
(2008) 07 DEL CK 0175
In the Delhi High Court
Case No : WP (C) No. 13740 of 2005

Sh. Balram Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Citation : (2008) 154 DLT 463

Hon'ble Judges : J.R. Midha, J;A.K. Sikri, J

Bench : Division Bench

Advocate : J.P. Sengh and Iram Majid, for the Appellant; Divya Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The petitioner seeks full reimbursement of the medical expenses incurred by him while undertaking the treatment at Escorts Heart Institute and Research Centre, New Delhi (hereinafter referred to as the "Escorts Heart Institute") from his employer Department of Tele-communication, Government of India. He had sought this relief by filing OA before the Central Administrative Tribunal, which has been dismissed by the Tribunal vide its judgment dated 23.12.2004. Not satisfied with the said judgment and maintaining hope to recover the expenses incurred by him from his pocket, from the Government, he has challenged the order of the Tribunal and wants that his prayer made in the OA before allowed. This is the second round of litigation which has come to this Court by means of the present writ petition. His OA No. 2175/2002 was earlier dismissed vide judgment dated 8.5.2003. He had filed writ petition challenging that judgment. The said writ petition was dismissed of vide order dated 14.7.2004.

2. The circumstances in which the petitioner was to undergo the said operation at Escorts Heart Institute, on the basis of which he claims that he is entitled to full reimbursement of the expenses and not the partial contribution from the employer, may first be recapitulated.

3. The facts unfolded in the petition are that the petitioner suffered a heart attack in January 2000 while he was on official tour to Bhopal. He was admitted to Ayushman Hospital in Bhopal for some time. Thereafter, he came to Delhi and was examined by the doctors at the All-India Institute of Medical Sciences (AIIMS) on 25.2.2000. After the preliminary tests, AIIMS decided to take TMT test of the petitioner. It took about one month when this test was conducted on 23.3.2000 on the basis of which he was advised to undergo cardiology assessment of his heart ailment. After receiving this advise, the petitioner wrote a letter to his Department/respondent No. 2 on 17.4.2000 explaining that at AIIMS even the TMT test took one month due to heavy rush of patients and his health was such that it was not possible for him to wait for a long time. In these circumstances, he took permission to take treatment from Escorts Heart Institute. By communication dated 28.4.2000 the respondent No. 2 gave permission for treatment at the Escorts Heart Institute. He may point out at this stage that the Escorts Heart Institute is one of the recognized private hospitals as per Memorandum dated 18.9.1996.

4. The petitioner, in these circumstances, got himself examined at the Escorts Heart Institute where he was diagnosed a case of Triple Vessel Disease with mild left ventricular disfunction. On this diagnosis, he was advised to undergo open heart surgery and also the Carotid surgery, which is a high risk surgery. The petitioner underwent the said surgery and treatment at Escorts Heart Institute for which purpose the respondent No. 2 paid a sum of Rs. 89,000/- to the said hospital as advance on 4.6.2000. The surgery took place on 12.6.2000 and the total medical expenses incurred by the petitioner on the said treatment, as per the bills given by Escorts Heart Institute and other medical bills for medicines etc. came to Rs. 2,30,306/-. The petitioner submitted all these bills along with the requisite certificates to the respondent No. 2 for reimbursement of the balance sum incurred by him on his treatment. He was given another sum of Rs. 41,612/-. Thus, a total amount of Rs. 1,30,612/- was reimbursed to the petitioner as against Rs. 2,30,306/-. As per the respondents, that was the only amount which could be reimbursed as per the rules and therefore, the respondents refused to make further payments. This led the petitioner enter into protected communicated, which, however, did not yield any results. Failing to get relief administratively, the petitioner approached the Tribunal and filed the aforesaid OA, which has met the result already indicated above.

5. Perusal of the judgment of the Tribunal would show that as per the petitioner when he was permitted to get treatment at Escorts Heart Institute by his employer, the employer is supposed to pay the entire amount of the treatment. The petitioner had referred to the judgment of a Division Bench of this Court in Sqn. Commander Randeep Kumar Rana v. Union of India, CWP No. 2464/2003 decided on 29.4.2004 as well as the judgment of the Supreme Court in the case of State of Punjab and others Vs. Mohinder Singh Chawala, etc., in support of his submission.

6. On the other hand, the respondent had contended that the reimbursement of medical expenses would be as per the CGHS Rules which prescribes the approved rates fixed by the Ministry of Health and Family Welfare (respondent No. 1 herein) and not on the basis of actual expenditure incurred. The respondents had placed reliance on the judgment of the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, The Tribunal, as is obvious from the conclusion, accepted the plea of the respondents herein. It distinguished the judgment in the case of *Commandar Randeep Kumar Rana (supra)* on the ground that that was a case where the child of the said petitioner had initially been treated at the NSG Hospital and Safdarjung Hospital whereafter he was referred for treatment at Escorts Heart Institute. On the other hand, the Tribunal opined that in the instant case the treatment availed by the petitioner at Escorts Heart Institute was entirely on his own volition and on his giving undertaking that he would be bearing the difference of charges of the hospital. The Tribunal also observed that AIIMS was competent and right place for the petitioner to be treated, including carrying out Open Heart Surgery where cases of this category come from different parts of the country. Therefore, seeking reference from AIIMS to Escorts Heart Institute was quite an unusual exception keeping in view the expertise of AIIMS. Therefore, it was entirely on the personal endeavour of the petitioner that he was allowed to go to Escorts Heart Institute. The Tribunal further held that in view of the judgment of the Supreme Court in *State of Punjab and Ors. v. Mohan Pal* 2002 SCC (L&S) 189, the beneficiary is entitled to reimbursement only at AIIMS Hospital rates. Likewise, in *State of Punjab v. Ram Lubhaya Bagga (supra)*, the Supreme Court had held that State has right to fix the package deal, which was not violative of Fundamental Rights and Directive Principles and that every individual right has to give way to right of the public at large. These are the reasons for dismissing the OA of the petitioner by the Tribunal. Before us, arguments remain the same which were advanced by the learned Tribunal.

7. Mr. J.P. Sengh, learned senior counsel appearing for the petitioner, submitted that the Tribunal wrongly observed that going to Escorts was the petitioner's own doing and it was unusual on the part of AIIMS to refer the matter to the Escorts Heart Institute. His argument was that the Tribunal did not consider the seriousness of the petitioner's illness. When the AIIMS had advised that the petitioner is to undergo cardiology assessment of his heart ailment after his TMT test, the petitioner could not have waited for long. Getting such cardiology assessment conducted at AIIMS would have delayed in view of heavy rush of the patients. The AIIMS acknowledged this fact and that is the reason it referred the petitioner to Escorts Heart Institute. Even the respondent No. 2 realised the seriousness of the petitioner's ailment and therefore, it gave permission to the petitioner to get treatment at Escorts Heart Institute. In view of these considerations, the judgment of this Court in *Commander Randeep Kumar Rana (supra)* squarely apply, was the submission of the learned Counsel. He also referred to number of cases whereby full reimbursement was given in such cases.

8. Learned Counsel for the respondents, on the other hand, referred to same judgments on which reliance was placed before the Tribunal in rejecting the claim of the petitioner. Her submission was that the petitioner could not ask for more than what he is entitled to, under the rules more so when the petitioner had himself given an undertaking that any extra expenditure incurred would be met by the petitioner himself. It was only on this basis that he was given permission to get treatment from Escorts Heart Institute. Therefore, he could not resile from the said undertaking.

9. We have given our thoughtful consideration to the respective submissions and have also gone through the various judgments cited by the learned Counsel for the parties. We may state at the outset that we are at one with the learned Counsel for the petitioner in so far as necessity of treatment at Escorts Heart Institute is concerned. The Tribunal did not perceive the illness with the sensitivity which it deserved and very casually observed that he could have been treated at AIIMS as well, which is a state-of-the-art hospital. Nobody disputes the credentials of AIIMS. However, what is glossed over by the Tribunal is that the petitioner had suffered the heart attack in January 2000 while in Bhopal and was admitted in the hospital at Bhopal where he remained for some days. No doubt, in February he was examined by the doctors at AIIMS. However, indubitably, AIIMS took almost one month in conducting the TMT test itself. It was the basic test required for a person suffering from heart ailment, that too when he had suffered heart attack also in immediate past. On perusing the TMT test report, the doctors at AIIMS themselves suggested that the petitioner should undergo cardiology assessment. When the doctors suggested cardiology assessment on the basis of TMT test was it proper for the petitioner to delay such an assessment by waiting in queue at AIIMS or was it necessary to have the said assessment done immediately? Answer is obvious. No prudent person would like to wait. Nor the doctor would suggest this. The doctors at AIIMS knew the harsh reality, namely, it may take unduly long for the petitioner to have the cardiology assessment at AIIMS. It is for this reason that they referred him to Escorts Heart Institute. It is for same reason that the petitioner's employer also gave permission to get treatment at AIIMS. The test conducted at Escorts Heart Institute proved the worst fears of the petitioner. On hindsight, one can say that delay in getting the cardiology assessment might have proved fatal inasmuch as, after the investigation the petitioner was diagnosed as a case of triple vessel disease with mild left ventricular dysfunction. The treatment suggested by the doctors at Escorts Heart Institute further strengthens the plea of the petitioner that immediate treatment was needed inasmuch as, he was advised to undergo not only Open Heart Surgery but the Carotid surgery as well, which is, concededly, treated as high risk surgery. Advice of the doctors to undergo such a high risk surgery imminently was a sufficient indicator of the seriousness of the ailment with which the petitioner was suffering and immediate treatment which was needed. After the petitioner has undergone the said surgery, which was successful and he may be living normal life now, would not mean that at the

relevant time emergent steps were not required. What would have happened had the petitioner not undergone cardiology assessment immediately could be anybody's guess! We are, therefore, of the opinion that it was an emergent situation in which the petitioner needed diagnostic test and thereafter remedial surgeries without any delay. Referral of the petitioner by the AIIMS to Escorts Heart Institute for this purpose and permission of the respondent No. 2 as well is to be understood in the aforesaid perspective. Once we examine the matter in this hue, we find that this case is on parallel with the case of Commander Randeep Kumar Rana (*supra*). Directing the respondents to reimburse the full amount of medical expenditure incurred by the petitioner in that case in the open heart surgery of his son this Court had observed as under:

We have given our careful consideration to the arguments advanced by learned Counsel for both the parties. It is not denied that the treatment taken at Escorts Hospital was pursuant to the recommendation made by the Safdarjung Hospital, which is a Government Hospital. Naturally, when a small child is to be treated for Ventricle Septal Defect involving open-heart surgery, a specialized hospital and its services are required. Therefore, once the respondents themselves have recommended the treatment to be taken by the Escorts Hospital, they cannot deny the full reimbursement on the basis that the charges incurred by the petitioner over and above the package rate, which the respondents has agreed with the said hospital, cannot be reimbursed. At page 12 of the paper-book there is a letter conveying permission by the respondent to the petitioner to undertake specialized treatment from recognized private diagnostic centre. There is another letter of the respondent at page 22-23 of the paper-book in which it has been admitted that Escorts Heart Institute and Research Centre was also one of the hospitals which the petitioner was entitled for treatment. Now we come to the plea, which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of the counter affidavit that it is the duty of the citizens to see and ensure that such recognized hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to law down guidelines is with the respondent. A citizen is a mere spectator to what State authority do and decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay such charge as the petitioner has incurred over package rates at the first instance and if in law State can recover from the hospital concerned, they may do so but they cannot deny their liability to pay to the Government employee who is entitled for medical reimbursement.

We do not see any merit in the submission of the respondent. We direct the respondent to reimburse the full amount of Rs. 2,09,501/- after taking into consideration the amount of Rs. 1,42,736/- which has already been paid to the petitioner. The balance amount be reimbursed within a period of four weeks. Petition stands allowed. Rule is made absolute.

10. We do not dispute that the Supreme Court in the case of State of Punjab and

Ors. v. Mohan Pal (supra) as well as State of Punjab and Ors. v. Ram Lubhaya Bagga (supra) has held that keeping in view the aspect of limitations in regard to the capacity of the Government to pay at the rates which are charged by the hospital and also the position in regard to laying down guidelines on what should be the charges of such hospitals so that they maintain a rational relationship with the rates of AIIMS, it would be difficult to take a view that in cases where treatment is availed at a hospital other than AIIMS, reimbursement should be made at the rates charged by such private hospital without causing strain on the ability of the respondents to pay. However, the distinguishing feature in the present case is that Escorts Heart Institute is on the panel of CGHS and is one of the recognized private hospitals in view of Office Memorandum dated 18.9.1996. Again, it is not that the petitioner wanted treatment at that hospital only and therefore, went there at his own volition. Rather, he had initially gone to AIIMS. He had to go to Escorts under emergent and compelling circumstances, as narrated above. No doubt, before giving its consent to the petitioner to get treatment from Escorts Heart Institute, the respondent No. 2 had taken from the petitioner in writing that over and above the admissible expenses to be borne by the Government, balance amount would be paid by the petitioner from his own pocket. However, under the circumstances, we are inclined to agree with the submission of the petitioner that he had to give such a statement under compelling circumstances and against his wishes, as otherwise the respondent No. 2 was not giving its consent. When a person is faced with life and death situation, it is not difficult to contemplate that he would have given letter to this effect involuntarily and under compulsion. In our opinion, he should not be made to suffer because of this reason when he is otherwise found entitled to full reimbursement.

11. It is not in dispute that keeping in view the limited financial resources, it is legitimate for the Government to fix the limits of reimbursement. But at the same time it is to be borne in mind that when the Government takes a particular hospital on its panel and approves the same for the purposes of treatment of its employees, it is the duty of the Government to ensure that such hospitals do not charge over and above what Government wants to pay. Reason is simple. In so far as the employee is concerned, he is entitled to full reimbursement of expenditure incurred by him on his treatment in a CGHS recognized private hospital. Health insurance for its employees is the guarantee of the Government and the Government has to adhere to the same. It is for this reason that the Government should ensure that private hospitals on their panel charge the same amount which the Government reimburses.

12. While dealing with this problem and dilemma, a learned Single Bench of this Court in the case of Shri V.K. Gupta Vs. Union of India (UOI) and Another, observed as under:

7. The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognized

by them for treatment on the basis of applying the rates as per the previous Memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Coordinate Bench of this Court in Civil Writ No. 5317/1999 titled M.G. Mahindru v. Union of India and Anr. decided on 18.12.2000 wherein the learned Single Bench relying on the decisions of Narendra Pal Singh Vs. Union of India and Others, as well as State of Punjab and others Vs. Mohinder Singh Chawala, etc., directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at CGHS or RML Hospital and the petitioner was referred after due permission to a specialty hospital duly recognized by the respondents. The respondents cannot, therefore, deny full reimbursement of the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.

8. The Supreme Court had duly noted in State of Punjab and Ors. v. Mohinder Singh Chawla etc. (supra) that "the right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.

9. Reference may also be usefully invited to the last Office Memorandum bearing F. No. Rec-24/2001/JD(M)/CGHS/DELHI/CGHS(P), Government of India, Ministry of Health & Family Welfare dated 7.9.2001. The said circular reconsidered the question of recognition of private hospitals, diagnostic centres under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient terms as per the Memorandum is that the recognized hospital is obliged not to charge more than the package rates from the beneficiary.

10. The only submission by learned Counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affair. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of this legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute & Research Centre, New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute & Research Centre being a recognized hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs. 70,155.85 to the petitioner within four weeks

from today, together with costs assessed at Rs. 1,500/-.

13. It is clear from the above that this Court did not accept the plea of the respondents that it could deprive an employee of his legitimate reimbursement specially on account of its own failure in not revising the rates. We may also note that the Court has taken consistent view in this behalf in various judgments, some of which are as under:

- i. V.K. Abbi v. CGHS WP(C) No. 6658/2002 decided on 4.4.2003.
- ii. Prithvi Nath Chopra v. UOI WP(C) No. 770/2003 decided on 15.4.2004.
- iii. Squ. Cdr. Randeep Kumar Rana v. UOI CWP No. 2464/2003 decided on 29.4.2004.
- iv. S.K. Gaur v. UOI WP(C) No. 3146/2003 decided on 18.1.2005.
- v. T.S. Oberoi v. UOI reported as DCLR 2002 (II) Delhi 226.
- vi. Union of India v. R.K. Bhatia WP(C) No. 8846/2005 decided on 23.5.2005
- vii. S.K. Taneja v. UOI WP(C) No. 13417/2004 decided on 9.1.2006.

14. We are, therefore, of the view that in balancing the interest of the Government, on the one hand, which is limited to financial resources and its paying capacity and on the other hand, it has duty towards its employees to reimburse the medical expenses, a balance can be struck by directing the respondent/Government to reimburse medical expenditure in full when the following conditions are met:

- a) The private hospital where the treatment is taken by a Government employee is on the approved list of the Government.
- b) The illness for which the treatment is required is of emergent nature which needs immediate attention and either the Government hospitals have no facilities for such treatment or it is not possible to get treatment at Government hospital and it may take unduly long for the patient to get treatment at Government hospital.
- c) The concerned employee/patient takes permission to get treatment from the Government hospital, which is granted and/or referred by the Government hospital to such a private hospital for treatment.

15. Since all these conditions are met in the present case, we allow this writ petition, set aside the judgment of the Tribunal and direct the respondents to pay balance amount of Rs. 99,694/- to the petitioner within four weeks. In the circumstances of this case, we also grant cost of Rs. 10,000/- to the petitioner.