

HIGH COURT OF DELHI

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Date of decision: August 20, 2008

WP(C)No. 13435-37/2006

#Govt. of NCT of Delhi & Anr.

..Petitioners

! through
Mrs.Avnish Ahlawat with Ms.Latika Chaudhary,
Advocate

Versus

\$Dr. Prem Prakash

..Respondent

^ through
Mr. Sudershan Rajan with Mr.Kunal Tandon,
Advocates for the respondent
Mr. Sanjeev Puri, Sr. Advocate with Mr.Gyaltsen
B., Advocate for respondent No.2-EHIRC
Ms. Sonia Mathur, Advocate for UOI

WP(C)No. 12968-70/2006

Govt. of NCT of Delhi & Ors.

..Petitioners

! through
Mrs.Avnish Ahlawat with Ms.Latika Chaudhary,
Advocate

Versus

\$ G.R. Arya

..Respondent

^ through
Mr. D.C. Vohra with Mr.Sudershan Rajan,
Advocates for the respondent
Mr. Sanjeev Puri, Sr. Advocate with Mr.Gyaltsen
B., Advocate for EHIRC
Ms. Sonia Mathur, Advocate for UOI

Coram :

* **Hon'ble Mr.Justice Manmohan Sarin**
Hon'ble Mr.Justice Vipin Sanghi

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| (1) Whether reporters of local paper may be allowed to see the judgment? | Yes |
| (2) To be referred to the reporter or not? | Yes |
| (3) Whether the judgment should be reported in the Digest ? | Yes |

• **Manmohan Sarin, J.**

1. By this common judgment, two petitions namely “Government of NCT of Delhi and others versus Prem Prakash” being WP(C) No. 13435-37/2006 and “Government of NCT of Delhi versus G.R. Arya” being WP(C) 12968/70/2006 are being decided, since both involve the question of extent of reimbursement of medical claims to Government employees-ex employees. Vide orders dated 6.3.2006 in O.A. No. 1776/2005 and judgment dated 3rd February 2006, in OA No. 2242/2005 the Central Administrative Tribunal granted reimbursement of their expenses on medical treatment. The Tribunal allowed the applications of the respondents holding them entitled to be reimbursed the entire amount of medical expenses since these were incurred at the empanelled hospitals with treatment being authorized by the Government of NCT.
2. The Govt. of NCT of Delhi by these writ petitions, is seeking quashing of the orders of the Tribunal. In WP(C)No.13435-37/2006 referred to as Dr. Prem Prakash’s case, out of the total amount of Rs.2,76,444/- (Two Lac Seventy Six Thousand Four Hundred and Forty Four only) expended by the respondent for the treatment of his wife, the petitioner sanctioned the amount of Rs. 1,60,244/- (One Lac Sixty Thousand Two Hundred and Forty Four only). In WP(C) 12968-70/2006, i.e. G.R. Arya’s case, the medical claim of respondent herein and his wife was reduced by the petitioner from Rs.4,12,934/- (Four Lac Twelve Thousand Nine Hundred and Thirty Four only) to Rs. 2,67,745/- (Twelve Lac Sixty Seven Thousand, Seven Hundred and Forty Five). The Tribunal vide the impugned orders, directed the petitioner, to reimburse the remaining amount of medical expenses to the applicants (respondents herein).

3. Before noticing the grounds raised in the present petitions, facts leading to the filing of the two petitions may be noted briefly:

WP(C) No. 13435-37/2006

- (i) Respondent is a holder of medical facility card and is entitled to avail medical facilities for himself and his family members. It is common ground that Escorts Heart Institute and Research Centre (hereinafter referred to as EHIRC) is an empanelled hospital. The respondent's wife had suffered cardiac discomfort and was rushed to the EHIRC for diagnosis and treatment. She was admitted on 25.1.2004 and was suffering from unstable angina. On her condition stabilizing, an angiography was performed on 27.1.2004 and the coronary angioplasty was done on 29.1.2004. She was discharged from the hospital on 31.1.2004. The package rate as per the OM dated 7.9.2001 is stated to be applicable.
- (ii) The EHIRC raised a bill for Rs.2,76,444/- (Two Lac Seventy Six Thousand Four Hundred and Forty Four only) but the petitioners reimbursed only Rs.1,60,244/- (One Lac Sixty Thousand Two Hundred Forty Four only) as per the package rate. As noted earlier, the Tribunal had directed the payment of the differential amount. Vide orders dated 28.8.2006 in the writ petition, the petitioner was asked to deposit the differential amount in Court. Petitioner deposited the same. The EHIRC was made a party in these proceedings and its response was invited to seek clarification with regard to allegations of charging in excess of the package rates. The EHIRC claims that the bill has been raised strictly in terms of OM dated 7.9.2001 and there was no overcharging.

(iii) We have had a look at the bill in question. The charges for two items in the bill catch our attention. Firstly, charges for an injection 'Reopro' which is Rs.42,640/- and the cost of Cypher Stent, which is Rs.1,22,750/-. These two items are consumables in the bill at Sl. No.29 and 30. The questions arising are whether the charges are covered by memorandum of 7.9.2001 and if not, who is liable for the payment of the amount billed in excess of the package rate. We shall consider these aspects later in the judgment.

4. Let us notice the salient facts with regard to the WP(C)No.12968-70/2006, i.e. G.R. Arya's case.

WP(C)No.12968-70/2006

- (i) Respondent G.R. Arya had superannuated from the Government service after rendering service as Survey Instructor in Pusa Polytechnic. His wife suffered a heart attack on 28.12.2002. She was rushed immediately for emergency medical aid to "Neelu Sawan Angel" nursing home at Saket from where, she was advised to be shifted to Batra Hospital. Angiography was performed which showed blockage in major vessels. She was operated for bypass on 30.12.2002. Respondent sought reimbursement of medical bills to the tune of Rs. 4,12,934/- (Four Lac Twelve Thousand Nine Hundred and Thirty Four only) for his wife's treatment. Out of the total amount, Rs.2,67,745/- (Two Lac Sixty Seven Thousand Seven Hundred Forty Five only) was sanctioned.
- (ii) Respondent had sought for himself permission to get treated at the EHRC for his ailment, which was granted being an empanelled hospital. The bill for the treatment was

Rs.4,45,585.45/- (Four Lac Forty Five Thousand, Five Hundred Eighty Five and Forty Five paise only). A sum of Rs.2,37,200/- (Two Lac Thirty Seven Thousand Two Hundred only) was sanctioned out of the said amount for the angiography and angioplasty done. Respondent's case for full reimbursement was rejected on the ground that the package rate has been revised from 24.5.2004, while his treatment was for an earlier period and he was entitled only for earlier package rate reimbursement and not the full reimbursement.

5. EHIRC was impleaded as a party on an application moved by the Government of NCT as it was noticed that EHIRC has been charging more than the permissible package rates resulting in extra expenditure to be incurred by the Government servant or the Government and resultantly, the Government being compelled to pay the same under the directions of the Court to the employee. Further, the use of injection like Reopro and Cypher Stents (medicated Stent), which are far more expensive than the ordinary Stents, are frequently used as part of the consumables thereby bringing an imbalance to the package rates. EHIRC in reply, stated that the members of CGHS scheme are charged at the rates prescribed under the CGHS scheme and no extra charge has been levied and that they were following the procedures of the scheme. EHIRC also denied that normal rates as applicable to general patients are charged to CGHS employees. Further, patients who are members of the Scheme, are being charged for rates under the Scheme. As regards the patients hospitalized beyond the period covered by the package rate, they are charged as per the CGHS prescribed rates for the extended period and not

as per EHIRC normal rates. By way of illustration, they have stated that Dr. Prem Prakash was charged @ Rs.1,57,219/- as against the normal charge of Rs.2,10,650/- being a member of the CGHS Scheme. In other words, the Hospital reasserts that only rates as approved under the CGHS Scheme are being charged.

6. Mrs. Ahlawat appearing on behalf of the Government of NCT submitted that the reimbursable amount as per the Government would only be the amount as per the package rates. She submits that even in emergency cases, full reimbursement is not allowed and it is for the Head of the Department to decide as to what would be the permissible reimbursement.
7. The next submission of Mrs. Ahlawat was that the State does not have unlimited resources and as laid down in the case “State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors.” reported at (1998) 4 SCC 117, the State is fully justified and entitled to prescribe limits and its liabilities for reimbursement and it cannot go beyond the said limits. Learned counsel also assailed the award of interest on the balance amount directed to be reimbursed. In the case of G.R. Arya, Mrs. Ahlawat submitted that granting of permission to get treatment at a particular hospital does not tantamount to allowing full reimbursement. It was urged that the treatment of the respondent himself was not of an emergency nature. An extra amount of Rs.14,000/- spent had been sanctioned by the Head of the Department in respect of the respondent’s wife’s case. In short, the submission is that the liability is confined to the package rates.
8. The Tribunal in allowing the OA proceeded on the basis that it was the non-availability of well equipped Government hospitals that a Government servant is forced to approach private hospitals, which

are well equipped. The Government recognizing this, has empanelled these Institutes and Hospitals and settled package rates. The assumption being that the cost of treatment would not exceed the package rate. In case the hospitals are charging more than the package rates, it was a matter between the Government and the Institutions to settle but the Government servant should not be burdened with the cost.

9. In the judgment delivered in the case of G.R. Arya, the learned member of the Tribunal has placed reliance on the decisions of Delhi High Court holding that if a person is treated in an approved hospital in emergency, he cannot be denied the full reimbursement. In case hospital has charged extra, it was for the respondent to take the matter with the hospital. Reference was invited to "*Milap Singh Vs. UOI & Anr.*" reported at All India Cases 2004(22) 589, "*Prithvi Nath Chopra Vs. UOI & Anr.*" reported at 111(2004) DLT 190, "*V.K.Gupta Vs. UOI & Anr.*" reported at 97 (2002) DLT 337 and "*M.G.Mahindru Vs. UOI & Anr.*" reported at 92(2001) DLT 59.

Counsel for the respondent relied on "State of Karnataka and Anr. versus Sri. R. Vivekananda Swamy", **JT 2008 (4) SCC 553** wherein it was held that rules may limit the reimbursement of medical claim. There is no controversy with regard to the power to limit the reimbursement by framing rules. We are concerned with cases where exceptions have been carved out for reimbursement of billing in excess of package rates and the grounds therefor.

10. Relying on the aforesaid judgments, the Tribunal quashed the impugned order and directed the petitioner to release amounts which had been spent by the respondent either on his treatment

or his wife's treatment in EHIRC or Batra Hospitals within three months.

11. Let us consider the two items, which we had noticed in the bills of Dr. Prem Prakash, namely, injection Reopro and the cost of Cypher Stent. Package rate is more comprehensively defined in the 2001 OM as compared to the 1998 OM. It is defined as the lump sum cost of in-patient treatment or diagnostic procedure. The rate includes operation charges, procedural charges, cost of disposable, surgical charges and cost of medicine. The personal items such as TV, telephone etc. charges are specifically excluded. It is also mentioned that "implant shall be reimbursed as per actuals except for the items where ceiling is defined." The injection Reopro is given to prevent stenosis. It should not normally be billed separately and should form part of the angiography and angioplasty procedures and included in the total package cost. The cost of Stent could either fall under the lump sum charge as cost of disposables or surgical charges, which should not be separately charged by the hospital. Alternatively, if it is to be treated as part of the implant, to be reimbursed at actuals or at the ceiling fixed between the CGHS and the hospital. It is submitted that in either case, the employee should not be made to pay for these charges which would should be borne/absorbed by the hospital/Government or partly by both.
12. Our attention has been drawn to a recent decision of a Division Bench of this Court in WP(C)No.13740/2005, Sh Balram Sharma versus Union of India and Anr. dated 4.7.2008. This was also a case where petitioner was seeking full reimbursement of medical expenses incurred by him while undertaking the treatment at EHIRC from his employer, Department of Telecommunication.

Petitioner's O.A. before the Tribunal had been dismissed. It is not necessary to recapitulate the facts of that case except to notice that the petitioner was diagnosed to be a case of Triple Vessel Disease with mild left ventricular disfunction requiring open heart surgery and Carotid surgery being a high risk surgery. Petitioner's total bills came to Rs.2,30,306/-. Out of the aforesaid amount, a total amount of Rs.1,30,612/- was reimbursed to him. This led to protracted correspondence. Petitioner had placed reliance on the judgment of a Division Bench of this Court in WP(C)No.2464/2003 titled "Sqn. Commander Randeep Kumar Rana Vs. Union of India" as well as the judgment of the Supreme Court in "State of Punjab & Ors.Vs. Mohinder Sigh Chawla" reported at JT 1997 (1) SC 416. The Supreme Court in the above case observed:

"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 expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee."

The Court on appreciation of the record before it, concluded that AIIMS had referred the petitioner to EHIRC realizing the seriousness of his ailment and gave permission to him for treatment. We may also notice that in this case, the petitioner himself had given an undertaking that any extra expenditure would be met by the petitioner himself and it was on this basis that the permission had been granted.

13. After reviewing several judgments of this Court on the subject and the Supreme Court and as noticed in para 13 of the judgment, it was held that while balancing the interest of the Government

which does not have unlimited funds on the one hand and, therefore, has to limit his financial resources and paying capacity as also its duty towards its employee to reimburse medical expenses, a balance could 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.

14. Following the aforesaid judgment of the Coordinate Division Bench, we are of the view that in the cases before us, the aforesaid three conditions are duly met. These were serious and emergent cases of cardiac ailment. The treatment was with the permission of the competent authorities and at the empanelled hospitals. Therefore, the respondents would be entitled to full reimbursement. We may mention that it would be open for the respondents to delete from the bills, charges for items like telephone, TV, cost of toiletries etc., which do not form part of the package rates and if the same have been billed.

15. In view of the foregoing discussion, we are of the view that no case is made out for interference in the exercise of writ jurisdiction with the orders passed by the Tribunal except the amount, as deposited, in the case of Dr. Prem Prakash, be released. In the

Writ Petition No.12968/2005, the balance amount, subject to admissible deductions for charges like telephone charges, TV charges, cost of toiletries etc. be released to the respondents without interest in the circumstances of the case. Ordered accordingly. It would be for the Government of NCT of Delhi to recover from the concerned hospital any billing in excess of the admissible rates under the scheme.

16. Before parting with this case, we may observe that a lasting solution has to be found for this recurring problem where the bills of the empanelled hospitals are invariably far more than the package rates. In a writ petition bearing WP(C) No.4754/1996 titled "T.S. Oberoi Vs. Union of India & Anr." one of us (Manmohan Sarin, J.) had the occasion to observe as far back as 30th May, 2002 and give directions to the Central Government in the following terms:

"In my view, it is high time that the Central Government/CGHS authorities, while conferring the status of recognized Government speciality hospital should re-negotiate the package rates for various procedures and treatments. The private hospitals receive several benefits from the State in terms of allotment of land at concessional rates, exemption or benefits of concessional custom duties in import of surgical, diagnostic, medical and other equipments and consumables. More often than not the stipulations and directive to the private Hospitals for providing a certain % of free rooms or treatment for economically weaker sections are not implemented. A large number of Government and public sector employees are referred to private speciality hospital for treatment. These constitute substantial business for any hospital. It is for the CGHS Authorities to negotiate with the private hospitals from a position of strength, so that discounted package rates and advantageous terms are offered to employees for different procedures irrespective of some individual variation in treatment. The authorities can also endeavour to have a modified package for cases entailing extra stay or repeat procedures. This is

especially so, when the public hospitals are not in a position to cater to the requirements and meet the ever increasing demand with adequate facilities not being available. An earnest endeavour is required on the part of the Central Government to arrive at better negotiated terms for itself and its employees.”

17. The package rates as negotiated, have left much to be desired.

These do not reflect availing of maximum benefit from institutes and hospitals, who are empanelled and are recipients of largesse from the State in terms of allotment of land at concessional rates, reduced customs duty on import of medical equipment and drugs. We are of the view that the Government, Director General of Health Services, Health Ministry, Govt. of NCT and the concerned State authorities should approach the institutions/hospitals after collecting data with regard to the number of patients referred from Government departments, State public undertakings, who are availing their services. It is our belief that these employees including retired employees, represent a sizeable segment of patients, which no institute or hospital can afford to ignore or not give preferred treatment at concessional rates. In particular, while negotiating the package and other rates for services, it has to be borne in mind that an individual employee, who is serving or has served the State, should, as far as possible, be not subjected to economic burden of treatment at high costs considering the limited emoluments vis-à-vis the private sector and the desirability of ensuring good health for the employees. Further, that it is the lack of availability of adequate number of specialized State owned hospitals, having the required capacity and skills and equipments to offer the treatment on time, that resort is had to the institutions and the hospitals in the private sector. It is desirable that a Government employee or the

employee of the State undertaking remains assured that in the event of any emergency or illness, he would receive treatment without being burdened financially. Towards this end, the approach in drawing or settling package rates for various procedures, treatment etc. has to be to protect the employee and the State against hidden or unforeseen costs, which result in excessive billing over the package rates. Such contingencies need to be anticipated and provided for. It should be possible to take care of these contingencies by providing for a marginal increase in the package rate itself, which is made available across the board to the institutions and hospitals. Provisions can be conveniently made for:

- (i) Extended stay beyond the period prescribed in the package by providing for a grace period for one or two days for which, there should be no charge except the actual cost of drugs and consumables;
- (ii) For extended period of stay beyond the grace period charges should be at concessional rates rather than the package rate for stay;
- (iii) In case of repeat procedure necessitated due to any error or omission or procedure having not been performed with the requisite skill, there should be no charge for the repeat procedure including extended stay to perform the procedure etc. except for consumables;
- (iv) Ensuring that imported or expensive drugs are supplied or charged at landed cost, plus a service charge of not more than 5 to 10%.
- (v) Laying down guidelines to the extent possible regarding use of expensive implants, stents etc.

18. These are some of the measures which commend to us. However, it is entirely for the Government and Executive Authorities, who are expert in the field, to devise and structure the various scheme and packages so as to derive the maximum benefit, which would enable it to provide better health care for its employees at lesser cost to itself.

The Director General of Health Services, Govt. of India as well as Director, Health Services, Govt. of NCT should review their existing schemes and submit a report on the measures taken by them in the light of observations made in the judgment within 4 months.

Petitions stand disposed with the above directions.

Manmohan Sarin, J.

August 20, 2008
Rk

Vipin Sanghi, J.