

(2006) 04 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C) No. 1895 of 2004

Smt. Promlesh Bhatnagar

APPELLANT

Vs

Employees State Insurance Corporation and Another

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2006) 129 DLT 827 : (2006) 89 DRJ 578 : (2007) 1 SLJ 539

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Naveen R. Nath, Ad, for the Appellant; Yakesh Anand, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J

1. By way of this writ petition, the petitioner is seeking the following prayers:

(a) Pass a Writ Order or Direction in the nature of Certiorari quashing the letter dated 17.9.2003 issued by the respondents rejecting the claim of the Petitioner for medical reimbursement as being arbitrary and illegal and being in violation of the Petitioner's rights under Article 14 and 21 of the Constitution of India.

(b) Pass a Writ Order or Direction in the nature of Declaration that the Petitioner is entitled to medical reimbursement for the expenses incurrent for the treatment of her husband at the Sir Ganga Ram Hospital, New Delhi for the entire period that the said beneficiary underwent treatment up to his death, i.e. 17.09.2002 to 11.10.2002;

(c) Pass a Writ order or Direction in the nature of Mandamus commanding the respondents to reimburse to the Petitioner an amount of Rs. 2,51,077 (Rupees Two Lakhs Fifty One Thousand and Seventy Seven Only) with interest at the rate of 12% per annum from the date of submission of the original and verified Bills,

up to the date of payment; and

(d) Pass any such other order or orders, as may be deemed fit and proper.

2. There is no dispute to the factual matrix. The petitioner is the widow and the beneficiary of the family pension from the Employees State Insurance Corporation (hereinafter referred to as "Corporation"). Her husband late Shri D.C. Bhatnagar was employed as office superintendent in the Corporation. He took voluntary retirement from service on the 2nd September, 2002 as he had been ailing. After retirement, the husband of the petitioner availed all medical facilities provided to the retired staff of the corporation. It is submitted that these facilities are identical to the facilities provided to the staff of the Central Government. The husband of the petitioner was admitted to All India Institute of Medical Sciences for treatment on 12th September, 2002. From this Institute, on 17th September, 2002, he was referred to the Sir Ganga Ram Hospital.

3. According to the petitioner, her husband had applied for issuance of the medical card with the Corporation which was issued to him only on the 10th October, 2002. This medical card has been placed on record and is valid for the period of one year from 1st October, 2002 to 30th September, 2003.

4. Unfortunately, shortly after issuance of the card, Shri D.C. Bhatnagar expired the very next date on the 11th October, 2002 when he was still admitted to Sir Ganga Ram Hospital. The hospital had raised a bill of Rs. 2,51,077/-.

5. It has been pointed out that Shri D.C. Bhatnagar was compelled to take voluntary retirement as he was seriously sick and had earlier been treated in the E.S.I. Hospital in Basaidarapur. Because of his sickness, his pension papers were under process and his medical benefit card was prepared only after retirement which was issued on the 10th October, 2002. There is no dispute that the husband of the petitioner was admitted in the Sir Ganga Ram Hospital on the 17th September, 2002 and he died while he was still in a hospital. On the date of his death, the medical card had been issued to the petitioner. In these circumstances, the petitioner made a representation dated 19th February, 2003 to the Director General of the Corporation seeking reimbursement of the medical bills. The bills, duly verified, were enclosed with the representation. This representation was forwarded by Additional Director of the Corporation to the Joint Director wherein it was stated that the contribution for issuance of medical benefit card was received on 10th October, 2002. The bills and claim papers of the petitioner were enclosed with the forwarding letter.

6. However, despite the recommendation to reimburse the medical expenses even as a special case, the Additional Director sent the petitioner vide a letter dated 17th September, 2003 informing the petitioner of the rejection of the claim in the following terms:

In respect to your letter bearing No. 30(16)/2002/P.S.3530 dated 23-12-2002, it is hereby informed that Late Shri D.C. Bhatnagar was not entitled to medical

benefits during the period of his illness since he had not furnished his contribution. As such it is not possible to accept the claim for medical reimbursement. Hence all the papers relating to the claim are being returned here with in original.

7. In these circumstances, the petitioner has been compelled to file the present writ petition seeking quashing of the letter dated 17th September, 2003. In the counter affidavit, the respondents have contended that the petitioner's husband cannot be given reimbursement for the medical treatment taken by him prior to issuance of medical card and prior to his making a contribution towards the medical fund. It is submitted that for this reason, the writ petition has to be rejected.

8. Having heard learned Counsel for the parties, I find that there is no dispute that the petitioner's husband suffered the ailment and required treatment and that he was actually taking the treatment. There is nothing in the counter affidavit to show as to when the petitioner applied for the card or to explain as to why it was not issued to him earlier. The petitioner's husband was compelled to take voluntary retirement on the ground of health and it has been stated that his retiral benefits and papers were under process on account of his sickness. He had been admitted to the All India Institute of Medical Sciences on 12th September, 2002 and from there, he was referred to Sir Ganga Ram Hospital where he was admitted from 17th September, 2002 to 11th October, 2002. There is no material to show that the deceased employee refused to make deposit or payment of charges. On the contrary, admittedly the card was issued on 10th October, 2002 which was valid from 1st October, 2002 and consequently, the delay, if any, has occurred on the side of the respondents. Undoubtedly, administrative procedures would have been required to be taken prior to issuance of card but in such case, it cannot possibly be contended that the petitioner's husband did not pay the demanded charges and for this reason, is disentitled to reimbursement of the expenses incurred. There is also no dispute that the petitioner's husband died in hospital and that the bill has been raised by the hospital in respect of his continuous treatment.

9. It is also significant that there is no contention on behalf of the respondent that the claim of the deceased Shri S.C. Bhatnagar was not valid or that he was not entitled to the payment on account of a prohibition under any rules or regulations or for any other reason.

10. My attention has been drawn to the pronouncement of Supreme Court reported at State of Punjab and others Vs. Mohinder Singh Chawala, etc., wherein the court held thus:

The petitioner has admittedly suffered the ailment and required urgent and immediate treatment in an emergency. The plea of the Government that he has not taken prior sanction for retirement in non-C.G.H.S. Hospital is clearly erroneous and cannot be entertained. Moreover, the law does not require that

prior permission has to be taken in such situation where the survival of the person is the prime consideration. It is always open for the Government to grant ex-post facto sanction subject to verification of the claim which has not been denied in the present case.

5. The law is, Therefore, well-settled that right to health is an integral part to life and the Government has constitutional obligation to provide the health facilities to its employee or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds. Firstly the Government does not give any proper reasoning to deny the claim of the petitioner in its communication dated 4th December, 1997 and secondly the affidavit of Dr. P.K. Baliar Singh merely states that since the petitioner had taken the treatment in non-C.G.H.S. Covered area and as per Central Government Health Scheme Orders and instructions as issued by the Government, a pensioner is not entitled is not entitled to the facilities of reimbursement. These reasons cannot be appreciated in view of the settled position that the petitioner is entitled to take recourse to an emergency treatment in any area if the circumstances and the nature of disease so warrant.

11. The court held that the reasons given by the respondents for denial of relief to the claimant in this case were not cogent. The denial was not based on any prohibition under rules and regulations.

12. In Surjit Singh Vs. State of Punjab and Others, the Apex court held thus:

11. 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 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. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course, the sum of Rs. 40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High

Court in the manner it has been projected now in this Court. We do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

13. Learned counsel for the petitioner has also placed the judgment of this Court delivered on 13th May, 2002 in WP (C) No. 4873/2000 entitled S.K. Sharma v. UOI and Anr. wherein the petitioner, who was an ex-government employee, claimed reimbursement of medical expenses in the absence of being a member of the C.G.H.S. scheme. The court noticed the stand of the respondent to the effect that the petitioner Shri S.K. Sharma had taken treatment at Bareilly which was not covered by the C.G.H.S. scheme and that the petitioner had opted for not becoming the beneficiary of the C.G.H.S. scheme after retirement. On this submission, it was contended that the petitioner was not entitled to the benefits of the C.G.H.S. scheme. In this case also, the respondent had contended that the petitioner Shri S.K. Sharma had not made payment for becoming the beneficiary of the C.G.H.S. scheme. In this background, after considering the contentions of the parties, the court held thus:

It is now settled law that a citizen of this country under the mandate of Article 21 of the Constitution of India does not only have a right for animal existence but a reasonable existence. Health service forms a very important part of existence of an individual. Government servants are provided the benefit of medical aid as within the limited financial emoluments available to them they would be unable to meet large medical expenses which may arise in certain exigencies. The chances of seeking such medical aid increases as the years go by and a person gets older. In fact the better medical facility back-up is required at that age. It is in these circumstances that a retired Government Officer is entitled to the benefit of the CGHS as he cannot be expected to have large financial capacity after retirement to meet exigencies of medical problems. There is thus force in the contention of learned Counsel for the petitioner that the material factor is status of the person as the retired pensioner and not merely being the card holder of the CGHS scheme on payment of some nominal amount. This has also to be appreciated taking into consideration the fact that certain areas are not CGHS areas. After retirement a Government Servant may reside in different parts of the country. It cannot be expected that the government should discriminate between the officers who happen to stay in one or other parts of the country. It is the duty of the Government to make available proper health facilities and the officer should not suffer by reason of the failure of the Government to extend CGHS scheme to all areas of the country.

In so far as the contention of the respondent that the petitioner was in a non-CGHS areas is concerned, the court placed reliance on the pronouncement of this Court reported in B.R. Mehta Vs. Union of India and Others, wherein it was held that it would be a travesty if a retired beneficiary is deprived of medical expenses only on the basis that he is not a member of the C.G.H.S. scheme. It was noticed

that the order of the learned Single Judge in B.R. Mehta case was upheld by the Division Bench in L.P.A. dismissing the appeal of the respondent on 14th February, 2000.

14. In the background of this position of fact and law, in S.K. Sharma v. U.O.I., this Court held that a government employee does not cease to be a Central Government beneficiary merely because he is not covered by the C.G.H.S. scheme; that he cannot be discriminated against merely because he is not a member of the C.G.H.S. scheme as he is staying in a non-CGHS area and that expert effective approval could have been granted to the treatment and claim of the petitioner. A writ of mandamus was issued directing the respondent to examine the case of the petitioner for reimbursement of the medical expenses and to reimburse the same.

15. In the instant case, the husband of the petitioner was allotted the medical card, albeit a day before he expired. However, admittedly, the medical card was valid from 1st October, 2002. The petitioner was constrained to seek voluntary retirement on health grounds on 17th September, 2002 and remained admitted in hospital from 12th September, 2002. He has been treated even in the E.S.I.C. hospital. Right to health is a constitutional right of a citizen of India and a retired beneficiary cannot be denied reimbursement of medical expenses only on the ground that he is not a card holder of the applicable scheme or has not made payment of some nominal amount. The respondents are possessed of the retiral benefits of the petitioner. Any amount which was due and payable to the petitioner's husband could have been notified to her. The quantification of the amount payable has not been placed even before the court. However, in view of the facts noticed in the judgments placed before this Court, undoubtedly, the amount is a notional amount. The petitioner, Therefore, cannot be denied reimbursement for the hospital bills paid by the petitioner on account of treatment given to her deceased husband who was an employee of the respondent Corporation.

16. For all these reasons, the writ petition has to be allowed.

17. The order dated 17th September, 2003 is hereby quashed. The respondents are directed to examine the case of the petitioner for reimbursement of the medical expenses incurred by her in respect of the treatment given to her husband and to reimburse the same to the petitioner on the basis that the petitioner's husband was entitled to reimbursement of medical expenses as a retired employee of the corporation. The needful shall be done within a period of two months from today. The respondents shall also communicate the computation of payment effected by them to the petitioner.

The petitioner shall be entitled to costs of the present proceedings which are quantified at Rs. 7,500/-.