

(2010) 09 DEL CK 0115

In the Delhi High Court

Case No : Writ Petition (C) No's. 3341-42 of 2005

Sh. C. Balakrishnan through LRs.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Citation : (2010) 09 DEL CK 0115

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Malini Poduval and Babita Sant, for the Appellant; Jatan Singh, Ashok Singh and Sudeep Singh Advs. for UOI, for the Respondent

Judgement

Manmohan Singh, J.—This is yet another case of a retired government servant who has been declined reimbursement of the medical expenses incurred by him for the treatment of his wife of replacement of both knees as she had suffered severe pain and could not stand up on her legs and she remained bed ridden after surgery till her demise.

2. The present writ petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India praying for an order/direction to the respondents for re-imbursement of the entire amount of Rs. 3,31,690/- incurred on the medical expenses by the petitioners.

3. The brief facts leading upto the filing of the present writ petition are that Petitioner No. 1 is a pensioner in the Central Secretariat and this entitles both petitioner No. 1 and his wife petitioner No. 2 for free medical treatment under the CGHS.

4. The petitioner No. 2 was an arthritis patient. In the month of October 2002, she suffered severe pain in her knees. On 15.11.2002 the petitioner No. 1 approached the Malviya Nagar dispensary and requested the Doctor to visit their home as petitioner No. 2 could not move. After the examination she was referred

to an Orthopaedic Surgeon in Safdarjung Hospital, New Delhi where she was recommended an immediate total knee replacement of both the knees.

5. The petitioner No. 1 approached AIIMS where there was a long waiting list for knee operations and the petitioners were informed to wait for 4 years.

6. Therefore he consulted the orthopaedic Surgeon Dr. Ashok Rajgopal who was at that time a consultant only at Sitaram Bhartia Institute for Research, New Delhi and had also been treating the petitioner No. 2 regarding the same. Dr. Ashok Rajgopal was of the opinion that the surgery be done immediately.

7. On 20.11.2002 the petitioner No. 1 sought the permission for getting the operation done at Sitaram Bhartia Institute by Dr. Ashok Rajgopal from respondent No. 2.

8. As no response was received, on 22.11.2002 petitioner No. 2 was operated upon at the Sitaram Bhartia Institute. And the petitioner incurred total expenses of Rs. 3,31,690/- and intimated the Director CGHS regarding the same vide letter dated 25.02.2003.

9. The respondent No. 2 by his letter dated 18.06.2003 in response to the letter dated 20th November, 2002 informed that special advice from the Government Hospital or prior permission letter or emergency certificate of the Hospital is not submitted by the petitioners.

And in response to his letter the petitioner No. 1 received the letter dated 21.06.2003 by the respondent No. 2 wherein it was stated that his claim could not be reimbursed as there was no emergency as per medical records.

10. Being aggrieved by the said response, the petitioner filed the present writ petition.

11. According to the respondents there is a regulated procedure of providing health facilities to employees or retired employees of the Government. In the present case the petitioner underwent a knee replacement surgery in an unrecognised/unapproved private hospital though she could have gone to any of the approved hospitals covered by the CGHS. It is stated that the ex-post facto sanction is granted only in such circumstances where the life of the person is prime consideration at the time of treatment whereas in the present case it was a planned treatment which could have been deferred till the approval received.

12. The second contention of the respondents is that knee replacement resulting out of arthritis is not immediate life threatening, hence, it was not a case of emergency as petitioner No. 2 was originally taken to Safadarjang hospital and she could have taken the treatment for knee replacement at same hospital rather than at Sitaram Bhartia Institute.

13. When the matter was listed before the Court on 13.09.2007 the respondent No. 1 was asked to file the affidavit along with the scheme of medical reimbursement, particularly, in respect of knee replacement surgery undergone

by the petitioner No. 2. Thereafter the respondent placed the relevant documents on record, namely the OM dated 07.09.2007 which shows that C.G.H.S approved rate for knee placement surgery is Rs. 1,15,000/- and the petitioner was directed to make the representation to the respondent No. 2 for claiming the reimbursement at the rate applicable in the year 2002.

14. Thereafter the petitioner made the representation dated 20.12.2007 and claimed that the petitioner No. 2 underwent the surgery of both her knees. Following comparative table of the claim made by the petitioner and the allowable rates was also sent, however, no positive response was received from respondents, hence, the matter was heard on merit:

As per the As per the claim Government of the Petitioner Order Dated 07.09.2001 Total Knee joint replacement (1 knee-RS. 2,30,000-00 1,75,000-00 1,15,000/-) For TWO knees Knee Implant(for one knee implant as per 1995 rate which is valid or 5 yrs = Rs. 60, 000/-)

Since the 1995 rates are no more valid actual are to 1,50,000-00 1,50,000-00 be paid as per Rule 5(d)- For two Implants (Rs. 75000/- X 2)

Blood Bank 2,700-00 Post medical treatment (physio therapy) 3,200-00 3,200-00 Miscellaneous Hospital Expenses 790-00 Total 3,85,900-00 3,31,690-00

15. Learned Counsel for the petitioner has referred to the case titled as Surjit Singh v. State of Punjab and Ors. AIR 1996 SCC 1388 wherein the Apex Court considered the similar situation where a patient who was taken to London for an operation to be conducted under the care of his son and in this case also the defence of the respondent State was that it was not a case of emergency. The Hon''ble Supreme Court observed as follows:

This plea of the appellant may have been required to be examined in thorough detail had he stuck to his original claim for medical expenses incurred in England. Since he has now brought down his claim to the rates prevalent in the Escorts in place of that of AIIMS, further reference to emergency treatment etc. would not be necessary. It would hypothetically have to be assumed that the appellant was in India, had not subjected himself to Medical Board examination, and had gone on his own to the Escorts and got himself operated upon for bypass surgery. The point to be considered is whether his claim is admissible under the policy keeping in view the string of judgments of the High Court in that regard, as well as on the factum that the State has already conceded reimbursement to the appellant on hypothetical basis as if treated in AIIMS.

The Hon''ble Supreme Court further observed as follows:

11. It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in

the right of self-defence in criminal law.

12. The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense.

16. Let me now deal with the first submission of the learned Counsel for respondents that the petitioner underwent knee replacement surgery in an unrecognized/unapproved private hospital as she could have taken the treatment of knee replacement at Safdarjung Hospital which is covered by CGHS.

17. In the present case, it is not disputed fact that prior to the surgery the petitioners went to Government hospital i.e. Safdarjung Hospital wherein an opinion was given to the petitioners that urgent steps were required to be taken for replacement of both the knees. The petitioners also made enquiry at AIIMS, where it was informed that there is about the 4 years waiting for the said replacement of knees. The case of the petitioner is that she could not stand up on her legs and was in severe pain, therefore, the petitioner No. 2 had to take immediate steps to get the surgery conducted by the specialist i.e. Dr. Ashok Rajagopal. Thus, this Court finds force in the submission of the petitioners. In any case, the petitioner could not be deprived of reimbursement of amount as incurred by the petitioners. Further, the comparative chart shows that the claim of the petitioners is less than the schedule of charges of government order dated 7th September, 2001.

18. The second submission of the learned Counsel for respondents is that the said replacement is not immediate life threatening and it was not a case of emergency. In view of the opinion sought by the petitioner from the hospitals and the conditions of the patient, it is not possible to accept the submission of the respondents that it was not a case of emergency. As far as the approval of CGHS prior to the surgery is concerned, it is not disputed fact that petitioner No. 2 was operated upon both the knees on 22.11.2002 and before the surgery on 20.11.2002 the petitioners sought permission from the Director of CGHS for getting the operation done at Sitaram Bhartia Institute of Medicines and Research. The said letter of 20.11.2002 was replied by the respondent No. 2 on 18.6.2003 wherein it was communicated to the petitioner No. 1 that the petitioner No. 2 ought to have taken the prior permission for treatment in the private hospital.

19. For the aforesaid reasons and delay on the part of respondent No. 2, the defence raised by the respondent No. 1 is not sustainable and cannot be accepted.

20. Thus, the petitioner is entitled to reimbursement of the amount claimed i.e. Rs. 3,31,690/- from respondent No. 1 towards medical expenses incurred by the petitioners as per the details given by the petitioners within the period of two months, otherwise the petitioner No. 1 would be entitled to interest @9% per annum on the aforesaid amount in future.

21. A writ of mandamus is issued accordingly. The writ petition is disposed of.