

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.4771/2007**

% **Date of decision : 26.03.2008**

Shri Than Pal Singh Petitioner
Through: Mr.Mata Din, Advocate

Versus

Mahanagar Telephone Nigam Ltd. & Another Respondents
Through: Mr.Gaurav Sarin, Advocate.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

- | | |
|--|-----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

Rule.

With the consent of the parties, the matter is taken up for final hearing.

1. The petitioner has sought a writ or direction seeking quashing of the order dated 6th October, 2005 directing recovering of an amount of Rs.98,000/- from the petitioner and further direction to recover the amount along with interest at 18% per annum with effect from 4th September, 2006 and a cost of Rs.11,000/-. The amount of

Rs.98,000/- was sanctioned and advanced by the respondents for the purchase of medical equipment for the illness of the petitioner's wife, however, the sanction was recalled later on after the medical equipment was purchased, on the ground that the Corporate Office of the MTNL did not approve the sanction of the amount.

2. The petitioner was an employee of Department of Telecommunication and was absorbed with effect from 1st November, 1998 with the Mahanagar Telephone Nigam Limited.

3. The petitioner and his family members are stated to be entitled for medical facilities provided under CGHS prior to his absorption and even after absorption till the medical facilities from CGHS were withdrawn by Mahanagar Telephone Nigam Limited. The wife of the petitioner suffered from Type-II Respiratory Failure & Chronic Hypoxia entailing admission on 28th March, 2002 in Batra Hospital & Medical Research Centre, an empanelled hospital of the MTNL. She was discharged on 10th April, 2002 and was advised BIPAP for domiciliary use. The petitioner, therefore, made a request for the purchase of the machine and the request of the petitioner was approved for an amount of Rs.98,000/-. The petitioner purchased the machine from Life Line Millennium Centre and the cheque was issued in favour of the seller for Rs.98,000/- bearing No.424678 drawn on State Bank of India and the machine was delivered to the petitioner on 11th July, 2002.

4. The wife of the petitioner, however, expired on 6th December, 2003. The petitioner after purchasing the machine the payment of which was made directly to the seller, submitted his medical reimbursement claim. However, by letter dated 6th October, 2005, the request of the petitioner for reimbursement was declined and it was held that the case of the petitioner was not approved by the corporate office and consequently the order for recovery of Rs.98,000/- from the pay and allowance of the petitioner was passed.

5. The petitioner appealed against the order dated 6th October, 2005. The petitioner also sought voluntary retirement with effect from 1st June, 2006, however, while giving the amounts due to the petitioner on his voluntary retirement, an amount of Rs.98,000/- was deducted from the gratuity amount of the petitioner and he was intimated by letter dated 4th September, 2006.

6. The petitioner has impugned the action of the Mahanagar Telephone Nigam Limited of deducting the amount of Rs.98,000/- from his pay and allowance on his taking voluntary retirement, the amount which was sanctioned by the competent authority earlier for purchase of BIPAP machine which was to be used by the petitioner's wife for domiciliary use and thereafter, ordering recovering the same on the ground that the Corporate office of the respondents did not approve it.

The petitioner contended that once the cheque was issued in the name of the seller of the machine and the petitioner had acted upon the representations made by the Mahanagar Telephone Nigam Limited, the amount could not be recovered from his pay and allowance on the ground that the same has been not accepted by the corporate office and the respondents are estopped from claiming the amount from the petitioner.

7. The respondents opposed the petition and filed a counter affidavit of Administrative Officer (MR), Mahanagar Telephone Nigam Limited dated 20th December, 2007 contending that after the amount of Rs.98,000/- was sanctioned to the petitioner on 26th June, 2002 for the purchase of said machine, the matter was sent to the corporate office (headquarters), MTNL, for the formal approval and as there was no scheme for providing reimbursement for the purchase of said machines, the earlier decision of sanctioning the amount was withdrawn and the petitioner was asked to refund the amount of Rs.98,000/- which was sanctioned to the petitioner erroneously. The appeal of the petitioner was also rejected and the petitioner retired by taking voluntary retirement on 1st June, 2006 and the amount which was sanctioned erroneously was recovered from the pay and allowance payable to the petitioner on his retirement. In these circumstances, the respondent sought dismissal of the writ petition.

8. I have heard the learned counsel for the parties and have perused the documents filed and relied on by the parties as well as the judgments relied by the petitioner. The petitioner has relied on order dated 5th February, 2007 in WP(C) No.1665/2006, Surendra Kumar v. MTNL & Others, where the employee was sanctioned an amount as medical advance for the purchase of machine for his treatment and the cheque was also issued for the sanctioned amount to the seller of the machine, however, later the request of the petitioner for medical claim for reimbursement was rejected and the amount was recovered from the pay of the employee. A learned single Judge of this Court relying on AIR 1979 SC 460, Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh; AIR 1971 SC 1021, Century Spinning & Manufacturing Co. Ltd. v. the Ulhasnagar Municipal Council and Another and Surya Narain Yadav and Others v. Bihar State Electricity Board and Others, (1985) 3 SCC 38, had held that MTNL was not entitled to recover the amount and had directed the Nigam to refund the amount.

9. This cannot be disputed that the wife of the petitioner was advised BIPAP for domiciliary use and a certificate was also issued by a Senior Consultant of Batra Hospital & Medical Research Centre pursuant to which the request was made by the petitioner for purchase of the machine. The request of the petitioner was accepted for purchase of machine for his wife and was conveyed to him by necessary endorsement dated 8th May, 2002. Not only the sanction was conveyed

for purchase of the machine, the amount was paid directly to the seller of the machine by the MTNL.

10. The petitioner has also produce a communication dated 26th June, 2002 addressed to the Director, CGHS, stipulating that approval for BIPAP machine for CGHS beneficiary for their domiciliary use could be granted, subject to fulfilling the conditions of request being approved by Medical Specialist and such a machine had to be provided once in a life time of a particular beneficiary.

11. The MTNL is a public organization and it is expected that it should have taken adequate steps to provide such medical facilities as are permitted by the Government. In case there were no guidelines with MTNL, the sanction ought not have been granted to the petitioner to purchase the appropriate machine for his wife which was advised by the Medical Specialist. After sanctioning the amount for purchase of the machine, the purchase consideration for which was also paid by the respondent directly to the seller of the machine, the respondent could not cancel the sanction on the ground that the corporate office had not approved the same. It is no more *res integra* that public bodies are as much bound as private individual to honor the promises made by them relying on which a person has altered his position to his prejudice and detriment. Reliance can be placed on the judgments of the Supreme Court, AIR 1979 SC 460, *Motilal Padampat Sugar Mills Co. Ltd. v. State*

of Uttar Pradesh; AIR 1971 SC 1021, Century Spinning & Manufacturing Co. Ltd. v. the Ulhasnagar Municipal Council and Another and Surya Narain Yadav and Others v. Bihar State Electricity Board and Others, (1985) 3 SCC 38.

12. Relying on the notification by the Central Government Health Scheme, a learned single judge of this Court had held in *Surender Kumar* (supra) that the respondent should issue formal guidelines, if not, already existing as expeditiously as possible so that such medical benefits which are available to the beneficiary of Central Government Health Scheme are also available to the employee of MTNL. The learned single Judge had granted three months' time, however, the learned counsel for the respondent is unable to show whether such reliefs as had been directed by this Court, have been extended to the employees of MTNL or not.

13. In any case, for the reasons stated hereinabove, the respondents were not entitled to claim back the amount of Rs.98,000/- which was sanctioned by them for the purchase of BIPAP machine for domiciliary use for his wife for which the purchase consideration was paid directly to the seller and the machine was delivered to the petitioner for the use of his wife.

14. The learned counsel for the petitioner has also prayed interest on the amount of Rs.98,000/- which was deducted from the gratuity amount of the petitioner on his taking voluntary retirement. He contends that the petitioner is entitled for the interest @ 12% per annum.

15. Consequently, the rule is made absolute and the order dated 6th October, 2005 issued by respondent No.2 for recovery of Rs.98,000/- from the petitioner is set aside and the respondents are directed to refund the amount of Rs.98,000/- deducted from his gratuity and other amounts within a period of six weeks. Considering that the amount was deducted from the gratuity which was payable to the petitioner, the respondents are also directed to pay simple interests on the amount deducted @ 12% per annum from the date the amount was deducted till the amount is repaid to the petitioner. However, considering the facts and circumstances, the parties are left to bear their own costs.

Copy of the order be given dasti to the counsel for the parties.

March 26th, 2008.
'k/Dev'

ANIL KUMAR, J.