
(2015) 01 RAJ CK 0044
In the Rajasthan High Court
Case No : Civil Writ Petition No. 133/2010

Santosh Surolia

APPELLANT

Vs

State of Raj.

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0044

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Rajesh Shah, for the Appellant; Sweta Bora, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—Instant writ petition has been preferred by the petitioner seeking the following relief"s:-

(i) by an appropriate writ, order or direction, the respondents may be directed to reimburse the expenditure incurred by the petitioner at Metro Heart Institute, Faridabad in respect of her treatment.

(ii) by an appropriate writ, order or direction, the respondents may further be directed to make payment to the petitioner alongwith interest @ 12% per annum from the date the amount has been so spent by the petitioner till the date of payment by the respondents.

(iii) Any other appropriate order or direction, which this Hon"ble Court deem just and fit be passed in favour of the petitioner."

2. Facts in brief as set out in the writ petition are that the petitioner is the widow of late Shri Laxmi Narayan Surolia who superannuated from the post of Research Officer, Rajasthan State Abhilekhagar. After the petitioner"s husband passed away, she became entitled to receive family pension and also became entitled to receive medical relief free of cost under the Medical Concession Scheme for

pensioners. After the death of her husband, the petitioner was issued a Medical Card/Pass Book in the year 2004.

3. In 2006, the petitioner went to meet her daughter who resides at Faridabad. At Faridabad, she developed discomfort in her chest. She was immediately taken in an emergent situation to the Metro Heart Institute at Faridabad. At the hospital, the petitioner was subjected to Coronary Angiography which revealed Double Vessel Disease for which she was advised PTCA with stenting to LAD and LCS and Angioplasty with Stenting to left renal artery. Accordingly, under medical advise and as a life saving measure the petitioner was subjected to the aforesaid procedure at the Metro Heart Institute, Faridabad. She was discharged from the hospital on 15.8.2006.

4. After recovering, the petitioner submitted a claim for reimbursement of her medical bill to the tune of Rs. 2,50,000/- along with complete record of her treatment. However, the Treasury Officer returned the application submitted by the petitioner vide communication Annexure-3 dated 29.8.2008 indicating that she had undergone treatment at a unrecognized hospital outside the State and as such she was not entitled to reimbursement in accordance with Rajasthan State Pensioners Medical Concession Scheme. The petitioner served a legal notice Annexure-4 to the respondents for reimbursement of her medical expenses but no response was given thereto upon which the petitioner has preferred the instant writ petition.

5. Reply to the writ petition has been filed on behalf of respondents no. 2 to 5. It is averred in the reply that the petitioner did not submit an affidavit before the competent authority about her treatment having been undertaken in an emergent situation. It is further stated in the reply that the petitioner got her treatment outside State of Rajasthan and that too from a private unrecognised hospital without obtaining reference certificate from competent medical/administrative authority and as such, she is not entitled for reimbursement of her medical bills under the Medical Concession Scheme and the writ petition deserves to be dismissed.

6. Counsel for the petitioner contended that the petitioner is the widow of a State Government pensioner and as such she is entitled to receive pension as well as medical benefits. Referring to the Rajasthan State Pensioners Medical Concession Scheme, learned counsel contended that as per Clause 4A of the Concession Scheme, the pensioner and his family members are entitled to financial assistance @ 80% of the hospital expenditure or Rs. 1,20,000/- whichever is less in case the treatment is taken at the hospital or institution outside the State. Learned counsel submitted that as the treatment of the petitioner was undertaken in an emergent situation, procuring the prior recommendation of the Principal of a Medical College/Director of the Medical and Health Services was not possible. He urged that emergency is not subject to any law and thus the petitioner is entitled for reimbursement of her medical bills in accordance with Clauses 4A and 4G of the Medical Concession Scheme. Learned counsel thus

submitted that the writ petition deserves to be accepted and respondents be directed to reimburse the medical expenditure borne by the petitioner in the treatment of her cardiac problem and stenting to the renal artery at the Metro Heart Institute, Faridabad along with interest on the accrued amount. He placed reliance on the following decisions in support of his contention and prayed that the writ petition deserves to be accepted.

1. Gyanendra Kumar Pareek Vs. State of Rajasthan and Others,

2. Anil Kumar Surolia Vs. State of Rajasthan and Others,

3. Surjit Singh Vs. State of Punjab and Others,

4. State of Punjab and Ors. Vs. Mohan Lal Jindal reported in (2001) 9 SCC-217.

7. Per contra, learned A.G.C. Ms. Sweta Bora appearing for the respondent no. 1 Medical Department and Mr. N.S. Rajpurohit appearing for the respondents no. 2, 3 and 4 contended that the petitioner is not entitled for the reimbursement of her medical bills because she got herself treated at an unrecognized hospital outside the State of Rajasthan without any prior recommendation of the Principal of a Medical College or Director of the Medical and Health Services as per Clause 4A of the Medical Concession Scheme and without recommendation of the Medical Board as per the condition of Clause 4E of the Medical Concession Scheme. They, therefore, prayed that the writ petition is liable to be dismissed.

8. Heard and considered the arguments advanced at the bar and perused the material available on record.

9. The petitioner underwent treatment of her cardiac ailment in an emergent condition as is averred in the writ petition. Though a vague denial to the averment is made in the reply but as a matter of fact the denial is without any basis whatsoever. The petitioner a 68 years old widow, had gone to visit her daughter at Faridabad. It is specifically pleaded in the petition that she developed sudden symptoms involving chest discomfort on which, she had to be hospitalized in an emergent situation at Metro Heart Institute Faridabad. There is no reason to doubt the plea that the action was taken in an emergent situation. The objection of the respondents in the reply regarding the treatment not being undertaken in an emergent situation is not having any basis whatsoever. This Court considered the issue of emergent situation in the case of Gyanendra Kumar Pareek Vs. State of Rajasthan and Others, and held that when a family member suffers from cardiac ailment, the prime objective of the other family member would be to save his/her life. At that time, services of whichever hospital is suited could be utilized because emergency knows no law and no procedure and when human life is at stake in such situation, ultimate responsibility of the State cannot be washed off. This Court relied upon the decision of the Division Bench of this Court in Anil Kumar Surolia Vs. State of Rajasthan and Others, wherein the Division Bench observed as under:-

Government cannot insist upon an employee to get himself treated at recognized

government institution. All that the Government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognized government institution. Reference in this connection may be made to the judgment of the Hon"ble Supreme Court in Surjit Singh Vs. State of Punjab and Others, and State of Punjab and Ors. Vs. Mohan Lal Jindal reported in (2001) 9 SCC-217. Consequently, the reimbursement of the medical expenses borne by the State Government employees and pensioners has to be done even if the treatment is undertaken at unrecognized hospital outside the State even though reference may not have been taken prior to treatment. 10. Certain amendments were made in the Rajasthan State Pensioners Medical Concession Scheme vide order dated 19.12.2004 which are relevant for the purpose of disposal of this writ petition and are reproduced hereinbelow:-

The Governor is pleased to make the following amendments in the Rajasthan State Pensioners Medical Concession Scheme, namely-

In the said Scheme.

1. The existing words "Implantation of Pacemaker and Angioplasty/Balloonplasty" appearing in the sub-para 4B(i) shall be deleted and the existing sub-para 4B (ii) may be re-numbered as sub-para 4B(iii) and new sub para 4B(ii) may be inserted as under:-

(ii) A Pensioner and the members of his family as defined in sub-para (5) of para 3 of the scheme shall be entitled for grant of financial assistance in respect of specialized treatment of implantation of Pacemaker and Angioplasty/ Balloonplasty taken in Government Hospital within the State of Rajasthan as under:

(a) Pacemaker

Actual cost of Pacemaker subject to the maximum of Rs. 60,000/-

(b) Angioplasty/Balloonplasty

Actual expenditure incurred subject to the maximum of Rs. 35,000/-

(c) For Stent/Stents

Actual expenditure incurred subject to the maximum of Rs. 75,000/-."

2. The existing para 4E shall be substituted by the following namely.

"4E. Treatment of heart ailment in recognized hospital outside the State (with or without the recommendation of the Medical Board) (w.e.f. 5.8.2004).

(a) In case it is recommended by the Medical Board that by-pass surgery for heart is indicated, the pensioner can get himself operated in any of the hospitals recognized by the Government outside the State for this purpose. Such pensioner may be allowed 80% of hospital expenses limited to Rs. 48,000/- being 80% of General Ward charges of All India Institute of Medical Sciences,

New Delhi.

(b) In case a pensioner undergoes by-pass surgery of heart (cardio Thoracic surgery) in any recognized hospital outside the State in emergent circumstances without any recommendation of the Medical Board, he may be allowed 80% of hospital expenses limited to Rs. 48,000/- i.e. 80% of General ward charges of AIIMS, New Delhi provided that he submits a Certificate from a cardiologist who took a degree of D.M. In Cardiology as MCH in Cardio Thoracic Surgery stating that pensioner's condition was such that immediate treatment was essential.

In case a pensioner takes treatment of Angioplasty/Balloonplasty and stent(s) in recognised hospitals outside the state, he/she may be allowed financial assistance as under:-

(i) For Angioplasty/Balloonplasty

Actual amount of expenditure incurred subject to the maximum of Rs. 35,000/-

(ii) For Stent/Stents

Actual cost of Stent/Stents subject to the maximum of Rs. 60,000/-(80% of Rs. 75,000/-)"

11. Thus, as per the said amendment the only hurdle against the petitioner for being granted the relief of reimbursement of her bills is that she took treatment at unrecognised hospital outside the State. However, as has been noted above, the Division Bench of this Court has already laid the issue to rest by observing that even if the treatment is taken at unrecognized hospital and without any reference, the reimbursement thereof has to be done at the rates prescribed in the Concession Scheme. Another order came to be passed by the State Govt. on 21.12.2009 which completely puts the controversy to rest and reinforces petitioner's claim for reimbursement. The order is quoted hereinbelow:-

"No. F.1(6) FD(Rules)/2012 Jaipur dated 21 DEC 2009

Subject:-Reimbursement of cost of implants and reimbursement of medical attendance and treatment in private hospitals to pensioners/family pensioners under Rajasthan Pensioners Medical Concession Scheme.

State Government has decided to extend the facility of Medical Attendance and treatment to State pensioners/family pensioners in private or charitable hospitals, as applicable to State Government servants under Finance Department order No. F.6(4)FD(Rules)/03 Pt.-I dated 27.11.2009 pertaining to the period prior to 19.06.2009.

Such claims of treatment shall be considered and decided by the Sub-Committee of the Trust."

12. As a consequence, the action of the respondents in refusing to reimburse the medical bills of the petitioner cannot be approved as being unjust and arbitrary.

13. Thus, the writ petition deserves to be and is hereby allowed. The petitioner shall be entitled to receive reimbursement of the medical expenses borne by her in her treatment at Metro Heart Institute, Faridabad in accordance with Clause 4B and 4E of the Amended Medical Concession Scheme dated 19.12.2004 which has been quoted hereinabove. The respondents shall reimburse the petitioner the medical expenses in accordance with above referred clauses within a period of two months from the date of this order. Since the petitioner has been denied reimbursement of her lawful claim for nearly 8 years, the amount shall also carry interest @ 9% per annum from the date of the submission of the bill to the date of actual payment. If the payment is not made within aforesaid period of eight weeks, the interest shall stand enhanced to 12%. No order as to costs.