

(2014) 05 RAJ CK 0237
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1343/2008

Sohan Raj Kharwal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0237

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Vikas Hedau, Advocate for the Appellant; Anil Bissa, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—The petitioner being a retired Senior Teacher of the Education Department of the State of Rajasthan has filed this writ petition claiming reimbursement of medical expenses to the extent of Rs. 1,40,378/- for Angio Biography Heart Surgery undertaken by him in S.A.L. Hospital, Ahmedabad in emergency outside the State of Rajasthan after he was treated in Government Hospital for the said disease. The said claim has not been entertained by the respondent-State and only a sum of Rs. 4400/- has been paid to the petitioner towards the angiography vide Annex. 7 dtd. 15.5.2007 and no reason has been assigned by the respondents for not making reimbursement of the balance amount of treatment because under the Scheme for Pensioners.

2. The learned counsel for the petitioner has urged that, in an emergency, if the Government servant takes the treatment outside the State of Rajasthan, the Rules 6 and 7 of the Rules of 1970 govern the case and while the petitioner was outside the State of Rajasthan, he suffered the heart ailment, in an emergency he was taken to a nearby private hospital and he was provided medical treatment there. He also relied upon the recent judgment of this Court in the case of Jawahar Lal Bohra Vs. State of Rajasthan & Ors. (SBCWP No. 6350/2005, decided on 26.03.2014) and in the case of Smt. Usha Mehta Vs. State of

Rajasthan and ors. (SBCWP No. 6401/2006, decided on 26.03.2014). He, therefore, submitted that reimbursement of the medical expenditure incurred by the petitioner deserves to be reimbursed to the petitioner.

3. This Court in the case of Jawahar Lal Bohra (supra) has held as under:-

18. The contention raised by the learned counsel for the respondent that since the Asian Heart Institute, Mumbai was not the recognized hospital by the State Government, and therefore, the claim of the petitioner could not be accepted, is also a contention not worthy of acceptance. Firstly, as aforesaid the limited number of hospitals outside the State of Rajasthan, which have been included in the 1970 Rules, makes it a miserably narrow list of such speciality hospitals, which can provide the treatment in complicated cases. Prescribing the hospitals of only at two stations of Delhi and Mumbai also does not seem to have any rational nexus. The point of time at which the list of these hospitals were prescribed also goes back to many years before the treatment in the present case was taken by the petitioner or may be taken by other similarly situated persons later on. It is true that 1970 Rules have since been replaced by the State Government by another set of Medical Attendance Rules in the year 2008 and then again by the another set of new Rules in the year 2013 but the fact remains that the present case is covered by the Rules of 1970 which held the field up-to the year 2008 and in the present case, the petitioner having undergone that treatment for his heart ailment in the year 2004 will be admittedly covered by the Rules of 1970. Therefore, if the aforesaid list of Hospitals for Rules 6 or 7 of the 1970 Rules was to restrict the claims of the Government Servants or the retired Government servants/pensioners, the very purpose of making of provisions for the reimbursement of such medical expenses under the 1970 Rules will be frustrated, if the State was to be allowed to negate such claims in all other cases. Such cannot be the intention of the medical attendance rules in question. Therefore, on the principles of the harmonious construction in the present case, the petitioner is held entitled to the reimbursement of his medical expenses incurred by him.

19. Apparently and avowedly, these medical attendance Rules providing for reimbursement of the medical expenses to the Government servant and retired pensioners, is a beneficial and welfare legislation meant for the welfare of the Government servants and, therefore, a liberal, sympathetic and objective interpretation for the applicability of these Rules, has to be made by the Courts and not a pedantic or narrow approach of the matter would subserve the interest of justice.

20. In the aforesaid facts and circumstances the case, this Court would have directed the complete reimbursement of the expenses incurred by the petitioner and as claimed by him, because the relevant facts are not being disputed by the respondent State of his disease, treatment in the Asian Heart Institute, Mumbai, or actual incurring of the expenses but as the Rule exist, the aforesaid harmonious construction of the two Rules is possible in the facts of the present

case and that is why this Court would dispose of this writ petition by directing the respondent-State to re-consider the medical reimbursement claim made by the petitioner to the extent of the expenditure, if such actual treatment had been taken by the petitioner in the specified recognized Government Hospital, namely, Bombay Hospital, at Mumbai. The reimbursement of claim to that extent cannot be disputed and denied by the respondent-State, otherwise it will be negation of the rights of the pensioner or the Government servant to claim such reimbursement under the 1970 Rules. It may be noted here that the applicability of these Rules has not been questioned by the respondent-State except the contentions raised to the extent of sub-rule (2) of Rule 2, which has already been negated by this Court above. Therefore, the State is bound to reimburse the medical expenses, where a case is covered by either of the Rule 6 or 7 of the Rules of 1970 at least at the rates of nearest recognized hospital under any of the Rule 6 or 7 outside the State of Rajasthan, where the patient or Government servant has taken the treatment in a hospital outside the State of Rajasthan in an emergency and such claims cannot be altogether rejected.

21. The details and the range of expenditure at the Bombay Hospital, the recognized hospital, is however not available on the record of the Court. Therefore, any specific direction to reimburse the claim of the petitioner to a particular extent, cannot be made in the present case. Though the learned counsel for the petitioner submitted that he has available those rates of the Bombay Hospital, of the year 2002 but in the present case, the treatment was taken by the petitioner in the 2004, when the rates may be and presumably would be different, depending on the facility of such treatment available in Bombay Hospital at that point of time. Therefore, it remains to be verified as to what were the rates applicable for such treatment, which the petitioner actually undertook in the Asian Heart Institute, in the year 2004 in Bombay Hospital, at that point of time. The respondent-State through its Medical & Health Department, can very well verify such rates and ascertain such information from the authorities of the recognized hospital, namely, Bombay Hospital, Mumbai, even now. If the Bombay Hospital, Mumbai, does not provide any such information or verification within stipulated time frame, the entire claim of the petitioner of actual expenditure incurred by him for Rs. 3,13,016/- shall be reimbursed to him.

22. Therefore while holding the petitioner entitled to the reimbursement of his medical expenses for his treatment for heart ailment, which he took in Asian Heart Institute, Mumbai, for such reimbursement as per Rule 6 of the 1970 Rules, this writ petition is disposed of by directing the Director of the Medical and Health Department of the State Government to forward the relevant papers of the actual treatment taken by the present petitioner at the Asian Heart Institute, to the Bombay Hospital, Mumbai and request them to supply the information with regard to the expenses which would have been incurred in the Bombay Hospital, had the petitioner taken this treatment actually in Bombay Hospital itself at that point of time. Upon such information being received, the amount as

permissible and chargeable by the Bombay Hospital, may be paid to the present petitioner against his claim of actual expenses incurred by him for his treatment in Asian Heart Institute, Mumbai. It is needless to say that if such charges by Bombay Hospital are shown to be more than the claim raised by the petitioner, only the amount as claimed by the petitioner shall be reimbursed to him and on the other hand, if the charges quoted by the Bombay Hospital are less, than the amount claimed by the petitioner, then such lesser amount would be reimbursed to the petitioner. If the amount so ascertained and paid to the petitioner is significantly less than the amount claimed by the petitioner, the petitioner will be free to make appropriate representation to the respondent Joint Director of Medical and Health Department, Jodhpur, who shall decide such representation by a speaking order and direct complete reimbursement to the petitioner or his authorised representative as per his aforesaid claim exercising the powers of relaxation under Rule 12(2) of the Rules of 1970. The aforesaid exercise may be undertaken and completed within a period of 3 months from today since already a long period of 10 years has already passed by since the petitioner underwent the said treatment at Mumbai in the year 2004.

23. The writ petition is, accordingly, disposed of. No costs. A copy of this order be sent to the concerned parties forthwith.

4. In the case of Smt. Usha Mehta (supra), this Court has held as under:-

14. Now, let us examine whether the reimbursement of the medical expenses when a case falls under Rule 7 is limited in any manner. Rule 7 clearly stipulates that the Government servant and members of his family suffering from a disease, for which treatment is not available in any Government hospital in the State shall be entitled to medical attendance and treatment to the extent indicated in Sub-rule (2) of this Rule provided that the local medical authority gives the requisite certificate allowing the patient to have treatment outside the State. The said Sub-Rule (2) of Rule 7 quoted above clearly stipulates that cost of all the drugs and medicines and other therapeutic substances shall be reimbursable besides the amount actually paid to the hospital or the institution including the charges for surgical operations and ordinary nursing facility where the patient has been given the medical treatment. Sub-rule (2) also permits travelling allowance for the journey from rail/road from duty point to the place of treatment outside the State of Rajasthan.

15. Appendix 11 of Rule 7(3) gives the list of Hospital/Institution recognized for the purpose of Rule 7(3) outside the State of Rajasthan admittedly includes Bombay Hospital, Mumbai at serial No. 11 besides 13 other leading Hospitals of Delhi and Bombay and also Christian Medical College and Hospital, Vellore. The circumstances in which the patient Government servant in the present case was taken to the Bombay Hospital when refused to be admitted in AIIMS Delhi as stated in the writ petition are also not disputed by the respondents. The fact that Bombay Hospital is a recognised hospital by the State for the treatment outside the State is also not disputed nor it could be so disputed. Therefore, the claim of

the present petitioner clearly falls within the parameters of Rule 7 and deserves to be fully reimbursed except to the extent of air fare which is not permissible under Rule 7(2)(c) of the 1970 Rules which permits travelling allowance only for the journey by road/rail from the place of posting to the place of treatment. The amount of such air fare is Rs. 37,450/- included the aforesaid total sum of these 6,98,001.87/- claimed by the petitioner for reimbursement. The respondents have even denied and disputed and have not reimbursed the charges of the Bombay Hospital namely ICU charges, intensive care, nursing charges, investigation expenses, doctor's consultation fees, surgical charges, surcharge paid to the Government on the bills, ambulance charges and normal stay charges at Bombay for a period of 3 months amounting to Rs. 22,200/- only. With these deductions the sum paid of Rs. 2,67,478/- that too with the relaxation granted to the petitioner does not appear to be on a fair, reasonable and proper consideration of the claim of the petitioner for the reimbursement of the expenditure made with regard to the treatment of the patient-Government servant.

16. This Court also does not find anything in the Circulars referred to above dtd. 3.3.1999 and 6.3.2002 for curtailing or reducing the payment to the petitioner's wife after his death. Admittedly the State did not verify the expenses with the AIIMS, Delhi itself which would have been incurred by the patient or his family for his treatment had he been admitted actually in AIIMS, Delhi upon their consent and appointment given and without any such information brought on the Court, the reimbursement of some of the expenses by the State, namely of drugs and medicines, part of investigations charges to the extent of 1/3rd cannot be said to be a proper consideration of the medical bills submitted by the petitioner in the present case. Since Bombay Hospital is admittedly a recognized hospital by the State Government under 1970 Rules, which list has to be considered even for Rule 6 cases as held by this Court in the case of Jawahar Lal Bohra (supra), there is no reason, why the petitioner should not be held entitled to full reimbursement of actual expenses.

17. This Court is of the opinion that in view of the long period of 10 years passed by and more so when the patient-Government servant unfortunately expired after suffering a prolonged disease and multiple organs failure and having undergone the agony of coma and unconsciousness for a long period, the trauma suffered by the widow of the present petitioner deserves a sympathetic consideration and instead of remanding the case back to the State, this Court is of the considered opinion that a direction to the respondent-State to make reimbursement of the balance amount not already paid to the petitioner deserves to be given in the present case.

18. Accordingly it is directed that the State Government shall now pay the balance amount of Rs. 3,92,973.87 (6,98,001.87-37,450 of the air fare and-Rs. 2,67,478/- already paid).

19. The writ petition is accordingly allowed and respondent-State is directed to

make the aforesaid payment to the present petitioner within a period of 2 months from today failing which the amount so determined shall bear simple interest @9% per annum to the date of actual payment. If the aforesaid sum is not paid within a period of 2 months, the interest shall be payable from the date of filing of present writ petition on 1.11.2006. No order as to costs. A copy of this order be sent to the parties concerned forthwith.

5. Accordingly, the present writ petition is disposed of with a direction and liberty to the petitioner to approach the competent Authority, namely, the Director of Pension and Pensioners Welfare, Government of Rajasthan, Jaipur, who will decide the claim of the petitioner in the light of aforesaid judgments of this Court by passing a speaking order after giving an opportunity of hearing to the petitioner, within a period of two months from today and shall reimburse the costs of treatment to the extent permissible under the aforesaid Scheme for Pensioners within the aforesaid period of two months from today. No order as to costs. A copy of this order be sent to the parties concerned forthwith.