

(2021) 10 SHI CK 0098

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No.6583 Of 2020

R.S. Thakur

APPELLANT

Vs

Himachal Pradesh State Electricity

RESPONDENT

Date of Decision : 30-10-2021

Acts Referred:

Citation : (2021) 10 SHI CK 0098

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : M.L. Sharma, Meghna Kashava, Ruma Kaushik

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The respondent-employer did not approve the medical reimbursement claim of the petitioner-employee in respect of his knee replacement operation carried out in a private hospital in New Delhi, which is not empanelled with the State of Himachal Pradesh. Aggrieved, petitioner has, therefore, filed this writ petition.

2. Facts:-

2(i). As per the pleadings, the respondent-Board has adopted the medical reimbursement policy issued by the State of Himachal Pradesh for reimbursement of medical claims. According to this policy, both outdoor and indoor patient treatment/diagnostic tests taken in government as well as empanelled private hospitals/health institutions/diagnostic labs located within and outside the State of Himachal Pradesh are reimbursable subject to restrictions stipulated therein. Clause 9.9 of this policy pertains to situations where medical treatment taken in non-empanelled institutions in emergency is reimbursable subject to restriction of rates at par with the rates of Indira Gandhi Medical College & Hospital (IGMC), Shimla. In case the treatment is not available in IGMC, Shimla, then the reimbursement is to be at the rates prescribed in

PGIMER Chandigarh/AIIMS Delhi/CGHS or actual, whichever is less. Clauses 9.9 and 9.10 in this regard read as under:-

"9.9. In case treatment is taken in a non-empanelled institution in emergency, reimbursement shall be restricted to the rates of IGMC Shimla/Government Dental College, Shimla. In case the procedure/treatment is not available in the IGMC, Shimla/Government Dental College, Shimla the rates of PGIMER Chandigarh/AIIMS, Delhi/CGHS or actual whichever is least shall apply. In case there are no such rates the CGHS rates or actual whichever is less shall apply.

9.10. In cases where there are no CGHS Rates, the procedure being adopted under the CGHS will be applicable to the State of Himachal."

Clause 11 of the policy stipulates that in case treatment is taken in emergency in an institution that is not empanelled within and/or outside the State, the question whether there was an emergency or not, being a question of fact, will be decided by the administrative department. This clause reads as under:-

"11. Emergency treatment in a non-empanelled institution: In case treatment is taken in emergency in an institution that is not empanelled or diagnostic tests are undertaken in a lab which is not empanelled within and/or outside the state, the question whether there was an emergency or not, being a question of fact, will be decided by the A.D. concerned. There will be no need to seek permission of the Government or Department of Health and Family Welfare in such cases. The decision of the A.D. whether there was an emergency or not shall be final."

Clause 12 of the policy stipulates that treatment for Cancer, Renal Failure/Kidney Transplant, the patient/dependent will be allowed to undergo treatment in any super-specialty hospital whether empanelled or not, subject to the condition that the reimbursement amount will be restricted to CGHS rate or actual, whichever is less.

2(ii). The petitioner on 11.09.2018, applied to his employer/ respondent for permission to undergo knee transplant operation from Apollo Hospital, Sarita Vihar, New Delhi. The petitioner stated in the application that he was suffering from knee pains and was advised to undergo knee transplant operation or else in future, he would not be in a position to walk. That medical experts had advised him to undergo this operation at Apollo Hospital, New Delhi. The said hospital was not empanelled with H.P. Government/ HPSEBL (respondent employer). That his family members were settled in Delhi and could look-after him there during and post his operation. He further stated in the application that his operation dates, tentatively had been fixed by Apollo Hospital during second and third week of October, 2018.

2(iii). The application of the petitioner seeking permission to undergo operation/ replacement of his knees in the above-mentioned private hospital was rejected by the respondent-employer vide communication dated 24.09.2018, which was duly communicated to the petitioner. While rejecting petitioner's application, the

respondent stated that as per the provisions contained in the reimbursement policy, the medical reimbursement from non-empanelled hospital is permissible only in case of emergency. In petitioner's case, such contingency was missing. The petitioner had opted to undergo operation at New Delhi only on the basis of appropriateness of treatment.

2(iv). Regardless of rejection of his prayer, the petitioner underwent his knee transplant/replacement operation from Apollo Hospital, New Delhi in the month of October, 2018 and submitted his medical bills amounting to Rs.5,12,512/- for reimbursement to the respondent. The medical reimbursement claim of the petitioner was rejected by the respondent on 09.01.2019 with the remarks that the treatment was taken from a non-empanelled hospital and that the permission sought by the petitioner to undergo operation from the above-mentioned private hospital had already been declined on 24.09.2018.

2(v). Against the above backdrop, the petitioner has filed the instant petition, praying for quashing of communication dated 09.01.2019, whereby his medical reimbursement claim was turned down by the respondent. Petitioner has prayed for direction to the respondent to reimburse the medical expenses incurred by him in knee replacement operation as per the medical bills submitted by him alongwith interest @ 12% per annum.

3. We have heard learned counsel for the parties and gone through the record available on the case file.

Learned counsel for the petitioner submitted that the petitioner had to undertake knee transplant operation in a non-empanelled private hospital in case of emergency, therefore, he is entitled for medical reimbursement of the expenses incurred by him on his treatment at par with the rates of IGMC, Shimla. In support of such contention, learned counsel relied upon the judgment rendered by the Hon'ble Supreme Court in *Shiva Kant Jha Versus Union of India*, (2018) 16 SCC 187.

Opposing the prayer, learned counsel for the respondent-employer submitted that there was no medical emergency in the case of the petitioner. The petitioner had sufficient time to take treatment of knee replacement/operation in an empanelled hospital. Despite having knowledge that the aforesaid private hospital was not empanelled with the Government of Himachal Pradesh and despite rejection of his application seeking permission to undergo knee replacement operation in that non-empanelled private hospital, the petitioner had still taken treatment from non-empanelled private hospital. The petitioner, therefore, is estopped by his own act and conduct and is not entitled for medical reimbursement.

4. Having heard learned counsel for the parties, we are of the considered view that this petition deserves to be dismissed for the following reasons:-

4(i). The applicable medical reimbursement policy is not under challenge. As per

this policy, in case the treatment is taken in a non-empanelled institution in emergency, the reimbursement is permissible restricted to the rates specified therein.

The petitioner had not undertaken the operation in an emergent situation. In his application dated 11.09.2018 itself, the petitioner had mentioned that he was suffering from knee pains. That his family members were residing in Delhi and, therefore, it was easier for him to take medical treatment at Delhi. That Apollo hospital was the best hospital for knee replacement operation. That the medical experts had statedly advised him to undertake knee replacement operation in the best hospital at Delhi and, therefore, he wanted to undergo knee replacement operation in Apollo Hospital, New Delhi. This all goes to show that no medical emergency existed. Petitioner had opted to undergo the operation in the non-empanelled private hospital because of appropriateness of the medical treatment there, which suited him and not because of any medical emergency.

4(ii). The petitioner was aware that the aforementioned private hospital is not empanelled with the State of Himachal Pradesh. He had applied to his employer/respondent for permission to undergo the knee replacement operation at Apollo Hospital, New Delhi. His application was rejected by the respondent-employer. The decision was communicated to the petitioner well in time. Despite all this, the petitioner underwent operation from the aforementioned private non-empanelled hospital.

4(iii). The judgment relied upon by the petitioner in Shiva Kant Jha's case, *supra*, is on the basis of facts of that case. The petitioner therein had taken medical treatment at Fortis Escorts Heart Hospital, wherein he was admitted in emergency condition for survival of his life. It was in that background that the Hon'ble Apex Court had allowed the writ petition observing that the 'treatment of the petitioner (therein) in non-empanelled hospital was genuine because there was no option left with him at the relevant time'. Hon'ble Apex Court also observed in the judgment that the 'decision is confined to that case only'. The facts of instant case as noticed above are different. There was no emergent situation in petitioner's case, wherein he underwent knee replacement surgery in a non-empanelled private hospital.

In view of the aforesaid discussion, we hold that the petitioner in the instant case had not taken the treatment from non-empanelled private hospital in emergency. Petitioner's case was not covered for medical reimbursement under the applicable policy. We do not find any fault in respondent's rejecting petitioner's claim for medical reimbursement of the bills in question. Accordingly, there is no merit in the instant petition and the same is dismissed, so also the pending miscellaneous application(s), if any.