(2002) 05 DEL CK 0079

In the Delhi High Court

Case No : CWP 6717 of 1999

Shri M.L. Kamra — APPELLANT

Vs

Lt. Governor and Others — RESPONDENT

Date of Decision : 01-05-2002

Acts Referred:
Civil Services (Medical Attendance) Rules, 1944 — Rule 1
Constitution of India, 1950 — Article 14, 21, 226, 47

Citation : (2002) 5 AD 999 : (2002) 98 DLT 97 : (2002) 64 DRJ 207

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : Rajiv Aneja, for the Appellant; Meera Chibbar, for the Respondent

Final Decision : Dismissed

Judgement

Mahmood Ali Khan, J.—This writ petition is filed under Article 226 of the Constitution of India for issue of a writ of mandamus directing the respondents 1 to 4 to reimburse the medical claim of Rs. 1,30,238.90 of the petitioner incurred on his treatment and coronary bypass surgery in Indraprastha Apollo Hospital, New Delhi with interest @ 24% per annum and issue of writ in the nature of certiorari quashing the order of the respondent bearing No. 705 dated 9.8.1998 by which reimbursement claim was declined.

2. Material facts, in brief, are that the petitioner is working as a trained Graduate Teacher in Dau Dayal Arya Vedic Senior Secondary School, Naya Bans, Delhi which is a Government aided school, and is governed by the Civil Services (Medical Attendance) Rules in the matter of medical attendance and reimbursement of claim for treatment. The petitioner was suffering from (CAD) triple vessel coronary artery disease. On 17.9.1996 Angiography?s was done on him in G.B. Pant Hospital (A Delhi Government Hospital). His condition was found stable and he was discharged with instructions "to attend cardiology clinic room No. 7 on Monday/Friday and to collect final CAG Report from Ex.II Lab and report after three days." The claim for expenses incurred on medicine and Angiography?

s done in the said hospital was later on reimbursed to the petitioner. It is alleged in the petition that after a fortnight the condition of the petitioner started deteriorating and he had to undergo elaborate medical check up. He consulted Dr. M.P. Gupta on 5.10.1996 and 9.10.1996. He also consulted Dr. R.C. Bhatia of Swamy Dayanand Hospital, who is a cardiologist and who advised him to have immediate coronary bypass surgery as he was complaining of re-current chest pain and dysponea. The petitioner tried to take an early date for his surgery in AIIMS but could not succeed. His family then rushed him to Indraprastha Apollo Hospital on 14.10.1996 where he was put under observation for surgery on account of his critical condition. A coronary by-pass surgery was then performed on him on 17.10.1996 since his case required an emergency treatment. He was discharged from the said hospital on 25.10.1996. On 11.1.1997 the petitioner submitted medical bills to the Department of Education of the Govt. of NCT of Delhi for reimbursement of the medical expenses totalling Rs. 1,30,238.90 incurred by him on the surgery and treatment at Indraprastha Apollo Hospital. Out if it Rs. 1,28,020/- was for treatment and operation in the hospital and the balance of Rs. 2,218.90 was the expenditure incurred on medicine. Despite repeated reminders and legal notice dated 21.9.1999 the respondents have failed to reimburse the claim. Contrarily the respondents have rejected the claim of the petitioner on 9.8.1998 vide letter No. 704 addressed to the Principal of the School, where the petitioner was working, without assigning any reason. Hence the petition.

3. On noticing, Mr. V.K. Sharma, Deputy Director of Education has filed a counter affidavit on behalf of respondents 1 to 3 i.e. Lt. Governor of Delhi, Govt. of NCT of Delhi, Director of Education and Deputy Director of Education (North). In the counter affidavit it was averred that the petitioner had started taking treatment from G.B. Pant Hospital and he was advised to collect Angiography?s report after 7 days and to take an early date for operation from CTVS Department of the hospital but instead of following it up the petitioner preferred to get his treatment from a private hospital of his own sweet will. Therefore, he is not entitled to reimbursement of the medical claim submitted by him since he was neither referred to the said hospital by G.B. Pant Hospital nor any other government hospital. There are three referral hospitals as per circular No. F.27/9/97/H&FW dated 26.9.1997 read with circular No. F.27(9)/93-97/M&PH/PF dated 15.9.1999 of the Government of National Capital Territory of Delhi (Health and Family Welfare Department) which are (1) Batra Hospital and Medical Research Centre; and (2) Escort Health Institute and Research Centre; and (3) National Heart Institute and Research Centre. There is no rule under which a government employee of the Govt. of NCT of Delhi can claim reimbursement for treatment taken by him in a private hospital of his own. The petitioner himself is to blame for not following the advice of doctors at G.B. Pant Hospital and not reporting there on the schedule date. The petitioner was not interested in his treatment in G.B. Pant Hospital because of his false psychological impression that he would not be treated/operated well there. He of his own went to M.C.D.

Hospital again for advice for which respondent No. 2 is not bound to reimburse the claim. The case of the petitioner was considered without undue delay in accordance with Central Services (Medical Attendance) Rules. Indraprastha Apollo Hospital is a private hospital and is not recognised for treatment for Delhi government employees. The claim of the petitioner was not found tenable. The representation made by the petitioner was considered by the Director of Education and was referred to Director of Health Services for expert opinion since the case of the petitioner was that the treatment was taken at Indraprastha Apollo Hospital in emergency. The Director of Health Services after obtaining the reports from G.B. Pant Hospital where coronary Angiography?s of the petitioner was conducted earlier was of the view that the petitioner had not followed the advice given to him by the doctors of G.B. Pant Hospital since he was asked to collect the Angiography?s report after 7 days and take an early date for operation from CTVS Department of the said hospital. Instead of following this advice the petitioner preferred to get treatment at the private hospital without being referred to by any doctor of any government hospital on the ground of emergency. The State Government employees are provided medical attendance and facilities in various hospital and dispensaries and in certain specified cases as per the prescribed rules, the doctors of the government hospital refer typical and emergent cases to listed/recognised hospital for which reimbursement facility is available subject to prescription of such cases to these private hospitals also. The claim of the petitioner was rejected to accordance with the Civil Services (Medical Attendance) Rules.

4. In the rejoinder the petitioner controverter the case pleaded in the counter affidavit. It was submitted that according to the Circular No. F.27/9/97-H&FW dated 26.9.1997 Central Services (Medical Attendance) Rules were applicable to the employees of the Government of N.C.T. of Delhi till new rules were framed. The respondents have concealed circular No. G.I.,M.H.&F.W.,O.M.No.S.14024/13/96 M.S. dated 1st July 1997 of CS (MA) Rules according to which Circular No.G.I.M.H. & F.W., O.N.No.110011/16/ 94/GHS/ DeskII/CMO(D)/CGHS(P) dated 18th September 1996 of CGHS as it was adopted in the Central Services (Medical Attendance) Rules and that CGHS circular declared Indraprastha Apollo Hospital as a recognised hospital. He also alleged that G.B. Pant Hospital did not enjoy good reputation on account of a number of death in coronary by pass surgery cases and he could not get early date of operation in AIIMS. It was further submitted that the Supreme Court has laid down that right to health is an integral part of right to life and respondents have deprived the petitioner of his right to life as enshrined in Article 21 of the Constitution by rejecting the medical reimbursement claim and the respondents have further violated Article 14 of the Constitution as in a number of other cases similar reimbursement claim has been allowed.

5. In an additional affidavit Gyanendra Srivastava, Director of Education submitted that as per the information supplied by G.B. Pant Hospital all the patients who needed emergency surgery were immediately operated upon in the

hospital and no patient was referred to any other hospital. After investigation routine patients were discharged from the Department of Cardiology of the said hospital and referred to CTVS OPD for giving dates for surgical operation. The waiting list of CTVS Department of the said hospital was up to 6-8 weeks. The G.B. Pant Hospital further informed that usually a patient who needed emergent surgery was not discharged and that he was referred to a surgeon immediately unless the patient refused or wanted to go to any other hospital. Coronary Angiography?s was done on the petitioner on 17.9.1996 and he was discharged and was referred to CTVS OPD for an early surgery. After Angiography?s the petitioner did not report back to G.B. Pant Hospital and went to Indraprastha Apollo Hospital on the advice of Dr. M.P. Gupta, Consultant Cardiologist of Ganga Ram Hospital. It was further stated that the government employees could have surgery at G.B. Pant Hospital or if they are apprehensive and did not want surgery in that hospital they could be referred to AIIMS but the patient (the petitioner) aped for a private hospital. The copy of the letter received from G.B. Pant Hospital was also enclosed.

6. The argument of the counsel for the petitioner is that the treatment at Indraprashta Apollo Hospital was taken by the petitioner in an emergency situation as his condition was deteriorating day by day and any delay in surgical operation could have been fatal. He further submitted that even otherwise Indraprastha Apollo Hospital was a recognised hospital under Civil Services (Medical Attendance) Rules and the various office circulars and government orders issued there under which are applicable to the CGHS employees of the Central Government and which the Government of NCT of Delhi has extended to cover its employees. He further argued that the right to life and health was a fundamental right enshrined in Article 21 of the Constitution of India, Therefore, the petitioner had a right to avail of the best medical facilities which were available in the city for saving his life. According to him, in a number of cases the courts have allowed reimbursement of the medical claim of the government employees who had undertaken treatment in a non-governmental/unrecognised hospital in similar emergency situation. Lastly, he contended that the petitioner should have been reimbursed the claim to the extent he would have it reimbursed in case of treatment at a government hospital. He referred to the judgments in Surjit Singh Vs. State of Punjab and Others, , Sadhu R. Pall v. State of Punjab and Ors., (1994) 1 SLR 283, Waryam Singh v. State of Punjab and Ors., 1996 (4) SLR 177 (P&H) , State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , Narendra Pal Singh v. Union of India and Ors., 1999 (3) AD 769 and a judgment of a single bench given in CWP No. 5317/99 Ms.S.Janani v. Union of India and Anr., decided on 18.12.2000 in support of his argument.

7. Controverting the argument of the counsel for the petitioner, the counsel for the respondents, on the other hand, argued that Indraprastha Apollo Hospital was a private hospital and it was not on the list of recognised hospitals under Civil Services (Medical Attendance) Rules applicable to the employees of the Government of NCT of Delhi for coronary bypass surgery. The petitioner had

surgery in that hospital without being referred to by his medical attendant or any of the government hospitals. Therefore, he was not entitled to the reimbursement of the claims for medical attendance, surgical operation and the medicine incurred by him in Indraprashta Apollo Hospital. Above all, it is contended, it is not a case of an emergency operation on the petitioner for saving his life since the petitioner went to Indraprastha Apollo Hospital on the advice of Dr. M.P. Gupta, cardiologist consultant of Ganga Ram Hospital of his own. Furthermore, it is submitted, the petitioner first went to G.B. Pant Hospital where he had coronary Angiography?s done and he was discharged with the instructions for follow up. He was advised to contact the CTVS, OPD for getting en early date for surgical operation and collect the report but the petitioner did not follow up these instructions and instead opted to go first to M.C.D. Hospital and then consulted doctors of Ganga Ram Hospital and thereafter got himself admitted in Indraprastha Apollo Hospital where he had coronary bypass surgery. Civil Services (Medical Attendance) Rules and the various office circulars which have been issued were applicable to the petitioner and in accordance with them the petitioner was not entitled to the reimbursement of the expenses incurred on surgery, treatment and medicine in Indraprastha Apollo Hospital. She justified the rejection of the medical claim of the petitioner by the respondents. She further argued that the case law relied upon by the petitioner related to the cases of Punjab Government employees who were governed by medical attendance rules and the office orders of Punjab Government. It was contended that the Punjab Government had allowed its employees to have some specialised treatment of serious diseases like heart ailment in some recognised hospital situated outside the State including a few hospital government and private at New Delhi since similar facilities were not available within the State, which is not a case here. Therefore, reliance on Punjab case law cited on his behalf is misplaced she has argued.

8. The short questions that arise for decision in this civil writ petition are (1) whether Indraprastha Apollo Hospital is a recognised hospital for the treatment of coronary by-pass surgery of the employees of the Government of N.C.T. of Delhi under Civil Services (Medical Attendance) Rules and the government orders and circulars issued there under; (2) whether the petitioner had undertaken the treatment and was operated upon for coronary by-pass surgery in Indraprastha Apollo Hospital as an emergency case; and (3) whether the petitioner is entitled to the reimbursement of the medical claim on account of the expenses of his treatment and operation done at Indraprastha Apollo Hospital on the ground that the right to life was a fundamental right enshrined in Article 21 of the Constitution of India and the petitioner has a right of self-preservation and availing of the better medical attendance and facilities available in a private hospital, in this case, Indraprastha Apollo Hospital, for saving his life.

9. The first question first. The petitioner claims that Indraprastha Apollo Hospital is a recognised hospital for the treatment of Central Government employees covered by CGHS in Delhi and the Government of N.C.T. of Delhi has extended

CGHS Rules to its employees till the rules under Delhi Government Employees Health Scheme are framed. It is argued by the counsel for the petitioner that the petitioner was referred to Indraprastha Apollo Hospital by Dr. R.C. Bhatia who is heart specialist working in Swamy Dayanand Hospital of M.C.D. at Shahdara, Therefore, he was entitled to the reimbursement of the full claim of the expenses for treatment and the operation conducted in Indraprastha Apollo Hospital. The petitioner has referred to Swamy''s book on Medical Attendance Rules Page 122 where a copy of G.I.. M.H. & F.W.,O.M.No.s.11011/16/94 -CGHS/Desk-II/CMO(D)/ CGHS(P) dated 18.9.1996 has been extracted which provided a list of recognised private hospitals/diagnostic centres under CGHS in Delhi for specialised and general purpose treatment and diagnostic procedures. The relevant portion of this Circular is given below:

"The undersigned is directed to say that the issue of recognition of private hospital for treatment of CGHS beneficiaries under CGHS, Delhi and fixation of ceiling rates has been under consideration of the Government for quite some time. It has now been decided to recognize the undermentioned hospitals/ diagnostic centres for different specialities (treatment/ diagnostic procedures) mentioned against their names:-"

10. Below this the name of Indraprastha Apollo Hospital is mentioned at S.No. 18 for specialised and general purpose treatment and diagnostic procedures. Relying upon this Government circular it is argued that Indraprastha Apollo Hospital being a recognised private hospital for treatment of CGHS beneficiaries the petitioner has right to take treatment from this hospital and reimbursement of the full claim for the expenses incurred on the surgery and the medicines there.

11. Conversely, counsel for respondents 1 to 3 has contended that Central Services (Medical Attendance) Rules apply to the petitioner and other employees of Government of N.C.T. of Delhi but these rules do not apply to the Central Government employees who are covered by CGHS in Delhi. Reference is made to Rule 1 of Central Service (Medical Attendance) Rules. Note 2 appended to Sub-rule (ii) of Rule 1 of these Rules provide that "these rules do not apply to:

(i) xxxx (ii) xxxx (iii) xxxx (iv) xxxx (v) xxxx (vi) Government servants who are governed by the Central Government Health Scheme while is stations where the Scheme is functioning."

12. She has also referred to Page 116 and 117 of Swamy''s book on Medical Attendance Rules. At page 116 it has been provided that the Central Government servants and members of their family residing outside the area covered by CGHS in the Union Territory of Delhi and those who come to Delhi may receive medical attendance either at Willingdon Hospital or Safdarjung Hospital which are under the direct administrative control of Central Government and further that "the employees of Delhi Administration and members of their families are, however, continue to receive treatment at these two Central Government hospitals only on the advice of their authorised medical attendants". At page 117 in respect of

AIIMS it is provided that this Institute will be treated as a referral institute/ hospital in respect of the persons covered under the CS (MA) Rules. At page 118 of the same Book it is provided that Primary Health Centre, Najafargh, St. Stephens Hospital, Delhi, Batra Hospital and Medical Research Centre, Escort Health Institute and Research Centre and National Heart Institute and Research Centre have been recognised for the treatment of Central Government servants and members of their family under Rule 2(d) of Central Services (Medical Attendance) Rules.

13. Counsel for respondents 1 to 3 has also filed the copies of the circulars issued by the Government of N.C.T. of Delhi on 26.9.1997 and 1 5.9.1999. the circular No.F.27/9/97/H&FW dated 26.9.1997 was issued in pursuance to a scheme formulated by the Government of N.C.T. of Delhi for providing medical facilities to its employees and other beneficiaries. The relevant extract of this circular is reproduced below:

"In continuation of this Department letters of even number dated 13.3.1997, 13.5.97 and 22.7.97 on the above noted subject, I am directed to inform you that the various queries were raised by different departments with regard to implementation of this scheme. These have been considered and the following procedure for providing medical facilities/reimbursement thereof has been decided in consultation with office of Finance Department/Controller of Accounts.

(1) All the head of offices shall ensure that monthly contribution from the employees who opt for this scheme is deducted from their respective salary latest by 31.10.1997 to make them eligible for reimbursement under this scheme. In case of a pensioner all head of the offices/DDOs where the pensioner last served, shall receive five yearly contribution or at least one year contribution from the pensioners at the rate already communicated against TR-5.

(2) Since the scheme was made effective from 1.4.1997 but all the employees could not get Health Cards on that date, the employees may be treated as eligible during the period from 1.4.97 to the date they get their health-cards.

(3) Central Services (Medical Attendance) Rules are applicable under this Delhi Govt. Employees Health Scheme till new rules are framed.

(4) Reimbursement scheme duly supported by the prescribed certificate from authorised medical attendants of the Delhi Govt. Hospitals/St. Stephens Hospitals and other referral is admissible to the members of this scheme.

(5) All the cases of reimbursement shall be received and processed in the office where a member of the scheme is working or from where the scheme is working or from where he/she retired.

(6) All the heads of the Department are, Therefore, advised to make adequate budget provisions on this account in the Revised Estimates for the current financial year.

Monthly contribution from the members of this scheme are required to be debited in the following head of account:- Major Head "210" Medical & Public Health 01-Urban Health Services, 800-Other Receipts.

Receipts in view of Medical facilities provided to the employees/ pensioners of Delhi Government and reimbursement on this account may be debited in respective salary head. The following hospital under Government of N.C.T. of Delhi are recognised for treatment of the members of the scheme:"

14. Below this a list of all the hospitals, Allopathic, Ayurvedic, Homoeopathic dispensaries run by the Government of N.C.T. of Delhi has been given. Thereafter the portion of the circular, which is relevant, reads as under :

..... The following hospitals/ diagnostic centres have been recognised as referral hospitals for the members of the scheme"

HEART DISEASE

Escort Health Institute and Research Centre National

Heart Institute and Research Centre.

Batra Hospital and Medical Research Centre;

The office circular No. 27(9)/93-97/M&PH/PF dated 15.9.1999 was issued for providing rates of charges of by-pass surgery CAB in respect of private hospitals recognised at par with CGHS. The relevant portion of this circular is extracted below:

"I am directed to forward herewith a copy of Order based on Ministry of H&FW, Govt. of India O.M.No.S.14025/45/94-MS dated 22-04-98, which contains the rate of Coronary By-Pass Surgery for the following recognised Private Hospitals:

1. Batra Hospital and Medical Research Centre;

2. Escort Heart Institute and Research Centre

3. National Heart Institute and Research Centre.

15. Counsel for respondents 1 to 3 referring to these office circulars has argued that only three private hospitals (1) Batra Hospital and Medical Research Centres; (2) Escort Health Institute and Research Centre; and (3) National Heart Institute and Research Centre are the recognised hospitals and diagnostic centres where the employees of Government of N.C.T. of Delhi may be referred to for treatment of the heart disease including coronary by-pass surgery. It was strenuously urged that Indraprastha Apollo Hospital being a private hospital is not recognised under the C.S. (M.A.) Rules and by the Government of N.C.T. of Delhi for treatment and surgery of heart diseases so the respondents 1 to 3 rightly declined to reimburse the medical claim submitted by the petitioner. She has also argued that as appears from the report of G.B. Pant Hospital dated 30.8.2001 sent to the Director of Education - respondent No. 3, who had

submitted it Along with his additional affidavit dated 7.9.2001, it is clear that in case a patient is not willing to have his surgery at G.B. Pant Hospital a reference was being made to AIIMS or to the private hospitals also. According to her, the petitioner, in this case, did not report back to G.B. Pant Hospital and get his case referred to AIIMS or any other recognised private hospitals like (1) Batra Hospital and Medical Research Centre; (2) Escort Health Institute and Research Centre; and (3) National Heart Institute and Research Centre, Therefore, he had no right to claim reimbursement of the expenses incurred on treatment at Indraprastha Apollo Hospital. It is submitted that no government hospital or authorised medical attendant of the petitioner as per rules has referred his case for treatment at Indraprastha Apollo Hospital. It is also not a case of emergency treatment at the said hospital. For all these reasons she has justified the rejection of the medical reimbursement claim submitted by the petitioner.

16. The respondents 1 to 3 have filed Delhi Government circulars which were issued in 1997 and 1999 after the formulation and implementation of a scheme for its own employees on the pattern of C.G.H.Scheme of Central Government employees. The petitioner had his surgery and treatment at Indraprastha Apollo Hospital in the year 1996. Therefore, these circulars are not of much help in deciding the case of the petitioner. Delhi Government has not framed its own rules under the new health Scheme. In the absence of the rules framed under its own scheme, the government was adopting the office circulars issued by the Central Government under Civil Services (Medical Attendance) Rules and CGHS to apply them, with or without modification, on its own employees. No Delhi Government order/office circular has been produced or brought to the notice of this Court by which office circular G.I., M.H. & F.W.,O.M.No.S.11011/16/94 - CGHS/Desk-II/CMO(D)/CGHS(P) dated 18.9.1996 (relied upon by the petitioner) was adopted by Delhi Government for applying over its employees. Till the Rules are framed under Health Scheme of Delhi Government, C.S.(M.A.) Rules shall continue to apply to Delhi Government employees.

17. In Swamy''s book on Medical Attendance Rules at pages 54 to 57 extract of G.I.M.H.&F.W.OM S14025/55/92-MS dated 19th August 1993 and S-19025/43/94 MS dated 31st October 1994 is given. These office orders were applicable to Delhi Government employees in 1996 when the petitioner had his surgery. The relevant portion of these office circulars is reproduced below:

(15) Recognized private hospitals and approved rates for Coronary Bypass Surgery - The approval of the Government is conveyed for reimbursement of medical expenses under Central Services (Medical Attendance) Rules, 1944, for specialized treatment like Heart, Kidney, Coronary, etc., at par with CGHS beneficiaries as only in these cases a package deal arrangement with private hospitals for CGHS beneficiaries exist at present. The rates of Coronary Bypass Surgery for all recognized private hospitals will be as under :

Entitlement Rates to be charged by the private recognized hospital

I. Rates for CBG

(a) General ward (basic pay up to Rs. 2,500 64,000

(b) Semi-private ward (basic pay Rs. 2,501 up to Rs. 3,500) 72,000

(c) Private ward (basic pay Rs. 3,501 and above) 89,000

II. Rules for Coronary Angiography?s

(a) General ward 8,500

(b) Semi-private ward 9,000

(c) Private ward 10,500

III. Rates for other investigations

Stress Thallium Test 6,000

Rest Muga Study 1,000

Stress Muga Study 1,100

Doppler Echo Cardiograph 700

Halter Monitoring 800 2. The above-mentioned revised rates are subject to the following conditions:-

(i) The rates for CABG, Coronary, Angiography?s and other investigations will be regulated on package deal basis. The package for CABG and Coronary Angiography?s include room rent from the date of admission to the date of discharge, service charges, nursing/medical care, surgeon''s and anaesthetist''s fee, operation theatre charge, etc., but does not include diet, cosmetics, toiletry, telephone charges, etc., which would be borne by the CS (MA)''s beneficiaries themselves.

(ii) The CS (MA)''s beneficiaries undergoing treatment for Angiography?s, CABG and other specified tests in the private recognized hospitals, will be reimbursed to the extent mentioned in this OM. The amount charged over and above the prescribed rates will have to be borne by the beneficiaries.

(iii) The above rates will remain in force for a period of 2 years and no request for revision of rates will be entertained during this period.

(iv) Reimbursement in respect of CS (MA) beneficiaries will be made at the above-mentioned rates or the rates charged by the hospital, whichever is less.

3. There will be no distribution between the first and the subsequent bypass surgery and the amount proposed would be applicable to any number of bypass surgeries.

4. The amount mentioned above will be paid directly to the recognized hospital by Department/Ministry concerned, from "Service Head".

5. A list of private recognized for Coronary Angiography?s and bypass surgery on a referral basis is given in the Annexure.

6. The admission in these hospitals will be regulated on the package deal basis. The package will include professional charges like surgeon''s fee, anaesthetist''s fee, etc., hospital stoppage charges for the total period of stay from admission till discharge, medication and food.

7. The above rates shall come into effect immediately.

8. The procedure for obtaining the treatment for Coronary Bypass Surgery in recognized private hospitals will be as follows:-

(i) On the basis of advice of Cardiologist of either a Central/State/UT Government hospitals, a referral letter is to be issued by the competent authority of the Ministry/Department. The referral letter will indicate the name of the hospital where the treatment would be taken, the amount that would be paid/ reimbursed and the Department/Ministry which will settle the claim for payment/ reimbursement.

(ii) All Central Government employees should apply for permission to the concerned Department/Ministry along with a certificate of their pay particulars.

(iii) The choice of the recognized hospital where the Government servant would like to avail of the treatment is left to the beneficiary himself subject to the condition that no travel expenses will be reimbursable if Coronary Artery Bypass Graft facilities are existing int hat particular city.

(iv) All recognized private hospitals will be required to maintain proper documentation and records in respect of beneficiaries admitted in general, semi-private wards for scrutiny as and when required by the Government.

9. All the recognised institutions are requested to confirm immediately that for the general ward patients, the charges would be kept within the ceiling prescribed.

G.I.M.H.&F..W.OM S14025/55/92-MS dated 19th August 1993 and S-14025/43/94 MS dated 31st October 1994

ANNEXURE

List of private hospitals recognized for Coronary Bypass Surgery

Name of City Name of hospital

Delhi 1. Batra Hospital and Medical Research Centre

2. National Heart Institute

3. Escort Heart Institute & Research Centre

18. In accordance with these circulars, the government servants on whom CS

(MA) Rules applied were entitled to have their case referred to a private hospital recognised for coronary Angiography?s and bypass surgery as given in Annexure. The choice of recognised hospital where the government servant would like to avail of the treatment was left to the beneficiary himself. As per annexure, in Delhi, 3 private hospitals were recognised for coronary bypass surgery. They were Batra Hospital and Medical Research Centre (2) National Heart Institute and (3) Escort Heart Institute and Research Centre.

19. In case the petitioner did not want to have surgery at G.B. Pant Hospital he in 1996 had the choice to have his case referred to AIIMS or any of the above named 3 private hospitals recognised for coronary bypass surgery and have the expenses reimbursed as per the package approved by the government. Instead of availing of this facility he chose a private unrecognised hospital at his own peril. Counsel for the petitioner has not been able to refer to any of the rules of Civil Services (Medical Attendance) Rules or the government circulars applicable to the employees of Government of N.C.T. of Delhi which permit the petitioner to have his surgery in a hospital other than the hospitals, government or private, which are not a recognised by the Government of N.C.T. of Delhi. It is pertinent to mention here that even AIIMS is not recognised hospital for treatment of heart diseases. It is only a referral hospital and employee of Government of N.C.T. of Delhi like the petitioner could be referred to AIIMS for such treatment by the government hospitals like G.B. Pant Hospital which had the facility for coronary by-pass surgery available.

20. Though the petitioner has alleged that he was referred to Apollo Hospital for surgery by Dr. R.C. Bhatia of Swamy Dayanand Hospital, Shahdara (a hospital of MCD) but he has not been able to produce anything to show that Dr. Bhatia was his authorised medical attendant and competent to make reference of his case to a referral Recognized /unrecognized private/government hospital to entitle the petitioner to the reimbursement of claim.

21. In this context circular of the Government of N.C.T. of Delhi No. F 335/18/97-H&FW/333 dated 8th May 1997 may also be noted which provided free facilities for treatment at Indraprastha Apollo Hospital "for the patients to be sponsored by the Government of Delhi". In accordance with this circular the patients would be sponsored by Medical Superintendents of Lok Nayak Jal Prakash Narain Hospital, G.B. Pant Hospital, Deen Dayal Upadhaya Hospital, G.T.B. Hospital and Director of Health Services, Delhi. Percentage of beds in general ward and even in private nursing home for treatment of the patients sponsored by the Government of Delhi free of cost is provided. The patients so sponsored were entitled to free consultation, bed, diet, investigation, nursing, medicines consumables under this scheme. This scheme is for sponsoring the patients in general and does not cover the employees of the Government of N.C.T. of Delhi though the scheme does not specifically exclude such employees being referred to Indraprastha Apollo Hospital for free bed under this scheme. But no such scheme was available in 1996 at the time of surgery of the petitioner.

22. After careful consideration of the CS (MA) Rules and the office circulars copies of which have been produced by both the parties and others referred to above I am constrained to hold that Indraprastha Apollo Hospital was not a hospital recognised by the Government of N.C.T. of Delhi for the treatment/ surgery including coronary by-pass surgery of its employees and the petitioner.

23. There is also dispute as to whether the petitioner went to Indraprastha Apollo Hospital as an emergency case and whether he was operated upon there in that condition. The petitioner has placed strong reliance upon a certificate issued by the Indraprastha Apollo Hospital and his discharge summary which are Annexures C and D of the writ petition. The certificate states as under:

"Certified that the patient Madan Lal Kamra, S/o Sh. F.C. Kamra, R/o 24F GASTA, B-3, Paschim Vihar, New Delhi 110 063 of DDAV, Sr. Secondary School Naya Bans, Delhi-110 096 visited the Hospital on 12/10/1996. After examining the patient it was found that he needed early surgery. He was admitted on 14/10/1996 and was operated on 17/10/1996. He is advised for bed rest for 2 months up to 20/12/1996."

24. The discharge summary after giving the name of the petitioner and some other particulars stated that the final diagnosis of the petitioner was "Atherosclerotic triple vessel coronary artery disease, critical left main coronary artery disease, unstable angina, essential hypertension". The name of the referring Physician was Dr. R.C. Bhatia. Referring Cardiologist was Dr. Atul Luthra. The particulars of the operation done on the petitioner mentioned in it were "Coronary artery bypass grafting x6. Left internal mammary artery anatomized to left anterior descending artery. Individual reversed sphenoid venous grafts to last obtuse marginal artery, right posterior descending artery, first and 2nd diagonal arteries and distal left anterior descending artery."

Annexure E is the bill which showed the Package Deal for CABG was Rs. 1,19,000/-, Echo Cardiograph Rs. 1,260/- and Maxima Oxygenate was Rs. 6500/- besides M.R.F. Rs. 160/-. The gross total of the bill was Rs. 1,28,020/-.

25. None of these three annexures indicate that the petitioner on 14.10.1996 was taken in emergency to Indraprastha Apollo Hospital, nearest available hospital for specialised treatment of the heart disease or that he was operated upon on 17.10.1996 as an emergency case. Respondents 1 to 3 have contended that the case of the petitioner was not that of emergency but a planned admission in Indraprastha Apollo Hospital to have coronary bypass surgery there. Attention has been drawn to Annexure A of the writ petition which are the treatment provided to the petitioner at G.B. Pant Hospital on 17.9.1996. According to this report the petitioner was suffering from ANGIO AOE III Strongly Positive TMT CAG; TVD in LAD. The provisional diagnosis was ''CAD'' I.Main.'' The condition of the patient at the time of discharge was stable. The report further provided in the column "Halter": "Cath & Angio As on Obverse" and "Plan": "Early Surgical Resecularisation REFFD: CIVS for early date please." Instructions for

allow up were "To attend cardiology clinic room No. 7 on Monday/Friday. To collect final CAG Report from Ex-II Lab and report after 3 days."

26. It is submitted on behalf of the respondents that it is clear from these reports that the petitioner was advised early surgery and was instructed to contact CTVS OPD for taking an early date for surgery and for collecting his CAG Report from the concerned Lab within three days. The petitioner did not report back to G.B. Pant Hospital and did not collect the report or take a date for early surgery. Instead he decided to have the surgery at Indraprastha Apollo Hospital on the advice of a consultant working in a M.C.D. Hospital (as alleged by the petitioner) or in Sir Ganga Ram Hospital (as alleged by the respondent). He as such planned to have his surgery at Apollo Hospital and it was not a case of emergency.

27. On the other hand, counsel for the petitioner submitted that the petitioner sent his friend to G.B. Pant Hospital for collection of the CAG Report and he was advised by a doctor there that the petitioner should have immediate surgery and further that it was not safe to have surgery at G.B. Pant Hospital where the rate of success of such operation was low. In this connection, he also referred to a newspaper report about use of contaminated surgical aids in G.B. Pant Hospital for septicaemia deaths in 1994-96.

28. The facts as emerged from the pleadings of the parties and the documents placed on record clearly indicate that the petitioner went to Indraprastha Apollo Hospital for surgery not as a case of emergency but as a matter of choice. This is clear from a representation which the petitioner made to the Deputy Director of Education, North Zone on 30.7.1996 and is Annexure R-V of the counter affidavit filed on behalf of respondents 1 to 3. The relevant portion of this representation is reproduced below:

"Angiography?s (CABG) was done on 17.9.1996 and the condition at the time of discharge was stable from G.B. Pant Hospital it got deteriorated son after a fortnight I sent my neighbour to collect the report and CAG film the remarks of Dr. G.S. Gambhir were, "Where is the patient? He should be in the hospital. He is just like an atom bomb when is he going to burst no one knows because of severe blockage. He needs an emergency operation. Having come to know I immediately contacted the medical experts'' advice. One and all advised me to go to a Hosp;ital where emergency operation could be performed and warned me against the conditions of G.B. Pant Hospital which showed no chances of life after operation "Jaan Hai to Jahan Hai," were the remarks of a nurse who works in G.B. Pant.

I sought consultation from Dr. M.P. Gupta on 5.10.96 who referred and advised me early surgery (Evidence enclosed). Then I visited Swami Dayanand Hospital on 9.10.96 and sought Dr. S.C. Bhatia''s advice. (I have been under his treatment since 1985 as a hypertension case). He is a Sr. Splt. in Cardiology. He too advised me early surgery (Evidence enclosed). It was as if all roads went to Indraprastha Apollo. I took appointment on 12.10.96 Saturday and was advised

to immediately get admitted to the Hospital for emergency operation. I could manage to collect funds and took admission on 14.10.96. The doctor said "Others can wait, M.L. Kamra can''t. He should be operated on 17.10.96 in the morning." I felt myself safe at the hands of Dr. G.K. Mani. It is the expert Dr''s advice that has saved my life and I am alive to claim the expenses and I am sure had I been at G.B. Pant Hospital you might have found my wife and daughter at your door for justice (for pensionary benefits)."

29. Counsel for the petitioner has vehemently argued that the petitioner has a right of self-preservation and considering the advice of the doctors it was absolutely necessary for the petitioner to have coronary bypass surgery at the earliest for saving his life. According to him the petitioner at first approached AIIMS for the surgery but was not given an early date. Therefore, he had no option but to have this operation at Indraprastha Apollo Hospital. Excepting bare words of the petitioner that he was denied an early date for surgery at AIIMS nothing has been produced on record to corroborate this allegation. The petitioner could not have gone to AIIMS for this operation of his own without being referred to by G.B. Pant Hospital or any other hospital of the Government of N.C.T. of Delhi where facilities for such operation were available. Though the petitioner had tried to explain as to why he had decided not to have surgery at G.B. Pant Hospital but he has not given any reason why he did not get himself referred to other three private hospitals namely (1) Batra Hospital and Medical Research Centre; (2) Escort Health Institute and Research Centre; and (3) National Heart Institute and Research Centre which are recognised by the Govt. of N.C.T. of Delhi for treatment of heart diseases and coronary bypass surgery. G.B. Pant Hospital is a super speciality hospital and has earned a name for itself in treatment of serious diseases like heart diseases in and around this part of the country. Still the petitioner had a wider choice to have his operation in other good government or private hospitals like AIIMS or three private hospitals referred to above after getting a reference made. It is not the case of the petitioner that he had no opportunity to get the reference made nor is it his case that there was long queue waiting for the emergency operation in any of these hospitals. He did say that an early date for surgery was not available in AIIMS but nothing has been produced on record to substantiate this allegation. The representation made by the petitioner to the Deputy Director of Education which has been produced by respondents 1 to 3 to counter the allegation of the petitioner does falsify the claim of the petitioner that he went to Indraprastha Apollo Hospital as an emergency case and had the operation there in that condition. The contention of the petitioner that his was an emergency case, Therefore, could have treatment at the nearest approachable hospital, government or private, recognised or un-recognised, for saving his life is not tenable. Needless to state that the counsel for respondents 1 to 3 has not disputed that in case of emergency where the life of the patient may be in danger of being wasted the State Government employees can have the treatment even in an unrecognised private hospital if it is necessary for saving

their life or health and that they will be entitled to the reimbursement of the medical bill paid by them on such treatment on a mere certificate of the Head of the Department.

30. Reference to the judgments in in Surjit Singh v. State of Punjab and Ors. (supra), Sadhu R. Pall v. State of Punjab and Ors. (supra) and Waryam Singh v. State of Punjab and Ors. (supra) is absolutely misplaced. All of them pertain to the treatment which the employees of the Government of Punjab had undertaken in the hospitals outside the State of Punjab in emergency under the Service Rules and the office circulars of the Government of Punjab which permitted them to have their treatment and surgery at some recognised hospitals outside the State of Punjab. A few such hospitals government and private were situated in Delhi also. These rules were framed by the Government of Punjab for serious and specialised diseases for which treatment was not available in the hospitals within the State of Punjab. The earlier rules provided for a long drawn procedure for getting permission before the treatment could be had in the hospitals outside Punjab. The employees who got treatment in emergency at some hospitals which were not recognised or without obtaining prior clearance from the concerned board were denied reimbursement of medical claim. They approached Punjab & Haryana High Court. It was in the peculiar facts of the cases and the fact that such facility was not available in the hospital within the State of Punjab that it was laid down that the State Government employees of Punjab Government had right of self-preservation and could not have followed cumbersome procedure and waited in a queue for clearance of their request for treatment in the hospital outside the State or outside the country. Their medical reimbursement claims were allowed. Even in some cases the State Government was directed to reimburse the claim at the same scale on which it was reimbursing the claim had the treatment been undertaken in a recognised government/private hospital. However, after the policy was amended the procedure for taking approval for treatment outside the State of Punjab was made easier, the Supreme Court in State of Punjab v. Ram Lubhaya (supra) upheld the amended policy but allowed reimbursement of the claimant the AIIMS rate or in Escort Hospital on account of peculiarity of facts. In the case of Narendra Pal Singh v. Union of India (supra) the petitioner, a CGHS beneficiary was posted at Hoshangabad and he had to be admitted for severe chest pain in a hospital at Vadodara in emergency. He was found suffering from triple vessel disease and had coronary bypass surgery in emergency. It being a treatment/surgery in emergency, which could not wait for normal procedure to be followed the Court allowed the reimbursement of medical claim. Similarly in M/s Janani v. Union of India (supra), case of a retired CGHS beneficiary was referred by R.M.L. Hospital (Central Government Hospital) to Escort Heart Institute and Research Centre for coronary Angiography?s. He was accorded sanction for heart surgery. Part of the medical bill was reimbursed to him. He filed civil writ petition for direction to the government to pay the balance. It was held "If the Government hospital did not have the facility for giving treatment like the one which was required to be given to the petitioner,

then it was an obligation on the part of the respondent to have reimbursed the amount paid to the said hospital."

31. No advantage of these judgments could be claimed by the petitioner in this case. In order to succeed and become entitled to the reimbursement of the medical bill of Indraprastha Apollo Hospital the petitioner was required to prove that his treatment brook no delay and he went to that hospital in emergency. He has not been able to prove it. Contrarily it appears that the petitioner planned to have the treatment at Indraprastha Apollo Hospital apprehending that it was not safe to have it in a government hospital without considering that three other good private recognised hospitals for heart diseases were available. For all these reasons it must be held that the petitioner did not go to Indraprastha Apollo Hospital in emergency and had his treatment there in that condition.

32. Now I advert to third question. The Supreme Court in State of Punjab and Ors. v. Ram Lubhaya (supra) while dealing with the new policy of the Government of Punjab which disallowed reimbursement of the full medical expenses incurred by an employee of the Punjab Government for such treatment in any hospital in India not being a government hospital in Punjab, in para 25 observed:

"So far as questioning the validity of governmental policy is concerned in our view it is nor normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or vocative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive."

In para 29 of the judgment the Supreme Court further laid down:

"No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospital increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be vocative of Article 21 or Article 47 of the Constitution of India."

In para 35 of the said judgment it was observed:

"Learned counsel for the appellant submits that in the writ petition filed, the

respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant''s decision to exclude the designated hospital cannot be said be such as to be vocative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every Fundamental Right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that Government will give due consideration and priority to the health budget in future and render what is best possible."

33. Supreme Court in the above judgment, thus, upheld the right of Punjab State Government to lay down policy and the procedure for those employees who wanted to have treatment of certain serious diseases in recognised hospitals outside the State.

34. Government of N.C.T. of Delhi has recognised a number of hospitals in Delhi for specialised treatment of heart diseases which include three private hospitals which are in no way inferior in reputation, services and facilities to Indraprastha Apollo Hospital. In fact those hospitals are super speciality hospitals for diseases relating to heart. The rules also permit reference of the government servants to other Central Government hospitals like AIIMS for treatment. Therefore, unlike the conditions which prevailed in State of Punjab which compelled the Government of Punjab to recognise hospitals outside the State fro treatment of its employees, the government servant in Delhi have a larger choice of hospitals for treatment. Where the life is in danger of being wasted or there is possibility of irreparable injury to the health i.e. in case of treatment in emergency, the employees of the Government of N.C.T. of Delhi, may under the rules claim reimbursement of the amount spent by them on the treatment taken in any of the hospitals private or government. If he had no time to approach his medical attendant/government hospital for making reference he need not worry. A certificate by the Head of the Department of the government servant that treatment was taken in emergency is enough for reimbursement of the medical claim. For these reasons the argument of the counsel for the petitioner that the rejection of the medical claim by the respondents tantamount to denial of fundamental right to life and health to the petitioner which are enshrined in Article 21 of the Constitution of India is, Therefore, not tenable. The petitioner cannot claim parity and equity with the employees of the State Government of Punjab. Every government provides medical facilities to its employees or for that matter to its citizens keeping the financial resources and other constraints in view. It cannot be held that if certain rules of Punjab Government allowed its employees to have treatment and reimbursement of their claim for treatment at a Private hospital outside the State of Punjab the petitioner should also be

allowed reimbursement of claim in similar manner from a private hospital of his choice and denial of such reimbursement would be discriminatory and vocative of Article 14 of the Constitution of India. There is no merit in this submission.

35. Now I turn to the last limb of the argument of the counsel for the petitioner. It is submitted that the petitioner is a poor employee and he had incurred a huge sum on his treatment at Apollo Hospital and reimbursement, at least, should be granted at the same scale at which he was entitled for it to be granted had he taken the treatment at a government hospital like AIIMS or even the G.B. Pant Hospital. Considering the huge amount spent by the petitioner the prayer of the petitioner seems innocuous at the first glance. However, if such reimbursement was allowed it would open Pandora''s box. The rules have been framed by the State Government for providing medical facilities to its servants keeping in view the financial resources, need and other constraints of the State Government. These rules are reasonable and cannot be held to have denied the government servant of fair and adequate medical facilities. If the petitioner in contravention of the CS (MA) Rules or the government circulars take a treatment at a place of his choice and he is reimbursed the medical claim at the rates which are applicable for treatment in government hospitals it would open a flood gate of medical reimbursement claims from its employees which may not be good for its financial resources. The government has established the hospitals, spends huge sum on their maintenance, it has recognised certain private hospitals also in consultation with the experts and keeping in view of its own financial resources. The violation of such rules, Therefore, cannot be allowed to be made even in exception.

For the reasons stated above I do not find any merit in the writ petition. It is dismissed.

