
(2007) 05 RAJ CK 0067
In the Rajasthan High Court

Vandana Gupta (Dr.)	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 47

Citation : (2007) 3 RLW 2467

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prem Shanker Asopa, J.—By this writ petition, the petitioner has prayed for quashing the order dated 18.3.1996 passed by the State Government whereby increase in the earlier sanctioned amount has been denied and has further claimed reimbursement of the balance amount of treatment abroad of her husband, amounting to Rs. 11.04 lacs together with interest. Further prayer for grant of compensation has also been made by the petitioner.

2. Facts of the case with regard to taking medical treatment abroad by husband of the petitioner Rajendra Kumar Gupta, who at the relevant time was employed as Electrical Engineer in Instrumentation Limited, Kota are not in dispute. Other facts of sanction of Rs. 2 lacs by way of advance vide order dated 7.7.1995 and receipt thereof by the petitioner are also not disputed. Petitioner in para 8 of the writ petition has mentioned the fact that the Principal, SMS Medical College vide his letter dated 5.4.1995 clarified that bone marrow transplant facility is not available in India and further mentioned the estimated cost of treatment in U.K. as Rs. 17.30 to 27.00 lacs and in USA Rs. 30.00 to 37.00 lacs, considering the above mentioned fact, the petitioner took her husband to UCL Hospital in UK where cost of treatment was comparatively low as compared to USA. The petitioner incurred an expenditure of Rs, 13.04 lacs. However, claim of the petitioner for reimbursement of the balance amount of Rs. 11.04 lacs on account of taking treatment in UCL Hospital, London for Bone Marrow Translant (Stern

Cell Transplant) is in dispute on the ground of entitlement of the reimbursement of expenses incurred in the abroad treatment of the petitioner's husband under the Rajasthan Civil Services (Medical Attendant) Rules, 1970 (in short "the Rules of 1970") whereas according to the petitioner, case of her husband is covered by the circular dated 21.2.1989 specifically issued for taking treatment abroad, for the reason that facility for treatment of such ailment in India is yet not widely established. The petitioner submitted all the medical bills for the treatment taken by her husband at UCL Hospital, UK duly verified by the doctor. Therefore, the petitioner is entitled to reimbursement of expenses incurred in treatment of her husband as aforesaid taken outside India. The petitioner has based her claim on Rule 3(1)(ix) of the Rules of 1970 and the circular dated 21.2.1989 (Anx. 21).

3. The respondent has denied the entitlement of the petitioner by placing reliance on note appended to Rule 3(1)(ix), 4 and 5(2) of the Rules of 1970 according to which where the husband and wife both are government servants, then option has to be exercised first and further claim for medical reimbursement shall be preferred by the person who is in receipt of higher salary. Neither the option was validly exercised nor the salary certificate was produced and further the circular dated 21.2.1989 is not applicable. Respondent has not disputed the fact that Bone Marrow Transplantation facility is not available in Rajasthan/India and cost of treatment-bone marrow transplant (Stem Cell Transplant) in U.K. is comparatively lower than U.S.A. (Anx. 7) and further had also not disputed genuineness of the medical reimbursement bills submitted by the petitioner.

4. In the aforesaid facts and circumstances of the case, the core question involved in the matter is as under:

Whether as per the aforesaid rules, the petitioner is entitled to submit the bill for the reimbursement of expenses incurred in medical treatment of her husband who at the relevant time was working in Instrumentation Limited, Kota and the further question is that whether petitioner is entitled for full reimbursement of expenses of Rs. 11.04 lacs incurred in the treatment taken abroad by her husband as per circular dated 21.2.1989 of bone marrow transplant (Stem Cell Transplant), for which facility of treatment in India is yet not widely established?

5. The submissions of petitioner and respondents on the aforesaid questions shall be dealt with at appropriate place hereinafter.

6. Before proceeding to decide the aforesaid question, it would be relevant to quote Rule 3(1)(ix) Rule 4(4) and 5(2) of the Rules of 1970 which read as under:

Rule 3(1)(ix) of the Rules of 1970 with Note appended thereto:

"Family" means Government servant's wife (not more than one) husband (in the case of a woman Government servant), children including children adopted legally and parents, if wholly dependent upon the Government servant.

Note :-The condition of dependence both in the case of husband or wife of the Government servant has been dispensed with provided the Government servant

has exercised an option, intimating the Appointing authority, that claims of medical reimbursement will be made to Government for the spouse even though his/her spouse is employed elsewhere in a body having prescribed procedures for reimbursement of medical expenses. Such option can be revised only with Government approval.

Rule 4(4) of the Rules of 1970

4. Treatment at Government Hospital as Indoor/Outdoor patient etc.

(1)

(2)

(3)

(4) Admissibility of Travelling allowance to ailing government servants in certain circumstances:

(i) If a Government servant falls ill at a place which is not the Headquarters of the Authorised Medical Attendant, he shall be entitled to traveling allowance as on tour except the halting allowance for the journey to and from such headquarter provided that he does not undertake journey for attendance by a dentist or an oculist. In case the condition of the ailing government servant is so serious that he cannot be carried to the headquarters of the Authorised Medical Attendant in any conveyance, the Authorised Medical Attendant attending the patient at his residence shall be entitled to Travelling Allowance as on tour for forward and return journey from his head quarters to the place of residence of the ailing Government servant under Travelling Allowance Rules.

(ii) If the Authorised Medical Attendant is of opinion that the condition of the patient is so serious or of special nature as to require medical attendance by a specialist medical officer other than himself, he may send the patient to the nearest specialist or other medical officer concerned. The ailing Government servant sent to another station from the headquarters of the Authorised Medical Attendant shall be entitled to Travelling Allowance as on tour without any halting allowance for the forward and return journey from and to the headquarters of specialist or other medical officer. An attendant escort accompanying the patient underwritten instructions from the Authorised Medical Attendant for the safety of the patient shall also be entitled to Travelling Allowance on the scale admissible to the Government servant himself on tour without any halting allowance. In case a Government servant travels by air or in air- conditioned class for this purpose, the travelling allowance shall be limited to traveling allowance admissible to him for journey by rail (except in air-conditioned coach)/Road under Rajasthan Travelling Allowance Rules, as on tour without any halting allowance.

Rule 5(2) of the Rules of 1970

5. Medical Attendance and Treatment of members of family of a Government

servant-

(1)

(2) Where both husband and wife are Government servant, they shall be entitled to medical attendance and treatment as independent entity according to his/her status under these rules. In such case the claim for reimbursement of medical expenses of the members of family dependent upon them shall be preferred by either husband or wife whoever is in receipt of higher pay.

7. Clauses 4 and 5 of the circular dated 21.2.1989 read as under:

4. The following ailments have been identified by the Central Government vide their Office Memorandum No. Section 14025/99/81; MS dated 6th December, 1982 as being such for which facilities for treatment in India are not yet widely established; and these have been accepted by the State Government also for adoption.

(i) Cadaver Kidney transplant;

(ii) Old operated bypass surgery cases (in which the initial operation was done abroad) needing revascularization;

(iii) Bone marrow transplant;

(iv) Operative correction for high myopia case;

(v) Complex cyanotic Heart-Lesion and newly born infants suffering from heart diseases.

5. Reimbursement of actual hospital expenses only in connection with treatment received abroad of the ailments mentioned in Para 4 may be permitted by the Administrative Department of the Government after obtaining prior concurrence of the Finance Department in relaxation of the rules provided the recognized referral hospital to which the ailing person was referred in accordance with the provisions contained in the relevant Medical Attendance Rules certifies that the treatment is not available in India and the certificate is endorsed by the Director, Medical and Health Services or the Principal of a Medical College. The question of reimbursement of travelling cost in such cases would not arise and all other expenses incidental to the treatment would also be borne by the government servant himself.

8. The gist of the relevant circular referred by the State Govt. in reply to para 7 has been mentioned by the petitioner in the rejoinder as published in "Lekhavigya" of February, 1995 is as under:

Where husband and wife both are in Government service the claim for reimbursement...shall be preferred by either husband or wife whoever is in receipt of higher salary.

9. A bare perusal of Rule 3(1)(ix) of the Rules of 1970 which defines "family"

makes it clear that family includes government servant's wife, husband, children wholly dependent upon the government servant but in the Note appended to Rule 3(1)(ix) of the Rules of 1970 the condition of dependence both in the case of husband or wife of the government servant has been dispensed with provided the government servant has exercised an option, intimating the appointing authority that claims of medical reimbursement will be made to government for the spouse even though his/her spouse is employed elsewhere in a body having prescribed procedures for reimbursement of medical expenses. In the said rule, there is no mention of any higher or lower salary of the spouse and the option was exercised by the government servant i.e. the petitioner in respect of the medical reimbursement of her husband on 5.4.1995. Government has disputed the said option on the ground that it was not accompanied by the requisite document i.e. salary certificate of the husband of the petitioner which ought to be lower than the petitioner. Further submission of the counsel for the petitioner is that the circular published in "Lekhavigya" of February, 1995 will not amend Rule 3(1)(ix) of the Rules of 1970. Under Rule 5(2) of the Rules of 1970 the salary issued is relevant only when husband and wife both are government servants whereas in the present case husband is not in government service therefore, said Rule 5(2) of the Rules of 1970 is not applicable.

10. There was no rule for reimbursement of the said amount from the Instrumentation Limited, which was incurred in taking medical treatment of husband of the petitioner outside India. The grant of advance amount for treatment outside India on the basis of recommendations of the Tata Memorial Hospital, Bombay and Principal, SMS Medical College and Hospital, Jaipur for taking treatment outside India also makes it evident that the option was exercised by the petitioner validly. Contention of Dr. Khangarot that Rs. 2 lacs were sanctioned by way of charity is wholly untenable and the same is further sufficient to show that the option exercised by the petitioner was valid and the petitioner's husband's case has to be considered in accordance with the circular dated 21.2.1989. In view of the above, no salary certificate of husband of the petitioner was required to be filed along with option and the option exercised by the petitioner is valid. Therefore, the petitioner was entitled to submit the bills for reimbursement of expense incurred in treatment of her husband who at the relevant time was working in Instrumentation Limited, Kota.

11. Now, the second part of the aforesaid question is whether petitioner is entitled for full reimbursement of expenses of Rs. 11.04 lacs incurred in the treatment taken abroad by her husband as per circular dated 21.2.1989 of bone marrow transplant (Stem Cell Transplant), for which facility of treatment in India is yet not widely established?

12. A bare perusal of the operative para, para 4(iii) and 5 of the circular dated 21.2.1989 would reveal that reimbursement of actual hospital expenses with regard to the treatment received abroad of the ailment mentioned in para 4 may be permitted by the administrative department but case of the petitioner was not

considered at all as per the circular dated 21.2.1989.

13. A three Judges' Bench of the Supreme Court in *Consumer Education and Research center and others Vs. Union of India and others*, has held that right to health and medical aid of workers during service and thereafter is a fundamental right.

14. Subsequently, in a case of medical reimbursement, two Judges' Bench of the Supreme Court in *Surjit Singh Vs. State of Punjab and Others*, held that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable and thereafter, meaning of life has been given according to the Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana.

15. In another medical reimbursement case- *State of Punjab and others Vs. Mohinder Singh Chawala, etc.*, (arising out of the judgment and order dated 8.4.1996 passed by the Punjab and Haryana High Court) right to health has been held to be integral to right to life, with the further observations that Government has a constitutional obligation to provide health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference, whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenses incurred by the government servant.

16. Again in a case arising out of the judgment and order of the Punjab and Haryana High Court, the three Judges' Bench of the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , has held that in case any policy is laid down by the Government for reimbursement within their financial resources, then, an employee should not be allowed to question the said policy unless the same is arbitrary or unconstitutional. In the said case the State policy has been upheld, by further observing that no right could be absolute in a welfare State.

17. The judgments in *Consumer Education & Research Centre and Ors. and Ram Lubhaya Bagga and Ors.* (supra) both have been considered by a Constitutional Bench of the Supreme Court in *Confederation of Ex-servicemen Associations and Ors. v. Union of India and Ors.* (2006) 8 SCC 399 wherein question of formulating contributory scheme for ex-servicemen was involved who were claiming full medical facility. In that case, the Supreme Court held that one time contributory scheme neither violates Part III nor is it inconsistent with Part IV of the Constitution. Further the case of *Consumer Education & Research Centre and Ors.* (supra) was distinguished and limited to their facts and the judgment in *State of Punjab v. Ram Lubhaya Bagga and Ors.* (supra) was affirmed. The Court has also held that right to life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but quality of life. It was also held that if any statutory provision runs counter to such a right, it must be held unconstitutional and ultra vires. Paras 61, relevant part of paras 64, 66 and

67 are as under:

Para 61. It cannot be gainsaid that right to life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but the quality of life. If any statutory provision runs counter to such a right, it must be held unconstitutional and ultra vires Part III of the Constitution. Before more than hundred years, in *Munn v. Illinois* (1876) 94 US 113 : 24 Law Ed 77, Field, J. explained the scope of the words "Life" and "Liberty" in 5th and 14th Amendments to the U.S. Constitution and proclaimed;

By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communication with the outer world....

By the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bonds of a prison.

Paras 64 and 66. 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. The contributory scheme cannot be held illegal, unlawful, arbitrary or otherwise unreasonable.

Para 67. To get free and full medical facilities is not a part of the fundamental right of ex-servicemen. 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 the Supreme Court. Though the right to medical aid is a fundamental right of all citizens including ex-serviceman guaranteed by Article 21 of the Constitution, framing of scheme for ex-serviceman and asking them to pay "one-time contribution" does not violate Part-III nor is it inconsistent with Part IV of the Constitution.

18. Having laid down the policy for medical reimbursement for abroad treatment of the ailment for which facility of treatment in India is yet not widely established the State cannot be allowed to back out from the same by simply saying that the same is not applicable. Neither the petitioner was communicated before rejection of the claim for the remaining amount of Rs. 11.04 lacs nor in the reply to the writ petition nor during the course of arguments the respondent has been able to establish how the circular dated 21.2.1989 is not applicable. A bare perusal of the same would reveal that the circular dated 21.2.1989 is fully applicable to the petitioner. It appears that the respondent has taken the reimbursement in a very light way and denied the same without application of mind and that too, without

assigning any reason. Further, even after giving an advance of Rs. 2 lacs the respondent cannot take the defence that the advance was given by way of charity. The petitioner has been dragged in litigation without any basis. Since the matter involves infringement of the fundamental right regulated under the shape of Rules of 1970 and the circular dated 21.2.1989, therefore, in my considered opinion, right to receive medical reimbursement as per the aforesaid fundamental right, rule and the circular dated 21.2.1989 has been infringed without any notice to the petitioner against the proposed rejection with reasons.

19. A seven Judges' Bench of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, has considered Article 21 of the Constitution of India particularly with reference to "personal liberty" and has held that principles of natural justice are applicable to the judicial and quasi judicial but administrative actions also. The grant/rejection of medical reimbursement is an administrative act.

20. Counsel for the petitioner has cited one judgment of Division Bench in *R.K. Bordia v. State of Rajasthan and Anr.* 1988 (2) RLR 971 wherein the earlier similar circular on the same issue dated 22.3.1985 was considered and following observations were made in Para 12 with regard to expression "Life" mentioned in Article 21 of the Constitution of India:

12. Mr. Mridul, learned Counsel for the petitioner has submitted that the expression "life" has received a judicial interpretation in series of judgments and has invited our attention to (3) *Kharak Singh Vs. The State of U.P. and Others*, and submitted that the "life" means not merely the right to continuance of a person's animal existence, but a right to the possession of his organs, his arms and legs etc. It is true that a person who is suffering an ailment which ultimately results in total deafness and reduces his life worse than animal existence and such is not life. The loss of hearing capacity of an incumbent will reduce the man to worse than animal existence. It is not expected from a benign State to take such a harsh attitude may (sic) deny a man of treatment which is not available in the country to undertake the same abroad. Part-IV of the Constitution of India has also made it obligatory upon the State Government to raise the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties as enshrined in Article 47 of the Constitution of India. It is equally the duty of the State to see that the citizens have a proper public health care. Precisely for this purpose only the Government has framed the Rajasthan Civil Services (Medical Attendance) Rules, 1970. This was one of the steps in fulfillment of the sacred duty of the State as enshrined in Part-IV of the Constitution of India. Thus we are of the opinion that the petitioner is entitled to have the medical treatment abroad as recommended by the panel of three Doctors as well as by the Principal SMS Medical College, Jaipur.

21. A perusal of the aforesaid para of the judgment would reveal that it is not expected from a benign State to take such a harsh attitude to deny a man of treatment which is not available in the country to undertake the same abroad

and it is sorry state of affairs that State is denying the legitimate claim of the sufferer on technical/frivolous grounds or bald denial of non- applicability of the circular dated 21.2.1989.

22. In addition to the above, opportunity was granted to Dr. Khangaroat, Addl. GA to make his submissions on the aforesaid issue on 16.3.2007. Again time was granted on 3.4.2007, and thereafter also time was given on 17.4.2007, 20.4.2007, 23.4.2007 and 1.5.2007 but no material was produced nor was submission made to distinguish the same except that the said circular dated 21.2.1989 is not applicable in the instant case.

23. Article 21 is in the negative form and puts a restriction that no person shall be deprived of his life or personal liberty except according to procedure established by law. As has been held by the Constitutional Bench of the Supreme Court the term "life" appearing in Article 21 of the Constitution of India would cover medical reimbursement under the Rules and policies. In such cases, principles of natural justice stand complied with in case any right of representation against proposed rejection is given.

24. In view of the above, the said circular which was issued for the treatment of diseases for which facility of treatment in India is yet not widely established and there is no specific rule, therefore, the said circular was issued to fill up the lacuna in the Rules but case of the petitioner was not considered according to the circular dated 21.2.1989. Therefore, the said circular dated 21.2.1989 will apply in case of the petitioner and the petitioner is entitled for the full reimbursement of the expenses of Rs. 11.04 lacs incurred in treatment of bone marrow transplant (stem cell transplant) taken by her husband abroad; consequently the impugned order is contrary to the said circular dated 21.2.1989 apart from being highly unreasonable, arbitrary, violative of principles of natural justice and the impugned order dated 18.3,1996 deserves to be quashed.

25. Therefore, I am of the considered view that before rejection of the medical reimbursement claim, show cause notice is necessary and thereafter also, rejection, if any, could be made by passing a reasoned order. Application of the principles of natural justice in rejection of reimbursement of medical expenses will further entail reasonableness and fairness in the approach of the respondents.

26. In the result, the writ petition is allowed, order dated 18.3.1996 is quashed and the respondents are directed to make payment of balance amount of Rs. 11.04 lacs to the petitioner in accordance with the procedure laid down in the circular dated 21.2.1989 within a period of three months from today. In case payment is not made within three months, the amount shall carry interest at the rate of Rs. 9 per cent from 18.3.1996.