

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 9229/2009**

S. R. Sharma Petitioner

Through: Mr. Naresh Thanai and
Mr. J.P. Singh, Advs.

Versus

Govt. of NCT of Delhi & Ors. Defendant

Through: Ms. Zubeda Begum with
Ms. Sana Ansari, Advs.

Judgment reserved on : April 09, 2010

Judgment pronounced on : April 28, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By the present writ petition filed under Article 226 of the Constitution of India the petitioner Sh. S.R. Sharma has prayed that this Court be pleased to issue a writ of mandamus/ directing the respondent no. 1 to reimburse to him medical expenditure incurred by him towards the treatment of his son amounting to Rs. 5,07,917.10/- with interest @ 18% per annum.

2. The petitioner holds the post of a Senior Assistant, Administrative Branch, Patiala House Courts, New Delhi and is a Medical Facility Card holder which entitles him to avail of medical

treatments for his family and himself.

3. The brief facts leading up to filing of the present writ are that the petitioner's son Sh. Kaushal Kumar Sharma suffered from drowsiness, high grade fever and loss of consciousness on 20.06.2007 whereafter he was rushed to Batra Hospital, New Delhi. Vide letter dated 26.06.2007 the petitioner informed respondent no. 2 District and Sessions Judge, Tis Hazari Courts, Delhi as regards his son's admission to Batra Hospital.

4. The petitioner spent Rs. 35,088/- for the treatment of his son at Batra Hospital which was sanctioned by respondent no.2 to the petitioner vide letter dated 03.11.2007 in lieu of bills issued by the said hospital dated 24.06.2007.

5. The petitioner's son was diagnosed with a lump in the brain for which surgery was advised. Since Batra Hospital was not an empanelled hospital, the petitioner's son was shifted emergently to respondent no. 3 Indraprastha Apollo Hospital on 24.06.2007 where Sh. Kaushal Kumar Sharma was diagnosed with high grade glioma (malignant cancer) and operated upon on 25.06.2007.

6. As per the advise of Dr. G.K. Jadhav, Senior Consultant, Radiation, Oncology in letter dated 09.07.2007 the petitioner's son went through radiation tests and chemotherapy, the cost of which was foretold to be approximately Rs. 9 Lac.

7. The petitioner thereafter requested respondent no. 2 to release 90% of the medical advance in his letter dated 10.07.2007. The respondent no. 2 informed the petitioner vide letter dated 10.07.2007

that he could not avail the cashless facility under DHGS as respondent no. 3 was not a recognized hospital for neurology.

8. However, the follow up treatment of the petitioner's son continued in the respondent no. 3 hospital and he was admitted to respondent no. 3 thrice; firstly from 24.06.2007 to 27.10.2007, secondly from 27.11.2007 to 28.11.2007 and lastly on 20.12.2007.

9. The petitioner's son passed away on 22.12.2007.

10. The total amount spent by the petitioner on his son's treatment was Rs. 15,98,154.15/- of which Rs. 5,07,917.10/- remained to be reimbursed to the petitioner by respondent no. 2 who informed the petitioner vide letter dated 14.11.2008 that the said amount, after being considered by the competent authority, was amount in excess and respondent no. 3 may be asked to reimburse the same.

11. The petitioner sought reimbursement of the excess amount from respondent no. 3 vide letter dated 18.12.2008. Respondent no. 3 in its letter dated 17.01.2009 refused to do so, informing the petitioner that it was not empanelled with DGHS for treatment of neurosurgery and therefore, DGHS rates were not applicable and the tariffs prevalent at the relevant time had been levied. The petitioner informed respondent no. 2 of the events that had transpired.

12. Counsel for the petitioner has argued that it is the duty of respondent no. 1 to ensure that its employees can avail of the medical facilities available if the said employee holds a medical facility card. Respondent no. 3 is an empanelled hospital and is on the approved list of respondent no. 1.

13. Further, the petitioner had obtained permission from the competent authority in this respect i.e. respondent no. 2. In the event that respondent no. 3 is not empanelled for neurosurgery, the respondent no. 1 ought to negotiate the applicable tariffs with respondent no. 3 and the petitioner ought not to be burdened with additional cost.

14. Counsel for the petitioner has referred to ***State of Punjab & Ors. Vs. Mohinder Singh Chawla and Ors., (1997) 2 SCC 83*** wherein it has been noted that right to health is an integral part of the right to life and therefore, if a Government employee has undergone specialized treatment for his/her medical treatment the same must be reimbursed by the State. Another judgment ***Govt. of NCT of Delhi & Anr. Vs. Prem Prakash (Dr.) & Ors., 153 (2008) DLT 1 (DB)*** has also been referred from which the relevant portion reads as under :

“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. A short affidavit has been filed on behalf of respondent no. 2 by Sh. Jeet Kumar Vaid, Superintendant (Litigation Branch), Office of District Judge-I and Sessions Judge, Tis Hazari Courts, Delhi. In the affidavit, Sh. Jeet Kumar has submitted that the petitioner’s son was shifted to and operated upon at respondent no. 3 hospital in an emergency situation. The petitioner requested for advance sanctions which were allowed to him as per the record. The affidavit states that the petitioner was accorded permission by the Delhi Government Dispensary, Begumpur, Delhi to take treatment as per instructions in OM dated 25.10.2007.

16. It is also submitted that the petitioner was given his dues as per entitlement under CS (MA) Rules and was sanctioned Rs. 38,909/- on 27.03.2008 indicating that the actual unpaid amount is not Rs. 5,07,917.10/- but Rs. 4,75,118.95/-. The petitioner has been granted permission by the competent authority to avail only of that treatment from respondent no. 3 for which respondent no. 3 was empanelled.

17. In the affidavit filed on behalf of respondent no. 1 it is submitted that respondent no. 3 is empanelled under DGEHS for *“All Radiological Investigations & Nuclear Medicines, Laparoscopic Surgery, Dialysis, Urology, Organ Transplant (Renal, Liver) Lithotripsy, Joint Replacement, Radiation Therapy, Cardiologym Cardiac Surgery, Cardio Thoracic, Vascular Surgery.”* Respondent no. 3 is not empanelled for neurological disorders/ treatment/ surgery. It is also clearly stated that *“as per the provisions of the scheme in emergent condition beneficiary can go to any of the recognized institution of his/her choice directly without being formally referred by AMA.”*

The scheme vide OM dated 25.10.2007 for payment that has to be made is given thus :

“i) In emergent condition beneficiary can go to any of the recognized institution of his/her choice directly without being formally referred by AMA. Cashless treatment facility in emergent conditions will be available to all pensioner beneficiaries in recognized empanelled private hospitals/diagnostic center in Delhi on production of valid DGEHS Card.

ii) Follow-up treatment subsequent to any emergent treatment/procedure or for the illness shall be on authorization of concerned AMA.

iii) Treatment in private hospitals not recognized/not empanelled under the scheme in medically emergent conditions will also be admissible when treatment is necessitated in such hospitals being situated near the place of illness/trauma and when no other recognized facility is available nearby or due to circumstances beyond the control of the beneficiary.

iv) However, reimbursement in such cases shall be made within the ceiling of DGEHS rates and there shall also be a provision for medical advance by the concerned departments (head of department) of 90% of the estimated expenditure in such conditions.”

18. As per respondent no. 1, follow up treatment subsequent to any emergent procedure can be done only on authorization of the concerned AMA/ department and in the present case, no such authorization has been placed on record. Reimbursement as per entitlement has been made and no further reimbursement can be made to the petitioner.

19. The petitioner has filed an additional affidavit stating that he applied to the Department of Health and Services, Govt. of NCT of Delhi through Begumpur Dispensary seeking permission for follow up treatment of his son with respondent no. 3 and was allowed to do so vide Office Memorandum dated 25.10.2007. The permission granted by the Department of Health Services is attached to the affidavit.

20. The petitioner filed another affidavit detailing the expenditure incurred by him for his son's treatment during the three times the latter was admitted to respondent no. 3 hospital and the amount reimbursed to him each time along with the amount yet to be reimbursed. These are concisely stated hereunder.

A. Period from 24.10.2007 to 27.10.2007

Rs. 14,98,556.15	Raised by hospital
Rs. 2,82,204/-	Medicines not available in hospital
Rs. 4000/-	Doctor's fee

Total : Rs. 17,84,760

Amount Sanctioned : Rs. 3,96,323/- and
Rs. 5 lac as medical advance

After adjustment, Rs. 8,88,437.15 were left out of which Rs. 4,43,543/- was sanctioned. A total of Rs. 4,44,894/- is yet to be reimbursed.

B. **Period from 27.11.2007 to 28.11.2007**

Rs. 24,311/- Raised by hospital
Amount sanctioned : Rs. 13,595/-
A total of Rs. 10,715/- is yet to be reimbursed.

C. **Period from 20.12.2007 to 22.12.2007**

Rs. 76,533/-
Amount sanctioned : Rs. 57,162/-
A total of Rs. 19,371/- is yet to be reimbursed.

21. As regards the expenditure incurred for follow up treatment, a sum of Rs. 71,845.95 was sought by the petitioner to be reimbursed of which Rs. 38,909/- were sanctioned leaving the amount of Rs. 32,936.95 yet to be reimbursed.

22. It is the petitioner's submission that the follow up treatment of his son was chemotherapy, for which treatment the respondent no. 3 hospital is approved/empanelled. An application/ sanction from the Authorised Medical Attendant for the follow up treatment is placed on record by the petitioner along with his earlier affidavit dated 05.11.2009.

23. In response to the above, respondent no. 1 has filed an additional affidavit through Dr. Parveen Kumar, Chief Medical Officer (DGEHS), Directorate of Health Services has stated that since respondent no. 3 is not recognized for the specialties of neuro-related problems or chemotherapy, non emergent treatment/ follow up treatment in the specialties are not covered for reimbursement.

24. To clarify its stand, respondent no. 1 has submitted that non emergent treatment in any private empanelled hospital requires permission from the department or from the in-charge of the concerned

dispensary where the beneficiary is attached. Part C thereof is used to convey permission.

25. In the present case no approval of the competent authority has been obtained by the petitioner by complying with the prescribed performa. Admittedly, Part C of the performa has not been filed in the form which is a requirement for the purpose of obtaining the permission of reimbursement as governed by paragraphs 9A/9B of OM dated 25.10.2010.

26. It is argued by the respondent no. 1 that the requisite permission is not placed on record by the petitioner. It is also mentioned that as per agreements between the Delhi Government and certain recognized private hospitals, the latter are bound to charge as per ceiling rates and treatment as per entitlement can be reimbursed in full. However, all hospitals do not agree to provide services of all specialties and only selected specialties may be covered under the agreements.

27. The circumstances in the present writ are such that it is unfathomable to expect the petitioner to have looked into miniscule technicalities such as filling up of the permission slip Part C of the form etc. Despite his troubled state of mind the petitioner obtained the necessary permission from the AMA which has been attached with the petitioner's affidavit dated 05.11.2009 by way of Part A and Part B of the requisite form.

28. It appears to me that the follow up treatment of chemotherapy in this particular matter are inextricably linked to and the logical consequence of the main treatment undergone by the petitioner's

son, for which the petitioner has been admittedly compensated and as such, the claim of the petitioner is allowed as a special case. No doubt the petitioner had not taken the permission as per the prescribed form Part –C as it appears that the said portion is not filled up by the petitioner at the time of obtaining permission but at the same time, one has to consider the realities of life. In a case where the child of a person is in such a critical stage of a disease, the parents are not always in the right state of mind. Here is a case of such nature, and had the petitioner at the time of obtaining the permission been correctly guided by the authority, the petitioner would have applied for obtaining the permission as per Part –C also. It appears to me that there was a bona fide mistake of the petitioner and benefit is to be given to the petitioner due to the facts and circumstances of the present case.

29. Considering the facts and circumstances in the present case, the writ petition is allowed and the petitioner is entitled to the reimbursement of the balance unpaid amount.

30. Though the total amount claimed by the petitioner in the writ is Rs. 5,07,917.10 with interest @ 18% per annum, there appears to be some discrepancy in the said amount and I am of the view that the petitioner be reimbursed by the respondent no. 1 to the extent of the balance medical expenditure amount i.e. Rs. 4,75,118.95/-. In view of the facts and circumstances of the present case, this Court is not inclined to grant the relief of interest in view of the peculiar circumstances of the matter.

31. The writ petition is disposed of with the above-mentioned

direction. No cost.

APRIL 28, 2010
dp

MANMOHAN SINGH, J.