

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 22172 of 2011
Date of decision: 13.05.2015

Ram Parkash

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ravinder Malik Ravi, Advocate
for the petitioner.

Dr. Sushil Gautam, DAG, Haryana.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J.

The petitioner seeks reimbursement of expenses incurred by him, of approximately of Rs.6,89,000/-, on the treatment of his late wife, who was suffering from chronic renal failure. The reimbursement sought is in respect of expenses incurred at a private hospital, i.e. the Silver Oaks Hospital, Mohali, Punjab.

2. As per the petition, the petitioners' wife retired on superannuation, from the respondent-department of the Government of Haryana, on 31.08.2007.

His wife, Smt. Pushpa Rani, was diagnosed with the above mentioned disease, sometime thereafter, by the Civil Surgeon, Karnal (the

date is not given in the petition) and was initially under treatment with the PGIMER, Chandigarh, where her condition is stated to have deteriorated, upon which she was taken to the Indraprastha Apollo Hospital, New Delhi on 09.10.2008.

Thereafter, since there was no improvement in her condition, the petitioner took his wife to the Silver Oaks Hospital, Mohali, where she is stated to have been diagnosed as a patient suffering from Repeatedly Progressive Glomerulo Nephritis (RPGN/ESRD/HTN). She is stated to have been admitted to the said hospital from 06.01.2009 to 12.01.2009, during which period the petitioners' own kidney was transplanted to his wife; i.e. the petitioner donated one kidney to his wife to try and save her life. Though at the time when the petition was filed (23.11.2011), his wife was still alive, Mr. Ravinder Malik Ravi, learned counsel for the petitioner submitted that Smt. Pushpa Rani had unfortunately died during the pendency of the petition.

3. After the operation, the petitioner is stated to have submitted medical bills for reimbursement of the expenses incurred in the Silver Oaks Hospital, Mohali, on 22.05.2009, claiming the same pursuant to the “medical reimbursement” policy dated 06.05.2005 (Annexure P-1), issued by the respondent-State. The relevant parts of Clauses 3,4,5 and 6, thereof, pertinent to the present case, read as under:-

“3. Approved Hospital:-

a) The reimbursement on the expenditure incurred for treatment in any of the non Govt. hospital out of the 20 hospitals approved vide govt. letter No.2/296/86-1HBIII, dated 19th November, 1986 with the concurrence of Finance Department vide their UO No.56/80/86-5FD-II/4309/4588,

dated 22nd October, 1986 and also for the expenditure incurred for treatment in any of the non govt. hospital out of the 27 hospitals approved vide govt. letter No.2/206/2002-1HBIII, dated 8.1.2003 shall be made at the rate equal to PGI, Chandigarh rates. A list of these 27 hospitals is annexed as Annexure A for ready reference. It is clarified that for expenditure on treatment in any of the (non-sic) Govt. hospitals out of these 27 hospitals reimbursement shall be governed by the provision in para 2(ii) and 2(iii) above.

b) The reimbursement on expenditure incurred on treatment taken in the remaining approved hospitals shall be on such terms and conditions as were mentioned in the instructions of the Govt. issued at the time of grant of approved hospitals along with the date of grant of approval is enclosed as Annexure B for ready reference.

c) For the purpose of entitlement of General/Private Ward, the basic pay below Rs.10,5000/- for general ward and above 10,500/- for private ward will be allowed as per PGI, Chandigarh rates list and reimbursement will be allowed for general ward/private ward treatments accordingly.

d) The patients taking treatment in the above mentioned approved hospitals should taken permission from the Civil Surgeon concerned.

e) Expenditure on the treatment taken in the branches of the approved hospitals will not be reimbursed unless separate approval is given by the State Government.

f, g, h & i xxxxxx xxxxxx xxxxxx

4. Unapproved Hospitals:

a) The reimbursement for the treatment taken in an emergency in an unapproved hospital will be allowed equal to PGI, Chandigarh rates with the approval of the Finance Department.

b) Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency.

5. Kidney donors:

The reimbursement on the expenditure for operating upon the donor is permissible only if the treatment has been taken in a Government/approved hospital as it is a planned procedure.

6. Expenditure on medicines:

The reimbursement of the expenditure incurred on the purchase of medicines for a period of seven days after discharge from the hospital will also be allowed.”

The relevant part of Annexure-A (referred to in Clause-3(a) above), pertaining to transplant of a kidney from an approved private hospital, is reproduced herein under:-

“KIDNEY TRANSPLANT

1. Christian Medical College and Hospital, Vallore

HOSPITALS APPROVED ON 8.1.2003.

1. Irvin Hospital, New Delhi.

2. Lady Harding Hospital, New Delhi.

3. Victoria Zangana Hospital, New Delhi.

4. St. Stephen Hospital, New Delhi.

5. Safdarjang Hospital, New Delhi.

6. Girdhari Lal Maternity Hospital, New Delhi.

7. G.B. Pant Hospital, New Delhi.”

The list of approved hospitals as contained in Annexure-B of the policy dated 06.05.2005, (with reference to Clause-3(b) thereof), reads as

follows:-

ANNEXURE B

LIST OF APPROVED HOSPITALS

S.No.	Hospital	Date of approval
1	Escorts Hospital, New Delhi	30.11.93
2	Batra Hospital, New Delhi	30.11.93
3	Nivedaik Prosthetic Centre Daulat Singh Wala, Zirakpur	30.11.93
4	Fortis Hospital, Mohali	31.10.02
5	Indraprasth Apollo Hospital, New Delhi	31.10.02
6	Sir Ganga Ram Hospital, New Delhi	31.10.02
7	Rajiv Gandhi Cancer Institute, New Delhi	31.10.02
8	Irvin Hospital, New Delhi	8.1.03
9	Lady Harding Hospital, New Delhi	8.1.03
10	Victoria Znanan Hospital, New Delhi	8.1.03
11	St. Stephen Hospital, New Delhi	8.1.03
12	Safdarjang Hospital, New Delhi	8.1.03
13	Girdhari Lal Maternity Hospital, New Delhi	8.1.03
14	G. B. Pant Hospital, New Delhi	8.1.03
15	Maharaja Aggarwal Hospital, and Charitable Trust New Delhi	24.06.03
16	Saket Hospital, Chandimandir	26.5.76
17	Rehabilitation Research Centre, Jaipur	20.08.86
18	Metro Hospital, Faridabad	10.09.03
19	Mukut Hospital, Sector 34, Chandigarh	24.5.04
20	Silver Oaks Mohali	14.10.04

Thus, as per the policy dated 06.05.2005, Silver Oaks Hospital, from where the petitioners' wife received a kidney transplant, was included in the list of approved hospitals and in terms of Clause-3(b) of the policy, reimbursement of expenditure incurred on treatment taken in these hospitals, was to be governed by the terms and conditions as were given in the instructions of the Government, issued at the time of grant of approval to such hospitals.

4. However, the petitioners' claim for reimbursement was returned by respondent no.2 (Director General, Animal Husbandry & Dairying, Haryana) on 21.07.2009, with the objection that reasons be given for getting treatment from a private hospital and to explain as to when the PGI, Chandigarh, had declared the disease suffered by the petitioners' wife, to be a chronic disease. Further, the petitioner was also asked to explain as to why treatment was not taken from the PGI and still further, as to whether the treatment received at the Silver Oaks Hospital, was in an emergency or not, which was to be verified by the Civil Surgeon, Karnal.

5. The petitioner is stated to have submitted his reply giving the circumstances of his wife first having received treatment at the PGI, Chandigarh, thereafter, at the Indraprastha Apollo Hospital, New Delhi and finally at the Silver Oaks Hospital, Mohali.

The respondents still not having granted reimbursement, a legal notice was got served upon them on 30.11.2010, after which the petitioner was advised by respondent no.3 on 20.01.2011, to represent before respondent no.1 and according to the petitioner, the representation was made also on 20.01.2011 itself.

6. Thereafter, the petitioner is stated to have again made a representation to the respondents on 17.03.2011, but in the meanwhile he received a letter dated 04.03.2011, in response to his legal notice, whereby again his claim was refused/returned, on the grounds that, firstly, the treatment should have been taken from the PGI itself, as the chronic disease has been certified to be such by that hospital and, secondly, that the Silver Oaks Hospital, Mohali, had been 'depanelled' by the Government of

Haryana on 12.02.2008. The petitioner was also again asked to get the case verified from the Chief Medical Officer, Karnal, as to whether it was an emergency case or not.

Of the bills for an amount of Rs.6,89,000/-, only bills to the tune of Rs.5,83,000/- were returned and bills for an amount of Rs.1,06,000/- were not returned on the ground that they had been misplaced, as per the petition.

7. Thus, with his grievances not redressed, the petitioner filed the present petition seeking reimbursement of medical expenses to the tune of Rs.6,89,000/- alongwith the interest @ 18% per annum, with effect from the date of his wifes' treatment, till such time as the amount is paid by the respondents.

8. In the reply filed by the respondents, it has been stated, in effect, that as per Clause 4(b) of the instructions dated 06.05.2005, any reimbursement of treatment taken from an unapproved hospital, would be allowed, equal to the rates for such treatment in the PGI, Chandigarh, with the approval of the Finance Department provided the Civil Surgeon concerned and the Head of the Department, concerned, certify the treatment to be one taken in an emergency.

It is further reiterated in the reply, that the Silver Oaks Hospital, Mohali, was depanelled by the Government of Haryana on 12.02.2008, vide a letter circulated by the Health Department, a copy of which has also been annexed with the petition. (As a matter of fact, the letter is actually dated 12.08.2008, even as per the photocopy of the same, annexed with the reply).

The reply further states that despite opportunities given to get the case verified from the Civil Surgeon, Karnal, that the petitioners' wife was operated upon from an unapproved hospital in an emergency situation, no such certificate had been produced and thereafter, the said Civil Surgeon, vide his letter dated 10.09.2009, had in fact informed respondent no.4 that it was not a case of an emergency operation. A copy of the said letter has also been annexed with the reply filed by the respondents.

The factual position with regard to the petitioner having submitted representations etc. alongwith the medical bills, has not been denied in the reply filed.

9. Mr. Ravinder Malik Ravi, learned counsel appearing for the petitioner, first reiterated all that has been stated in the petition, that the petitioner had no choice but to take his wife to the Silver Oaks Hospital, in the fervent hope that he may be able to save her life, upon donating his own kidney, in the circumstances that she was not getting any better either at the PGI, Chandigarh, or even at the Apollo Hospital, New Delhi. He then submitted that the petitioner has undergone tremendous hardship; mental, financial and physical, inasmuch as, he even donated his own kidney to try and save his wives' life, but unfortunately even that could not eventually save her, as she died during the pendency of the petition.

Thus, he submitted that on humanitarian grounds alone, the petitioner deserves to be compensated by reimbursement of the medical expenses incurred by him.

10. Learned counsel for the petitioner also relied upon the following three judgments of co-ordinate Benches of this Court, in support

of his contentions:-

- i) **Roop Chand v. State of Haryana and others**
2014 (1) SCT 681,
- ii) **Vijender Singh v. State of Haryana and another**
(CWP No.19733 of 2009, decided on 17.02.2011), and
- iii) **Roshni Devi v. State of Haryana and others (2002 (4)**
RSJ 364).

11. Dr. Sushil Gautam, learned Deputy Advocate General, Haryana, while submitting that, without doubt, the petitioner had obviously undergone tremendous problems, however, further submitted that in view of the conditions of the policy relied upon (Annexure P-1), the petitioner could not be reimbursed the amount spent by him in the Silver Oaks Hospital, for both the reasons given in the reply, i.e.:-

- i) That it was not a case of an emergency;
- ii) That Silver Oaks Hospital had been specifically depanelled from the approved list of hospitals, before the petitioners' wife received treatment at that hospital, from 06.01.2009 to 12.01.2009.

Therefore, Dr. Gautam submitted that, unfortunately, the petition would need to be dismissed, especially in the light of settled law, that nothing beyond the terms of the policy of the Government, can be granted to an employee.

12. Having considered the rival arguments and having gone through the pleadings, though undoubtedly, the petitioner deserves sympathy, especially as he has donated his own kidney to try and save the life of his wife, unfortunately, in the absence of any certificate by either the Civil Surgeon, or the PGI, Chandigarh, to the effect that the kidney

transplant performed was a required procedure to save his wives' life, this Court cannot direct reimbursement of such medical expenses.

On 14.11.2014, this Court had asked learned counsel for the petitioner as to whether he could place on record any document showing that the kidney transplant was advised by any government institution, pursuant to which he got such treatment for his wife, in a private hospital.

On that date, learned counsel had sought time to place on record such a document. However, even after two months, when the matter was again heard on 09.01.2015, no such document was either placed on record or even produced in Court. Had that been the case, then this Court could have considered directing the respondents to reimburse the petitioner at least as much amount, as would have been spent by him in the PGI, Chandigarh, for such an operation/surgical procedure, even though he chose to have the procedure conducted at an unapproved private hospital.

However, in the absence of any medical advice by a competent hospital, especially a premier institution like the PGI, Chandigarh, it seems that the petitioner simply took the advice given at a 'depanelled' private hospital, obviously on the off chance that it might save his wives' life. Sadly, even that purpose was not achieved, but in the process, the petitioner lost not only an organ from his own body but also could not eventually save his wives' life. In such a situation, where no approved hospital or a Government hospital has been shown to have advised any such procedure, despite which the petitioner took the risk of having such procedure performed from a depanelled hospital, not in an emergency situation, this Court can only express its sympathy with him but cannot direct, as already stated, reimbursement of expenses incurred on that

medical procedure, especially in the face of clauses 4 & 5 of the policy dated 06.05.2005.

13. As regards the judgments cited by the petitioner, *Roop Chands' case* (supra) was one in which the petitioner therein suffered a sudden pain in his chest while on a visit to Delhi and was rushed to an unapproved hospital where he remained admitted for two days and was diagnosed with Diabetes and heart disease, after which, he was admitted to Max Heart Vascular Institute, Saket, New Delhi where he underwent a Coronary Artery Bypass surgery and naturally incurred a large expenditure.

The stand of the State in that case, before this Court (coordinate Bench), was that since the surgery itself was not performed in an emergency situation, and was incurred in a hospital not approved by the Haryana Government, no reimbursement could be granted. The Court, holding that the surgery itself had not been shown to be not required, disposed of the petition with a direction to the respondents to get an opinion from the Civil Surgeon concerned, as to whether the surgery undergone by the petitioner was medically necessary or not. If the Civil Surgeon opined that it was necessary, then reimbursement was ordered at Government rates, even though the surgery was not performed in an emergency situation.

14. In *Vijender Singhs' case* (supra) the petitioner therein had been treated from the Escorts Hospital Faridabad and the Metro Hospital, of which, as per that judgment, only one was an approved hospital on the list of the Haryana Government. The stand of the respondents was not accepted, by holding that the place where a person takes medical treatment, is dependent on the faith between a patient and a doctor and as such, if he

goes to an authorised hospital, especially in a situation where he has a perforated appendix, it would obviously be a life threatening situation. As such, it was directed that the expenditure incurred, be reimbursed. In that case, *Roshani Devis' case* (supra) was also referred to, wherein it was held to the same effect, that a person has the right to chose his doctor, also holding that at best the respondents could have refused reimbursement beyond the rates of the PGI, Chandigarh or the All India Medical Sciences, New Delhi plus 75% of the expenses as were incurred over and above such rates.

Unfortunately, in the aforesaid case, the judgment of the Supreme Court in State of **Punjab and others vs. Ram Lubhaya Bagga and others (1998) 4 SCC 117**, was not brought to the notice of the Court.

15. In the opinion of this Court, reimbursement of medical expenses to the extent of the rates of the PGI, Chandigarh/AIIMS, New Delhi, would be justified, if such treatment is actually certified to be required, by the competent government doctors. Further, even reimbursement of an amount of 75% of the expenditure incurred over and above such rates could be justified, in terms of the Government policy, to the extent that such expenditure would have been incurred in an approved hospital.

In other words, only as much reimbursement can be granted, to an employee/former eligible employee, as is stipulated in a policy issued by the Government. This, in fact, was the ratio of the law laid down in *Ram Lubhaya Baggas' case* (supra) and has been followed thereafter in various judgments of the Supreme Court. Governments' right to promulgate a particular policy or to change such policy, was upheld by the Apex Court,

holding that the Government was fully justified in limiting the facilities it could extend to its employees, as per its financial resources.

16. In the present case, as already noticed, the petitioner could not place on record any certificate issued by the competent hospital/doctor, so as to show that the procedure as was performed upon his wife and himself (kidney transplant) was actually required.

In view of the above, the direction sought by the petitioner, cannot be issued to the respondents. However, since the deceased was actually diagnosed by the Civil Surgeon, Karnal and the PGI, Chandigarh, as is admitted by the respondents, to be suffering from a chronic disease, in the opinion of this Court, if either the Civil Surgeon, Karnal or the Head of the Department of Nephrology, at the PGIMER, Chandigarh, certifies even at this stage, on the basis of medical record, that the kidney transplant was, in fact, required, then the petitioner would be entitled to reimbursement of medical expenses incurred by him, at least to the extent that such expenses would have been incurred, in the PGI, Chandigarh. Simply, because the petitioner chose to go to a smaller private hospital where he expected to get better care for his wife and himself (as he was also a kidney donor to his wife) he cannot be denied reimbursement of the expenses that would have been incurred by him on an identical procedure at the PGI, Chandigarh itself.

17. Hence, keeping in mind the facts of the case, as also the reasoning of the Governments' own policy, this petition is disposed of by declining to immediately issue the directions prayed for, but with liberty to the petitioner to approach either the PGI, Chandigarh, or the Civil Surgeon, Karnal, or any other Government doctor(s) approved by the Government of

Haryana, to certify, on the basis of medical record available, as to whether the petitioners' wife actually required a kidney transplant or not.

In case such a certificate is issued by a competent doctor, the petitioner would be required to apply to the respondents within ten days thereof, for reimbursement of medical expenses incurred by him at the Silver Oaks Hospital, Mohali, between 06.01.2009 and 12.01.2009. The respondents would then reimburse to the petitioner, at least that amount as would have been spent by him on such procedure, in the PGIMER, Chandigarh, within a period of two months from the date of issuance of such a certificate by the competent authority. However, in view of the fact that no such certificate has been produced so far, no interest would be payable to the petitioner, even if he now submits the certificate referred to above, to the respondents, unless payment is not made to him, after submission of any such certificate, within the aforegiven period of two months, after which interest @ 7% per annum would be payable by the respondents till the date of actual payment.

No order as to costs.

13.05.2015
dinesh

[AMOL RATTAN SINGH]
JUDGE