotherapy, is on the list of the hospitals approved by the CGHS and Therefore, keeping in mind the difficulties faced by the petitioner in going from Rohini, where the petitioner's wife was being given the treatment, all the way to Vivek Vihar Dispensary where the petitioner was registered, simply to obtain the requisite medication, made no sense. As regards the objection in sub-para (3), Counsel for the petitioner states that his claim was preferred within the time prescribed. He states that the chemotherapy, which the petitioner's wife had undergone, had seven cycles and treatment was only completed after she underwent all the cycles. He states that the treatment started on 20th May, 2006 and it ended on 18th December, 2006, when the last cycle of chemotherapy was undergone. He states that he has preferred his claim on 2nd February, 2008 and, Therefore, computed from the date of the last cycle, the claim is well within the time and for these reasons, the rejection of his claim is unjustified.

3. On 30th November, 2007, Counsel for the petitioner had sought time to file an affidavit giving particulars of various documents filed by him before the respondents. The said affidavit has been filed.

4. To counter the contentions of the petitioner, the Counsel appearing for respondent has raised three objections. Firstly, he states that before seeking reimbursement, the petitioner underwent full seven cycles of chemotherapy. He states that the gap between one cycle and the next is about one month. Consequently, the petitioner had sufficient time to approach the respondent authorities around the time of the first cycle itself or immediately thereafter. However, admittedly, according to the rules, the petitioner was required to apply for the reimbursement within 90 days of the completion of treatment. It is also an admitted fact that the course of treatment in this case consisted of seven cycles of chemotherapy and it cannot be said that one individual cycle constituted complete treatment.

5. In my view, such claims are to be treated in a humanitarian manner and keeping in mind the totality of circumstances. In such cases, where a retired officer is trying to have his wife treated for cancer, it would be inappropriate to construe such provisions strictly. No doubt he had enough time to approach the authorities, but I do not see any impediment in the petitioner approaching the authorities after the treatment was over, i.e., after the seventh cycle. It is also admitted that the petitioner did approach the authorities within the prescribed 90 days after the treatment was over, i.e., after the seventh cycle. Looking to the fact that he was required to prefer his claim within 90 days of the completion of the treatment, it was always open to the petitioner to approach the authorities for reimbursement at any time from the very first day of the treatment till the 90th day after the day on which the treatment was over. The period of 90 days, which is prescribed for approaching the authorities for reimbursement after the treatment is over, is the outer limit. The fact that he chose to approach it not on the first day or even at any time before the last day of the treatment, but only thereafter, cannot disentitle the claimant to reimbursement because there is no gainsaying the fact that he did approach the authorities within the period prescribed. Admittedly, the petitioner was obliged to file his claim within 90 days after the completion of treatment. There is no mandate under the provisions which oblige a claimant to approach the authorities at the earliest possible date. Under the circumstances, I am not prepared to countenance this objection.

6. Next objection is that the petitioner never approached the CGHS authorities for the medicines required for his wife's treatment. According to the respondent they would have been available to him through the CGHS Dispensary No. 79, Vivek Vihar, Delhi in respect of which the requisite Identity Card is also available with the petitioner. It appears that admittedly the petitioner's wife was diagnosed to be suffering from Breast Cancer on 24.4.2006. Immediate medical intervention was advised, as a result of which she underwent surgical intervention within four days, i.e., on 28.4.2006.

7. In view of the fact that the petitioner was advised not to delay any of the procedures, including chemotherapy, and that any such delay could be dangerous for his wife, he thought it fit to have her treated at the Rajiv Gandhi Cancer Institute & Research Centre for chemotherapy immediately. Admittedly this institution is also on the list of hospitals approved by the CGHS. The petitioner is stated to have obtained regular medication for the treatment of his wife from the said institute and paid for the same. There is no objection taken by the respondent to the bills of medicines submitted by the petitioner along with his claim. The only objection is of a procedural nature with regard to the time within which the claim could be preferred or that the medicines ought to have been purchased from the CGHS approved dispensary at Vivek Vihar instead a similarly approved hospital where the surgery was performed and the post operative treatment in question was undergone. As I have already stated, in my opinion, the claim is within the time prescribed by the relevant regulations and deserves consideration. It cannot also be rejected solely on the ground that the medicines in question were not obtained through the Vivek Vihar dispensary. In view of the fact that the hospital from where the petitioner purchased the medicines in question, also happens to be an approved hospital, coupled with the fact that no objection has been raised to the bills submitted by him in this regard, this objection is a mere technicality and cannot be sustained.

8. It appears that the petitioner has broken up his claim, and a separate claim for each of the seven cycles has been preferred. They have all been returned with the common objection. They all bear the same date i.e. 30.7.2007. Looking to the circumstances of the case, in my opinion, objections No. 2 & 3 to the effect that chemotherapy drugs are to be procured from the dispensary; and that the claim is time barred, are set aside, and the respondent is directed to reconsider the claim of the petitioner with regard to requirements (a) to (k) of the letter dated 30.7.2007. The petitioner may clarify all these factors within a period of four weeks from today. The respondents may call for any further information on this aspect that may be required before taking a final decision in the matter.

9. The matter be disposed of within four weeks thereafter.

10. The writ petition is disposed of.