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HIGH COURT OF DELHI : NEW DELHI

W.P (C) No. 10711 of 2009

RAKESH LIKHAR Petitioner
Through: Mr. Nikunj Dayal, Adv.

Versus

INDIAN NURSING COUNCIL & ANR. Respondents
Through: Mr. V.S.R. Krishna, Adv. for R-1.
Mr. N.K. Jha, Adv. for R-2.

Judgment pronounced on: 15.09.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for a writ of Mandamus directing the respondents to reimburse the medical expenses incurred in the dental treatment amounting to Rs. 20,817/-.

2. The brief facts of the case are that the petitioner is working as an LDC with the Indian Nursing Council (herein after referred to as respondent No. 1) which is a statutory body to the Government of India. The employees of respondent No. 1 are not covered under C.G.H.S (herein after referred to as respondent No. 2) and their medical facilities are the responsibility of the

respondent No. 1.

3. On 23.01.2002 the respondent No. 1 issued an office memorandum bearing F.No.3-1/2001-INC recognizing private hospitals/diagnostic centers for its employees and their families and these hospitals/diagnostic centers were also recognized by C.G.H.S for specialized and general treatment. On 17.01.2007 the respondent No. 1 issued another memorandum bearing F.No.3-1/2006 INC for reimbursement of medical expenses as per C.G.H.S approved rates.

4. In August 2007 the petitioner's wife Mrs. Vimal Likhar was treated for dental problems at Kailash Hospital and Research Centre Ltd. which is an approved hospital on approved rates and the thereafter the petitioner submitted all the medical bills with the respondent No. 1 for reimbursement of Rs. 20,817/-. On inquiring about the reimbursement of his bills the petitioner was informed that the bills had been sent to the respondent No. 2 for clarification. Thereafter he sent repeated reminders to respondent but did not receive any information or reimbursement.

5. On 04.12.2007 respondent No. 1 issued a letter to respondent No. 2 for the reimbursement of medical bills of the petitioner and forwarded a copy of the same to the petitioner. According to the petitioner he was under the impression that his bills are kept pending till the respondent No. 1 receives a suitable reply from respondent No. 2 and incase there is no reply from respondent No. 2, the bills will not be paid. The petitioner even complained to the Chief Vigilance Commissioner about the irregularities in the reimbursement of the medical bills and his promotion and requested him to investigate into the matter. On

30.01.2009 the respondent transferred a sum of Rs. 3,020/- in the bank account of the petitioner as full and final payment of his medical bills.

6. The petitioner sent registered notice dated 04.02.2009 to the respondent No. 2 asking them to pay the balance amount of Rs. 17,000/- to him but the respondents failed to comply with the said notice and got two letters dated 04.02.2009 and 04.01.2008 issued to the petitioner rejecting the medical claim of the petitioner. Aggrieved by this act of the respondents the petitioner has filed the present writ petition.

7. The respondent No. 1 in its counter affidavit has stated that the medical bills of the petitioner were referred to the respondent No. 2 for recommendation. Vide letter dated 04.01.2008, the respondent No. 2 stated that in the instant case the treatment had been taken without the advice of the Government specialist and without permission from the parent department when there was not even an emergency. It has further been stated that the clinical record and investigations do not justify the Flap Operation of the 19 teeth, Apisectomy of 5 teeth along with surgical extraction etc. And as per the expert opinion of Government dental specialist the reimbursement of consultation charges at the CGHS rates of Rs. 60/- each, OPA X Ray (two) at the rate of Rs. 500/- each and RCT of two teeth at AIIMS rates of Rs. 250/- each tooth and metal crown at AIIMS rates of Rs. 500/- each is admissible. Therefore the respondent issued OM dated 04.02.2009 and reimbursed the sum of Rs. 3020/- to the petitioner.

8. The petitioner has cited reference of his other staff members whose medical claims were immediately cleared even

though the hospitals where they received treatment were not even C.G.H.S approved. But, according to the respondents those cases are on a totally different footing and the medical claims in the said cases pertain to cardiac and brain surgery. And the case of the petitioner pertains to dental treatment and it is a non-emergency case therefore it would not be fair to compare those cases with the present one.

9. It is settled proposition of law that the Courts in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot delve into the realm of policy making. Therefore, each of the claims raised before this Court shall be tested on the touchstone of the existing policy. It is only if the claims raised are in consonance of the extant policy that the same shall be allowed.

10. The validity of the policy was upheld by the Supreme Court in the case of **State of Punjab and Others Vs. Ram Lubhaya Bagga etc.**, 1998 (2) SCC SLR 220, at page 227 and 228 in para 23 and 27 which read as under:

“23. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of government policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good

reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

27. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

11. Having considered the settled law on the point, I am of the considered view that the petitioner is not entitled for the reimbursement of the medical expenses incurred in the dental treatment except which is reimbursed by the respondent as per C.G.H.S. rates. Firstly because the petitioner is only entitled to the reimbursement of the amount as per rule of CGHS and not otherwise and secondly because the nature of treatment of the petitioner's wife is dental treatment was not a case of emergency. Even otherwise, the petitioner has admittedly not taken any prior approval for the same. The writ petition is, therefore, dismissed

being without any merits. No costs.

MANMOHAN SINGH, J.

SEPTEMBER 15, 2010
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