

(2010) 07 DEL CK 0088

In the Delhi High Court

Case No : Writ Petition (C) No. 12711 of 2009

Union of India (UOI) and Another

APPELLANT

Vs

Shanti Devi Sharma

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2010) 07 DEL CK 0088

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Rajat Gaur, for the Appellant; Khushbir Singh, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Rule D.B.

2. Heard for disposal.

3. A short issue arises for consideration.

4. The predecessor in interest of the respondent Late Sh. Tara Chand Sharma who was in Government service, post retirement, opted not to pay the requisite contribution to be a member of Central Government Health Scheme.

5. Unfortunately for him, after availing medical aid, he applied for being issued a CGHS Card on 04.03.2003. It was then that he paid the requisite money and was inducted as a member of the Central Government Health Scheme.

6. But the medical bills prior thereto were rejected on the ground that when medical treatment was taken he was not a member of the scheme.

7. Proceeding to the Central Administrative Tribunal, Late Sh. Tara Chand Sharma succeeded when impugned order dated 14.01.2008 was passed.

8. While passing the impugned order, the bench of the Tribunal has apparently followed the ratio of law as per two decisions reported as S.K. Sharma and

Others Vs. Union of India (UOI) and Others, r. and decision reported as 2006 (1) ATJ 282 V.K. Jagadhari v. Union of India.

9. We note that in a decision reported as 2008 VI AD (Delhi) 44 Dal Chand Vashisht v. Government of NCT of Delhi and Ors. a Division Bench of this Court has considered the said two decisions and has given a finding that Sh. S.K. Sharma and Sh. V.K. Jagadhari on superannuation did not apply to become members of the CGHS Scheme for the reason Sh. V.K. Jagadhari settled in Neemuch, Madhya Pradesh, and Sh. S.K. Sharma, after retirement, settled in Bareilly, a town in the State of Uttar Pradesh. Both the towns did not have any CGHS facility and for said reason they were justified in not opting to become the members of the scheme. It was in said circumstances it was held that the two persons later on becoming members of the health scheme in question and thereby being entitled to reimbursement of the money spent by them prior to them becoming members was justified. Paragraphs 20 and 21 of the said decision may be noted as under:

20. Often Health schemes, including the DGEHS are contributory in nature, and are structured on the same lines as the insurance schemes, where the burden is shared by all the contributories collectively for the benefit of those who may need to draw from the common pool thus created. If such contributions were permitted to remain contingent on the employee/pensioner first suffering illness, and incurring substantial expenses (which are more than the contribution he would be liable to make under the Scheme, because only then the employee/pensioner will find it worthwhile to become a member of the Scheme), the entire scheme may collapse. No employee/pensioner would feel the need to get covered by such a scheme in advance, to cover the risks which the scheme protects against. Only such persons who see it as a profitable proposition, i.e., those who have incurred more expenses and are in a position to claim more reimbursement than the contribution required under the scheme would then become members under the scheme at their own convenience. The concept of a large body of employees/pensioners contributing a very small fraction of the costs to meet the expenses of a few who actually suffer large amounts of expenses on medical treatment would be completely defeated. No doubt, even in contributory schemes for employees/pensioners, the Government may provide funds from its coffers as well to top up the expenses/out go from such schemes, but essentially they are contributory schemes.

21. A constitutional Bench of the Supreme Court in Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others, has pronounced upon the nature of the CGH Scheme and the extent scope of the rights of a retired employee vis-a-vis his health services. In the said case the court was considering the claim being made by the confederation of Ex-Defence Personnel who were claiming the right to full and free medical aid for themselves and their families as a fundamental right. The Health care Scheme introduced by the Government, wherein the retired Army Personnel were required to subscribe

to the said scheme by paying a contribution was challenged on the ground that no amount could be asked from the beneficiaries towards subscription. The stand of the Petitioners before the Apex Court was that while they were in service free and full medical aid was being provided to them and they were similarly entitled to the same post retirement benefits and the imposition of a condition prescribing contribution by the employee to avail the facility post retirement, had violated the fundamental rights to free and full health care. This, according to them, was discriminatory. An analogy was also sought to be drawn from the scheme available for members of Civil Services and it was contended that members of the Civil services were also being provided all the medical facilities irrespective of the status of they being "in service" or "retired". It was contended that the retired civil servant and the retired defence personnel stand on the same footing and no discrimination or differential treatment could be meted out to them. The Supreme Court while rejecting the contentions of the Petitioners held:

In our opinion, such a contributory scheme cannot be held illegal, unlawful or unconstitutional. Ultimately, the State has to cater to the needs of its employees - past and present. It has also to undertake several other activities as a welfare State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex-defence personnel by allowing them to become members of contributory scheme and by requiring them to make one-time payment which is a reasonable amount, it cannot be said that such action would violate the fundamental rights guaranteed by Part III of the Constitution.

In *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, a three-Judge Bench of this Court had an occasion to consider the question of change of policy in regard to reimbursement of medical expenses to its employees. Referring to earlier decisions, the Bench took note of the ground reality that no State has unlimited resources to spend on any of its projects. Provisions relating to supply of medical facilities to its citizens is not an exception to the said rule. Therefore, such facilities must necessarily be made limited to the extent finances permit. No right can be absolute in a welfare State. An individual right has to be subservient to the right of public at large.

This principle equally applies when there is any constraint on the health budget on account of financial stringencies."

We are in agreement with the above view. In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay "one time contribution" neither violates Part III nor is it inconsistent with Part IV of the Constitution. Ex-servicemen who are getting pension have been asked to become members of ECHS by making "one-time contribution" of reasonable amount (ranging from Rs. 1800 to Rs. 18,000). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable.

Observations made by this Court in the cases relied upon by the petitioner and interveners including Consumer Education and Research center and others Vs. Union of India and others, referred to earlier, must be read as limited to the facts before the court and should not be understood to have laid down a proposition of law having universal or general application irrespective of the factual situation before the court. To us, the policy decision in formulating contributory scheme for ex-servicemen is in accordance with the provisions of the Constitution and also in consonance with the law laid down by this Court.

We see no infirmity therein. We, therefore, hold that getting free and full medical facilities is not a part of the fundamental right of ex-servicemen.

10. Thus, in Dal Chand Vashisht's case (supra) noting that it was not the case of Dal Chand Vashisht that post retirement he settled in a town where CGHS health facility were not available, it was held that Dal Chand Vashisht would not be entitled to any money spent by him on medical treatment prior to his becoming a member of the CGHS Scheme.

11. In the instant case, Late Sh. Tara Chand Sharma has nowhere stated that after he retired, he settled in a town where CGHS Medical facilities were not available. On the contrary, pleadings show that Late Sh. Tara Chand Sharma, after retirement, settled in Delhi. CGHS dispensaries and medical treatment under Central Health Scheme has been available in the town of Delhi since the inception of the scheme.

12. The writ petition is accordingly allowed and as a result impugned order dated 14.01.2008 allowing the O.A. No. 1662/2007 is set aside. O.A. No. 1662/2007 is dismissed.

13. The amount deposited by the petitioner pursuant to the orders passed in W.P. (C).6567/2008 is directed to be returned to the petitioners by drawing out a cheque in the name of the petitioners together with interest which may have accrued on the said deposit.

14. No costs.