

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

Date of decision: 8th November, 2011

+ LPA No.353/2007

% UNION OF INDIA Appellant
Through: Mr. Saquib, Advocate.

Versus

SH. S. SRINIVASA RAO & ORS. Respondents
Through: Ms. Sushma Singh, Adv. for Mr.
Sudhir Kulshreshtha, Adv. for R-2 to
3.

CORAM :-

HON'BLE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J

1. The challenge in this appeal is to the judgment dated 6th November, 2006 of the Learned Single Judge in W.P.(C) No.6793/2006 preferred by the respondent no.1 herein directing the appellant to provide Central Government Health Scheme (CGHS) benefits to the respondent no.1 as well as the other retired employees of the respondent no.3 National Seeds Corporation Ltd. (NSC).

2. Notice of the appeal was issued and vide order dated 21st May, 2007 which continues to be in force, the operation of the impugned judgment stayed. The respondent no.1 has failed to appear inspite of service and is proceeded against *ex parte*. The respondent no.2 Ministry of Agriculture and the respondent no.3 NSC have supported the appeal.

3. Though respondent no.3 NSC is a company incorporated under the provisions of the Companies Act, the learned Single Judge has given two reasons for holding the respondent no.1 eligible to CGHS benefit as available to the retired employees of the Central Government. Firstly, because CGHS benefit was available to the respondent no.1 while in service of the respondent no.3 NSC and secondly because health is an integral part of right to life.

4. The appellant in its appeal has contended that the respondent no.3 NSC is an independent entity and functions on commercial basis; its funds are raised through issuance of shares and borrowings from commercial banks; the Government does not provide any budget/financial aid to the

respondent no.3 NSC; the Government does not have any financial control over the respondent no.3 NSC; that CGHS facility is provided by Ministry of Health and Welfare consequent upon contribution made by the employees or the employer; that the respondent no.3 NSC is not a pensionable establishment and does not contribute for CGHS benefit to its retired employees; that payment of pension is a pre-condition for CGHS benefit to retired Government employees; that the respondent no.1 is neither a retired Government employee nor a pensioner and thus not entitled to the CGHS benefit.

5. The respondent no.3 NSC in its counter affidavit has explained that its employees enjoy CGHS facility during their service tenure owing to its arrangement with CGHS and merely for the said reason, they cannot be held entitled to such benefit post retirement also.

6. We are unable to find any right in the respondent no.1 to the CGHS benefit or any obligation in the appellant to provide the same to the respondent no.1. The reasons given by the learned Single Judge are not

found to be germane for extending the said benefit to the respondent no.1. Moreover, there is nothing before us to show that respondent no.3 NSC can be treated as Government whose employees as per their service conditions are entitled to CGHS benefit post retirement also. Also, though right to health is undoubtedly a part of right to life but the same cannot entitle all citizens to benefit of scheme meant for employees of Government only.

7. The learned Single Judge has based his judgment solely on the judgment dated 2nd February, 2006 of the Division Bench of this Court in LPA No.499/2004 titled ***UOI v. SPA Retd. Employees' Welfare Association*** and other connected appeals. The School of Planning and Architecture (SPA) is also a Society and the CGHS benefits were extended to the serving employees of SPA also. However in that case the plea was, of the benefit of CGHS having not been extended to the retired employees of SPA for lack of financial resources. It was in the context of the said plea/defence that it came to be held that the same could not deprive the retired employees of SPA from the benefit of CGHS Scheme. Of course, the argument of right to good health was also accepted. We may however mention that SLP (Civil)

No.8213/2006 (Civil Appeal No.10310/2011) against the said judgment is shown to be pending.

8. However, we find much development thereafter. A Single Judge of this Court in ***J.K. Sawhney v. Punjab National Bank*** 169 (2010) DLT 743 held the retired employees of the Bank to be not entitled to medical reimbursement when the bi-partite settlement between the Bank and its employees did not provide therefor. It was further held that those not covered by the CGHS could not be given benefit thereof and the question as to who should be entitled to benefit under the Scheme is a matter of Policy and in which the Courts cannot intervene.

9. Intra Court appeal being LPA No.437/2010 preferred against the aforesaid judgment was dismissed on 6th September, 2010. It was held that though it is the Constitutional obligation of the State under Article 21 of the Constitution to safeguard the life of every person and such right is a right to lead healthy life but no law mandates that every citizen is entitled to free medical treatment without any limitation on the amount that can be claimed

as reimbursement. Reliance was placed on *State of Punjab v. Ram Lubhaya Bagga* (1998) 4 SCC 117 laying down that no State or country can have unlimited resources and provision of facilities cannot be unlimited and that the courts would not interfere with any opinion formed by the Government.

10. We find the question as raised herein to have been again raised, this time by the employees of Nehru Memorial Museum and Library; they also claimed the benefit of the CGHS Scheme. The said writ petition was allowed in *President, CCRH Scientists Welfare Association v. UOI* 179 (2011) DLT 21 following the dicta in *SPA Retd. Employees' Welfare Association* without noticing the judgment in *J.K. Sawhney* (supra). The Intra Court appeal being LPA No.587/2011 preferred thereagainst was dismissed vide order dated 18th July, 2011.

11. We may notice that CGH Scheme is not applicable to all citizens. The said Scheme was introduced in the year 1954 with a view to providing comprehensive medical facilities to the Central Government employees and their family members and in specified cities only. Only the persons

specified in the Scheme are eligible to avail medical facilities thereunder. The employees and the pensioners availing CGHS are required to make contribution every month depending upon their pay/pension. Another Division Bench (of which one of us i.e. the Acting Chief Justice was a member) of this Court is ***Dal Chand Vashisht v GNCTD*** (2008) VI AD (Delhi) 44 observed that such schemes are contributory in nature and are structured on the same lines as the insurance schemes where the burden is shared by all the contributories collectively for the benefit of those who may need to draw from the common pool thus created; it was expressly observed that CGHS for retired civil servants was a contributory scheme; that to be able to obtain benefit of CGHS it is essential to be a member thereof. It was further held that merely because the Government may also provide funds from its coffers to top up the expenses/outgo from such schemes, would not affect the contributory nature thereof. It would thus be seen that CGHS is essentially contractual in nature and without being a member/contributory thereof, a person cannot claim the benefits thereunder. It is nowhere the case of the respondent no.1 that he even post his voluntary retirement from

respondent no. 3 NSC continued to be a member/contributory of CGHS. His claim in the writ petition was predicated only on the judgment of this court in *SPA Retd. Employees' Welfare Association* (supra).

12. Reference may be made to the judgment of the Constitution Bench of the Supreme Court in *Confederation of Ex-Servicemen Associations v UOI* (2006) 8 SCC 399 in which the claim of ex-defence personnel to full and free medical aid for themselves and their families as a Fundamental Right was for consideration; they were challenging the contribution for the healthcare scheme introduced, demanded from them inter alia on the ground that since they were entitled to free full medical aid while in service, they were entitled thereto post retirement also and on the ground that the members of the civil service were availing CGHS benefits during service as well as post retirement. The Supreme Court negated the said challenge and held the classification between in-service and ex-service employees to be legal, valid and reasonable and further held that extension of the benefits enjoyed while in service, post retirement cannot be claimed as a right.

13. It would thus be seen that CGHS has nothing to do with the right to life asserted and the right to unlimited medical aid for all citizens has been negated.

14. As far as the claim of the respondent no.1 in the writ petition of the respondent no.3 NSC being a Government of India Undertaking and its employees being entitled to the same benefits as employees of the Central Government is concerned, we may notice that the Supreme Court in ***Hindustan Antibiotics Ltd. v. Workmen*** AIR 1967 SC 948 held that the service conditions of employees in Public Sector Undertakings are not analogous to those of government employees; the PSU employees do not have security of service, the Fundamental Rules do not apply to them, there is no pension, they are covered by service standing orders and their service conditions are more similar to those of employees of private sector than those of government departments. The said five Judge Bench judgment of the Supreme Court was discussed by another five Judge Bench of the Supreme Court in ***Kishan Prakash Sharma v. UOI*** AIR 2001 SC 1493. Similarly in ***Dr. S.L. Agarwal v. General Manager, Hindustan Steel Ltd.***

(1970) 1 SCC 177, a five Judge bench of the Supreme Court held another PSU namely Hindustan Steel Ltd. to be not a department of the Government and its employees to be not government servants.

15. We may in this regard notice that a Division Bench of this Court in *National Seeds Corporation Employees' Union v. National Seeds Corporation* AIR 1972 Del 292 held even a writ petition to be not maintainable against the respondent no.3 NSC. This judgment was followed in *Gurbaksh Singh v. Delhi State Industrial Development Corporation* AIR 1978 Del 262.

16. The appeal therefore succeeds. The order dated 6th November, 2006 is set aside and the writ petition filed by the respondent no.1 is dismissed.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

NOVEMBER 8, 2011

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