
(2015) 09 DEL CK 0012

In the Delhi High Court

Case No : Writ Petition (C) 4863 of 2008

Union of India and Others

APPELLANT

Vs

M.A. Haque

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227, 39(e), 41

Citation : (2015) 09 DEL CK 0012

Hon'ble Judges : G.S. Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Ruchir Mishra, for the Appellant; Pankaj Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J—Present Writ Petition has been filed by the petitioners under Article 226/227 of Constitution of India seeking issuance of a writ of certiorari or any other appropriate writ to set aside the order dated 04.12.2007 passed by the Central Administrative Tribunal, Principal Bench (CAT) in O.A. No. 179/2007 and order dated 06.02.2008 passed in Review Application No. 14/2008 by the Central Administrative Tribunal.

2. The brief facts of the case in hand are that the respondent underwent an Angiography and Angioplasty on 10.11.1998 and 11.11.1998 respectively and accordingly submitted a bill of Rs. 1,59,412.50 for reimbursement of medical expenses incurred by him at Escorts Heart Institute. The respondent filed M.A. No. 559/2007 in O.A. No. 179/2007 before the learned Tribunal making a prayer for full reimbursement of Rs. 1,59,412.50 as medical expenses. The petitioners filed reply to the said O.A. and tendered the summary of the amount reimbursed to the respondent as per the Government Rates. The respondent was reimbursed in the sum of Rs. 99,805/- on 03.02.1999 as per the rates given in Government of India, Ministry of Health & Family Welfare O.M. No. S-11011/16/94-CGHS Desk II/CMO (D)/CGHS (P) dated 18.09.1996 applicable at the relevant time and

the reimbursement of medical claims of the respondent was restricted as per the package rates fixed by Ministry of Health & Family Welfare for CGHS recognized hospitals. The learned Tribunal vide order dated 05.11.2007 directed the petitioner herein to file an additional affidavit to explain why consultation fee, cost of medicine, injection and cost of consumables were not given to the respondent, as once the respondent was referred by Dr. Ram Manohar Lohia Hospital to the Escorts Heart Institute and took the treatment as per reference made by Dr. Ram Manohar Lohia Hospital, there was no justification for denying the medicines which the respondent was prescribed during his treatment. The Tribunal also directed the petitioner herein to explain if the respondent took some tests/medicines/tonics which were not related to cardiology for which he was not referred by Dr. Ram Manohar Lohia Hospital. An additional affidavit was filed by the petitioner explaining that the claim of the respondent was reimbursed as per the package deal rates given in Annexure I & II of Government of India, Ministry of Health & Family Welfare O.M. No. S-11011/16/94-CGHS Desk II/CMO (D)/CGHS (P) dated 18.09.1996 (R1), package deal rates include admission charges, operation charges, anaesthetic charges, OT charges, cost of drugs and disposable surgical sundries, physiotherapy charges and room charges, consultation fee, medicine, injection and cost of consumables was not reimbursed to the respondent separately as the package rate did not include the same. The learned Tribunal in its judgment dated 04.12.2007 directed the respondents (petitioners herein) to reimburse the respondent the remaining amount in the context of the claim of Rs. 1,59,412/- within one month from the date of receipt of a copy of the order. The petitioner sought review of the order dated 04.12.2007 passed in O.A. No. 179/2007, the petitioners filed R.A. No. 14/2008 before the learned Tribunal and the Tribunal dismissed the said R.A. vide order dated 06.02.2008.

3. Learned counsel for the petitioner argued that the respondent has been reimbursed the medical expenses incurred by him during his treatment as per the Rules and Package Deal Rates fixed by Ministry of Health & Family Welfare which were applicable at the relevant time. The details of the amount claimed and reimbursed to the respondent are as under:

4. Learned counsel for the petitioner further argued that any excess payment beyond the approved package deal/rates has to be borne by the beneficiary and reliance has been placed on para 5(c) of O.M. No. S-11011/16/94 - CGHS Desk II/CMO (D)/CGHS (P) dated 18/09/1996, which reads as under:

"5 (c) It has been further decided that the CGHS beneficiary taking treatment in the above mentioned hospitals with the prior permission of the CGHS will be entitled for reimbursement as per package rates given in the Annexure "C". The rates for indoor treatment mentioned in attached Annexures are for Semi Private Category. For Private Ward there will be an increase of 15% and the General Ward there will be a decrease of 10%."

5. Reliance has also been placed on OM dated 25.10.2001, as per which the

beneficiary of CGHS are entitled to reimbursement of medical expense only to the extent to package rates. The relevant para of the said OM reads as under:

"I am to inform you that 55 private hospitals and diagnostic centers were recognized vide Ministry OM NO. Rec-24/2001/JD(M)/CGHS/Delhi/CGHS (P) dated 7th September, 2001.

The beneficiary can take treatment in the following hospitals and reimbursement will be restricted to the package rates approved in the Ministry of OM No. S-11011/16/94 - CGHS Desk II/CMO (D)/CGHS (P) dated 18/09/1996"

6. Counsel for the respondent submitted that the right to life and health is a fundamental right enshrined in Article 21 of the Constitution of India, Therefore, the respondent 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 nongovernmental/unrecognised hospital in emergency situation.

7. Lastly, the counsel for the respondent contended that he should have been reimbursed the claim to the extent he would have it reimbursed in case of treatment at a government hospital. To substantiate his contention, counsel for the respondent relied upon the judgments of the Apex Court.

8. Learned counsel for the respondent supported the decision of the learned Tribunal and submitted that the same is within the parameters of Law as laid down by this Court as well as by Hon''ble Supreme Court in a catena of decisions. It is argued that the respondent was treated in an empanelled hospital that too after authorized referral.

9. While relying on *Suman Rakheja v. State of Haryana & Anr.* : (2004) 13 SCC 562, it was contended that respondent is entitled to full reimbursement of medical expenses incurred and the claim cannot be restricted to the ceiling limit prescribed under OM issued by the Government of India.

10. Further reliance has been placed on *Sh. Balram Sharma Vs. Union of India (UOI) and Another*, (2008) 154 DLT 463 , wherein it has been held:

"10. xxxxxxx. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute & Research Centre, New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute & Research Centre being a recognized hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred.

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14. We are, therefore, of the view that in balancing the interest of the Government, on the one hand, which is limited to financial resources and its

paying capacity and on the other hand, it has duty towards its employees to reimburse the medical expenses, a balance can be struck by directing the respondent/Government to reimburse medical expenditure in full when the following conditions are met:

- a) The private hospital where the treatment is taken by a Government employee is on the approved list of the Government.
- b) The illness for which the treatment is required is of emergent nature which needs immediate attention and either the Government hospitals have no facilities for such treatment or it is not possible to get treatment at Government hospital and it may take unduly long for the patient to get treatment at Government hospital.
- c) The concerned employee/patient takes permission to get treatment from the Government hospital, which is granted and/or referred by the Government hospital to such a private hospital for treatment.

and in *Shri Prithvi Nath Chopra Vs. Union of India (UOI) and Another*, (2004) 74 DRJ 175 , wherein it has been held that :

"22. There is no dispute about the fact that the hospital in question was an approved hospital and approved for the treatment in question. The real controversy which arises, and in fact that is what has been pleaded by learned counsel for the respondent is that the petitioner is entitled to reimbursement only at the rates specified in the circular of 1996 while the Indraprastha Apollo Hospital has charged a greater amount from the petitioner which is not entitled to be reimbursed.

23. There can be no doubt that the government has to provide the health care facility and reimburse the expenses. The observations of the Supreme Court relied upon by learned counsel for the respondents only set out that it may not be possible to make available unlimited resources for grant of such medical treatment. In fact, learned counsel for the respondents cannot even seriously dispute the proposition that such circulars are not strictly adhered to in all cases as in *V.K. Gupta's* case (*supra*) the stand of the learned counsel for the respondent was that reimbursement is made as per circular of 1996 and in other cases reimbursement has been done when ordered by the court. It was thus observed that this can hardly be called a satisfactory state of affairs."

11. We may note that in *Consumer Education and Research Centre and Ors. v. Union of India and Ors.*: 1995 SCC (3) 42, wherein it has been held :

"22. xxxxxxxxx. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of person and to live a life with dignity and equality.

27. That right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

12. In *State of Punjab and others Vs. Mohinder Singh Chawala, etc.*, AIR 1997 SC 1225 : (1997) 1 JT 416 : (1997) 1 SCALE 135 : (1997) 2 SCC 83 : (1996) 10 SCR 279 Supp : (1997) AIRSCW 1260 : (1997) 1 Supreme 546 , it has been held that:

"The name of the disease for which the treatment is not available in Punjab Government hospitals is shown as Open Heart Surgery and the name of the private hospital is shown as Escorts Heart Institute, New Delhi as one of the approved hospital/institution. Thus, for open heart surgery or heart disease the Escort Heart Institute is authorised and recognised institution by the Government of Punjab. Consequently, when the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is integral part of his expenditure incurred for the treatment. Consequently the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment."

13. In *Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI)*, (2004) 111 DLT 473 : (2004) 74 DRJ 479 , it has been held that

"If the hospital has charged over and above the package rate, the respondent is under an obligation to pay to such charges as the petitioner has incurred over package rates at the first instance and if in law state can recover from the hospital concerned, they may do so but they cannot deny their liability to pay to the Government employee who is entitled for medical reimbursement."

14. In *Jai Prakash v. Union of India & Ors.*, 2007(3) SCT 831, wherein it has been held

"Once the respondent itself recommended the treatment to be taken by the petitioner at the Institute, being an approved hospital for specialized treatment, there is no justification for the respondent to deny him full reimbursement on the basis of the charges admittedly incurred by the petitioner over and above the package rate which the respondent had agreed upon with the hospital. The plea of the respondent that the respondent is bound by the terms and conditions laid down in the Office Memorandum dated 22nd April, 1998 for making reimbursement of charges of by-pass surgery in respect of private recognized hospitals in terms of the said Office Memorandum, is liable to be turned down as

it is the very same private hospital, recognized and duly approved by the Government, which has charged rates over and above the package rate prescribed by the respondent."

15. Upon hearing learned Counsel for the parties and on bestowing our careful consideration to all aspects of the case and the law discussed above, we may note that respondent got his treatment in Escorts Heart Institute after being referred by Dr. Ram Manohar Lohia Hospital, which is a recognized hospital by the Ministry of Health & Family Welfare for specialized treatment. The treatment of the respondent in Escorts Heart Institute had also not been disputed. We find no justification and basis in petitioner's stand that the respondent had not been allowed full medical reimbursement.

16. In the instant case, it is the Government hospital, namely Dr. Ram Manohar Lohia Hospital which has recommended the case of the respondent to Escorts Heart Institute, which is a specialty hospital and on the empanelled list of CGHS. When the petitioners himself have recommended the case of the respondent for getting treatment at a specialty hospital, to deny the benefit of giving full reimbursement would be contrary to the grant of medical facilities to a Government servant. If the Government hospital did not have the facility for giving treatment like the one which was required to be given to the respondent and refer the patient to the private empanelled hospital, then it was an obligation on the part of the petitioners to have reimbursed the total amount paid to the said hospital. With these observations, we direct the petitioner to reimburse the full medical expenses to the respondent. We may note that the amount which needs to be paid to the respondent already stands deposited with Registrar General, Delhi High Court vide order 10th July, 2008. This amount be released to the respondent within one week from today with interest accrued thereon.

17. Writ Petition stands dismissed. No costs.