(2002) 05 DEL CK 0254

In the Delhi High Court

Case No : CW No. 475 of 1996

Shri T.S. Oberoi — APPELLANT

Vs

Union f India (UOI) and Another — RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:
Administrative Tribunals Act, 1985 — Section 10
Constitution of India, 1950 — Article 21, 41, 47

Citation : (2002) 64 DRJ 454

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : K.K. Rai, M.S. Oberoi and Amrit Kaur Oberoi, for the Appellant; Sanjay Jain, for respondent No. 1, R.K. Saini and N.R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner, by this writ petition, seeks refund of Rs.51,200/- together with interest up to date. This respondents the amount charged by respondent No. 2, Escorts Heart Institute and Research Centre (hereinafter referred to as EHIRC) over and above package rates, for the open heart surgery, undergone by petitioner on 31.1.1995.

Respondent No. 1 Union of India made a payment of Rs. 89,000/- being the package rates, specified in Office Memorandum dated 20.4.1994, leaving the petitioner to pay the charges over and above the package rates.

2. Petitioner is a retired Additional District Judge, who last served as a Member of the Central Administrative Tribunal, Petitioner is a patient of CAD (Coronary Artery Disease). Petitioner was unwell and the Head of the Department of Cardiology, Safdarjung Hospital upon examination referred him to the G.B. Pant Hospital for Angiography treatment. Angiography was got done immediately on 24.1.1995, which showed Triple Vessel Disease with 100 per cent blockage in two arteries and 80 per cent blockage in the third artery. Dr. M.Khalilullah, Director

and Head of the Cardiology Department, G.B. Pant Hospital recorded the petitioner''s condition in the following words :

"Mr. T.S. Oberoi, 64 years male, Member Judicial (Retd.) Central Administrative Tribunal, Delhi, is suffering from severe Triple Vessel Disease and requires immediate by pass surgery. In view of the complications involved, he is advised to undergo surgery at Escorts Heart Institute."

3. The Senior Medical Officer of the Central Government Health Scheme, accordingly, vide letter dated 29-20/94/R&H/CGHS Delhi, addressed to respondent No. 2 EHIRC, granted permission for treatment at EHIRC.

4. Petitioner in the event, under-went open heart surgery at EHIRC-respondent No.2. As noted, EHIRC billed a sum of Rs.1,40,200/- respondent No. 1 Union of India made payment of Rs.89,000/- being the purported entitlement of petitioner in terms of Office Memorandums dated 20.7.1994 and 5.10.1994, and required the petitioner to make the balance payment.

5. Mr. K.K. Rai, appearing on behalf of the petitioner, submitted that the petitioner was referred firstly by the Head of the Cardiology Department, Safdarjung Hospital to G.B. Pant Hospital. The Director and Head of Cardiology Department, considering the serious and critical condition of the petitioner, who was having Triple Vessel Disease with 100 per cent blockage in two arteries and 80 per cent blockage in the third artery, recommended his case for immediate surgery at EHIRC. Mr. Rai submitted that 26.1.1995, was Republic Day and thereafter there was the long weekend. The Director of G.B. Pant Hospital himself considering all these factors had recommended the petitioner''s case for treatment at EHIRC, in view of the complications involved. Mr. Rai, Therefore, submitted that the petitioner did not elect the EHIRC for treatment of his own volition, rather, it was a case where the Senior functionary of the Government Hospital, had recommended the petitioner for surgery at EHIRC, in view of the complications involved. In these circumstances, respondents were obliged to bear the entire cost of treatment. Learned counsel submitted that the basic right to life included the right to medical facilities and treatment. He referred to the Directive Principles, enshrined in Article 47 of the Constitution of India. Petitioner also places reliance on the judgment of the Supreme Court in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., . He submitted that in the cited case, on account of a long strike in AIIMS, patient had to be admitted in EHIRC. The patient had claimed the difference of charges paid by him to the EHIRC, and the amount reimbursed as per the policy, based on the admissible rates of AIIMS. The Supreme Court, though holding that the case should not be treated as a precedent for other cases, directed the Central Government to pay the differential. The Court repelled the challenges to the policy of fixation of rates and scales and held the same to be not vocative of Article 21 or Article 47 of the Constitution of India. Petitioner also places reliance on the case of M.G. Mahindru v. Union of India (CW. No. 5317/99), where a patient, who had been recommended and referred for treatment at EHIRC was held entitled to be

reimbursed the entire amount incurred on treatment. The rationales was that the respondents themselves had recommended the case for treatment at EHIRC and hence the patient was entitled to the complete reimbursement.

Reliance is also placed on the judgment of the Division Bench of this Court in P.K. Jain Vs. Government of National Capital Territory of Delhi and Another, to contend that the District Judge or Additional District Judge could not be held to be holding a post lower than the statutory post held by any members of the IAS. Therefore, All India Services (Medical Attendance) Rules, 1954 were applicable, as far as the entitlement to the reimbursement of medical expenses were concerned. Counsel also relied on proviso of Section 10 of the Administrative Tribunal Act to urge that though the petitioner had retired as Additional District Judge in October, 1992, the terms and conditions with regard to the medical reimbursement applicable were those of his parent service, Delhi Higher Judicial Service. Proviso of Section 10 of the Administrative Tribunal Act is as under :-

"Provided that neither the salary and allowance nor the terms and conditions of service of the Chairman, Vice-Chairman or other Member shall be followed to his dis-advantage after his appointment."

Learned counsel, Therefore, submitted that the petitioner was covered by the All India Services (Medical Attendance) Rules 1954 and hence entitled to the complete reimbursement.

6. Mr. Sanjay Jain, appearing on behalf of the Union of India, places reliance on the terms and conditions, set out in the Office Memorandum dated 20.7.1994, as also the clarification issued, as per Office Memorandum dated 5.10.1994. The said memorandum is in the following terms :-

"In continuation of this Ministry''s Office Memorandum of even number dated 20.7.1994 on the subject cited above, the undersigned is directed to say that the CGHS beneficiaries undergoing treatment for Angiography, CABG, and other specified tests in the private recognised Hospitals mentioned in the Annexure of the said Office Memorandum will be reimbursed to the extent mentioned in this Ministry''s Office Memorandum dated 20th July, 1994. The amount charges over and above the prescribed rates will have to be borne by the beneficiaries themselves."

He also relied on the Clauses 2 (ii) to (v) of the Office Memorandum dated 20.7.1994, which is in the following terms :-

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

(i) ...

(ii) The hospitals will not charge over and above the package deal rates mentioned above from the CGHS beneficiaries.

(iii) The hospitals should provide credit facilities to pensioners and after the treatment is over, submit the claim to the concerned Additional Director, CGHS of

the city concerned for reimbursement.

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

(v) Reimbursement in respect of CGHS beneficiaries including pensioners will be made at the above mentioned rates or the rates charges by the Hospital, whichever is less."

7. Learned counsel submitted that the right of the State to regulate the medical facilities to be provided in view of the limited resources available has been held to be not vocative of Articles 21 and 47 of the Constitution of India. He, Therefore, submitted that the petitioner had been duly reimbursed the rate as per the ceiling limits fixed in the Office Memorandums dated 20.7.1994 and 5.10.1994. Learned counsel relied on the following passage of the Judgment of the Supreme Court in State of Punjab and Ors. v. Ram Lubhaya Bagga etc. (Supra) :-

"29. No State of any country can have unlimited resources to spend on any of its project. 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 finance permit. If no scale or rate is fixed then in case private clinics or hospitals 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."

8. Having noted the facts, terms and conditions of the Office Memorandums dated 20.7.1994 and 5.10.1994, the judicial pronouncements by this Court as well as by the Supreme Court and the rival contentions of the parties, let us analyze the entitlement of the petitioner for reimbursement of the complete amount, as claimed. The legal position, which emerges is that while the right of the State to regulate the scale of charges, which are to be reimbursed as a matter of policy has been held not to be vocative of Articles 41 and 47 of the Constitution of India, keeping in mind that State is not being possessed of unlimited resources. In the instant case, vide Office Memorandum dated 20.7.1994, the entitlement of Government personnel in different scales as well as charges and fees for various procedures has been prescribed. The rate for CABG to be charged by private recognised hospital has been given as Rs.89,000/-. Clause 2(ii) carried the following prohibition :-

"The hospitals will not charge over and above the packaged deal rates mentioned above from the CGHS beneficiaries."

Clause 2(v) provided that reimbursement for CGHS beneficiaries including pensioners will be made at the above mentioned rates or the rates charged by the hospital, whichever is less. Lastly, the Memorandum of October, 1994, which

provided that the amount charged over and above the prescribed rates will have to be borne by the beneficiaries themselves.

9. For purposes of this writ petition, it is not necessary to go into the question as to whether the petitioner, being a retired Additional District Judge, is entitled to be reimbursed on the basis of All India Services (Medical Attendance) Rules and to complete reimbursement or not? In my view even if petitioner is held to be not covered by the All India Services (Medical Attendance) Rules and covered by CGHS Scheme and terms of the memorandum dated 20.7.1994 and 5.10.1994, it would not be of any consequence. The reason for this is that in the instant case, the petitioner did not to his volition choose the EHIRC, a speciality hospital, recognised by the Government. Petitioner had duly gone for treatment to the Public Hospital at Safdarjung Hospital, who referred him to G.B. Pant Hospital, which has facilities for cardiac treatment and surgery etc. including angiography. The angiography test was performed which revealed the petitioner''s condition as critical. Petitioner was found to be suffering from Triple Vessel Disease with 100 per cent blockage in two arteries and 80 per cent blockage in third artery. This being the situation the Director and Head of the Department of G.B. Pant Hospital, himself assessed the gravity of the petitioner''s disease being such the should immediately without loss of time get by-pass surgery done at the speciality Hospital EHIRC. Petitioner has also sought to explain that he could not have been treated in G.B. Pant Hospital in view of the intervening holidays and the long weekend. Once the recommendation has been made by the Director, who is an expert in his field, it cannot be said that the petitioner himself has selected to get treatment at EHIRC. The situation, Therefore, is that based on petitioner''s condition, a public hospital, which had facilities available, recommended his case for treatment at EHIRC. It was not a case, where the petitioner was not willing to have himself treated in public hospital. This being the situation, the restrictive conditions of the Memorandums dated 20.7.1994 and 30.10.1994, fixing the ceiling cannot be held to be applicable to the petitioner. Petitioner would be entitled to reimbursement of the entire amount spent. The above finds support from the earlier decisions of this Court in M.G. Mahindru v. Union of India and Anr. (CW. 5317/99) and V.K. Gupta v. Union of India & Anr. (CW. No. 4305/2001).

10. The matter can be looked at from another perspective. It was the failure of the CGHS authorities to enforce a stipulation in the Office Memorandum dated 20.7.1994, namely, "The Hospitals will not charge over and above the packaged deal rates, mentioned above, from the CGHS beneficiaries."

Respondent No. 2 in its affidavit, has stated that the patients are charged as per the actual treatment provided to them and based on the consumable used in their individual cases. In the case of the petitioner, the same were to the tune of Rs.1,50,200/-. Respondent claimed that it had given discount of Rs.10,000/- in open heart surgery and Rs.2500/- for angiography. Respondent No. 2 claimed that in view of the clarification given in the Office Memorandum dated 5.10.1994,

the charges over and above the prescribed rates were to be borne by the beneficiary and that condition No. 2(ii) of Office Memorandum dated 20.7.1994 could not be read in isolation.

11. In my view, it is high time that the Central Government/CGHS authorities, while conferring the status of recognised Government speciality hospital should re-negotiate the package rates for various procedure and treatments. The private hospitals receive several benefits from the State in terms of allotment of land at concessional rates, exemption or benefits of concessional custom duties in import of surgical, diagnostic, medical and other equipments and consumable. More often that not the stipulations and directive to the private Hospitals for providing a certain % of free rooms or treatment for economically weaker sections are not implemented. A large number of Government and public sector employees are referred to private speciality hospital for treatment. These constitute substantial business for any hospital. It is for the CGHS Authorities to negotiate with the private hospitals from a position of strength, so that discounted package rates and advantageous terms are offered to employees for different procedure irrespective of some individual variation in treatment. The authorities can also endeavor to have a modified package for cases entailing extra stay or repeat procedure. This is especially so, when the public hospitals are not in a position to cater to the requirements and meet the ever increasing demand with adequate facilities not being available. An earnest endeavor is required on the part of the Central Government to arrive at better negotiated terms for itself and its employees.

12. In view of the foregoing discussion, the petitioner is held to be entitled to reimbursement of the entire amount. A writ of mandamus shall issue to the respondent No. 1 to reimburse the balance amount of Rs.51,200/- to the petitioner within a period of eight weeks from today.

13. The writ petition is allowed and stands disposed of in the above terms. The respondents shall also file an action taken report in respect of the observations and directions given in para 11 within four months from today.

