

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.11.2014

+ **W.P.(C) 4222/2014**

J.K. JAIN

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Pranav Kr. Jha and Mr Ishan Jain.

For the Respondents : Ms Ruchi Sindhwani, ASC GNCTD with
Ms Bandana Shukla, Ms Megha Bhandana
with Ms Juhi Agarwal, Dy. Edu. Officer.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner's grievance is that a sum of ₹1,37,914.34/- incurred by the petitioner for treatment of his wife at Max Super Speciality Hospital, Shalimar Bagh, New Delhi has not been reimbursed by the respondents.

2. Briefly stated, the relevant facts are as under:-

2.1 The petitioner was employed as a Lecturer (Sanskrit) at Sarvodaya Bal Vidyalaya (SBV), Delhi Cantt, Govt. of NCT of Delhi and has superannuated from services. Concededly, the petitioner is DGEHS card holder and therefore his spouse was also a beneficiary of Delhi Government Employees' Health Scheme.

2.2 It is stated that the petitioner's wife (since deceased) was taken unwell on 17.07.2012 at around 1.15 AM and was taken to emergency ward of Sir Ganga Ram Hospital. As a bed was not readily available, she was taken to Jessa Ram Fortis Hospital, which is admittedly a hospital empanelled with the respondent.

2.3 Since Jessa Ram Hospital did not have a CRRT machine, the petitioner's wife was shifted to Max Super speciality Hospital, Shalimar Bagh (hereafter 'Max') on 18.07.2012 at about 12.23 AM where she was diagnosed with various ailments; 'Septic Shock' with acute Pancreatitis, Multi Organ Failure, CVS, Renal, Brain Coagulopathy, Septic Encephalopathy, Myocarditis and AE Bronchial Asthma. The petitioner's wife remained in care of Max till 22.07.2012. The petitioner states that since Max was private non-empanelled hospital, the petitioner shifted his wife to Sri Balaji Action Medical Institute, Paschim Vihar, New Delhi (hereafter 'Balaji') on 23.07.2012. The petitioner's wife expired on 07.08.2012 at about 8.20 pm

2.4 The petitioner sought reimbursement of medical expenses incurred by the petitioner from the respondent. The respondent processed the petitioner's claim of ₹3,90,982.34/- and reimbursed a sum of ₹2,53,068/- to the petitioner. The claim for the balance amount i.e. ₹1,37,914.34/-, which related to expenditure incurred at Max was denied.

3. The learned counsel for the petitioner has referred to an Office Memorandum dated 02.02.2010 (hereafter 'OM'), in support of his claim. The relevant extract of the said OM reads as under:-

“3. In order to reduce the burden on the specialists in individual cases of medical reimbursement claim under DGEHS, it has been decided to revise the guidelines for reimbursement by the competent authority (as being followed in CGHS vide OM No.4-18/C&P Vol.-1-Pt.(I) dated 20.02.2009), as follows:

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XXXX

XXXX

- b. The treatment was obtained in a private non-empanelled hospital under emergency and was admitted for prolonged period for treatment of Head Injury, Coma, Septicemia, Multi-organ failure, etc.
- c. The treatment was obtained in a private non-empanelled hospital under emergency for treatment of advanced malignancy.”

4. The learned counsel for the petitioner submits that in the facts of the present case, the said OM is applicable because the petitioner’s wife had been admitted in an emergency situation at Jessa Ram Fortis Hospital but had to be shifted to Max on account of non availability of CRRT machine which was required for her the treatment.

5. The learned counsel appearing for the respondents stated that Max is a non-empanelled hospital and, therefore, the expenditure incurred for treatment at the said hospital did not qualify for reimbursement. She submitted that although it is correct that in case of an emergency, the expenditure for treatment at non-empanelled hospitals is reimbursed, however, the same is subject to certain other additional conditions namely that the non-empanelled hospital should be near to the “place of

illness/trauma”. It was contended that in the present case, Max was not the nearest hospital to the petitioner’s place of residence and there were other empanelled hospitals which were much closer.

6. The learned counsel for the respondent also contended that the petitioner was not eligible for any reimbursement since the petitioner’s wife had been shifted from Jessa Ram Fortis Hospital contrary to medical advice.

7. In my view, denial of reimbursement of expenditure at Max on the ground that it was not the nearest hospital to the petitioner’s residence is unsustainable. In the facts of the present case, the proximity of Max must not be reckoned from the petitioner’s residence but from Jessa Ram Fortis Hospital where the petitioner’s wife was admitted. Indisputably, the condition of the petitioner’s wife was serious and it qualified to be an emergent situation. Since, admittedly, the necessary facilities for treatment of petitioner’s wife were not available at Jessa Ram Fortis Hospital she was required to be shifted immediately. In these circumstances, the condition for being shifted to the nearest hospital would apply but with respect to the location of Jessa Ram Fortis Hospital and not with the petitioner’s residence. Undoubtedly, if there was an empanelled hospital which was nearer to Jessa Ram Fortis Hospital then the contention raised by the respondents could be appreciated. However, concededly, this is not so.

8. The learned counsel for the respondents submits that admission to Sir Ganga Ram Hospital, which was done prior to the petitioner’s wife being admitted to Jessa Ram Fortis Hospital, was itself not in conformity with the OM since there was an empanelled hospital that was closer than Sir Ganga

Ram Hospital. In my view, the said contention is without merit because the petitioner is not claiming any reimbursement on account of any treatment afforded to his wife at Sir Ganga Ram Hospital. On the contrary, it is stated that no treatment was provided at Sir Ganga Ram Hospital and, therefore, the petitioner had not claimed any amount in that respect. In this view, the contention that the petitioner's wife should not have approached Sir Ganga Ram Hospital in the first place is not relevant as, admittedly, the petitioner's wife was admitted to an empanelled hospital subsequently.

9. The respondent's contention that the petitioner was not eligible for any reimbursement since the petitioner's wife had been shifted from Jessa Ram Fortis Hospital contrary to medical advise, is also without merit. First of all, it is disputed by the petitioner that his wife was shifted contrary to medical advise. It is also relevant to note that this fact has not been affirmed by the respondent in its affidavit but merely forms a part of the file noting that has been reproduced. Be that as it may, the respondent has unequivocally, affirmed that the petitioner's wife had to be shifted because the CRRT machine which was required for her proper treatment was not available at the Jessa Ram Fortis Hospital. The relevant extract from the affidavit filed on behalf of the respondent is quoted below:-

“5. That after diagnosis it was found that for proper treatment a CRRT machine is required which was not available at Jessa Ram Hospital. The Patient was shifted to Max Super Specialty Hospital Shalimar Bagh (Private, non-empanelled hospital).”

10. It is difficult to appreciate the contention canvassed by the respondent in view of this affidavit. Once, it admitted that the necessary

facilities for treatment of the petitioner's wife were not available at the Jessa Ram Fortis Hospital, it can hardly be contended that she was still medically required to be admitted in that hospital, which was not in a position to provide a proper treatment.

11. The learned counsel for the respondent on instructions of Ms Juhi Agarwal, Dy. Edu. Officer states that the claim of the petitioner has not been denied on any other ground except as contended by her.

12. In the aforesaid circumstances, the writ petition is allowed and the respondents are directed to reimburse an amount of ₹1,37,914.34/- on verification of the necessary bills.

VIBHU BAKHRU, J

NOVEMBER 25, 2014
MK

