

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.16629 of 1997

Ashok Kumar ... Petitioner

Versus

The State of Punjab and others ... Respondents

2. CWP No.5968 of 1997

Chander Parkash Khanna ... Petitioner

Versus

State of Punjab and others ... Respondents

Date of Decision: 22.04.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.16629 of 1997 titled *Ashok Kumar v. The State of Punjab and others* & CWP No.5968 of 1997 titled *Chander Parkash Khanna v. State of Punjab and others*.

2. The claim in this petition is for medical reimbursement incurred by the petitioner for treatment of a chronic disease/surgical intervention for a heart ailment. The treatment was taken at Escorts Heart Institute and Research Centre, New Delhi during the period May 03, 1996 to May 21, 1996 (in CWP No.5968 of 1997).

3. In CWP No.16629 of 1997 the claim is for treatment of the son of the Government employee who underwent heart surgery in the same Institute. It is not disputed that a Government servant is entitled to medical reimbursement of dependent child which ward is included in the definition of “family” in terms of Rule 4 (b) of the Medical Attendance Regulations Part I which apply to the respondent Punjab School Education Board where both the petitioners work.

4. In the written statement filed by respondents No.2 & 3/Board it is not disputed that the Escorts Hospital is recognized by the Punjab Government for medical treatment as per the instructions (Annex P-2). It is averred that recognition was withdrawn by letter dated September 09, 1994 and thereby there was no private hospital recognized by the Punjab Government for medical treatment w.e.f. September 09, 1994. A revised policy was promulgated on February 13, 1995 (Annex R-2/2) according to which Punjab Government employees/pensioners have been allowed to take medical treatment in any private hospital of their choice within the country but they will be reimbursed medical expenses at rates applicable to Government hospitals as recommended by the Medical Board. It is admitted that the petitioner was sanctioned out station leave on May 03, 1995 (CWP No.5968 of 1997) for surgical intervention. It is stated in para.6 of the written statement that the petitioner got himself admitted in the Emergency Ward of Escorts at his own and no sanction was given by the respondent-Board. It is argued that the petitioner could have got himself admitted in AIIMS but did not. It is the case of the petitioner that while travelling from Chandigarh to Delhi he developed complications during the journey which

took him to Escorts Hospital, New Delhi. However, the issue is no longer *res integra*. In cases of emergency where it threatens life it would be open to him to take treatment in any hospital whether Government or private. The right to medical reimbursement forms a right falling in Articles 21 & 47 of our Constitution. Doubts, if any, had been dispelled by the Supreme Court in State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117 which is a case involving heart surgery performed at Escorts Hospital, New Delhi. The Supreme Court considered the Punjab policy dated February 13, 1995 and held that Ram Lubhaya Bagga was entitled to reimbursement of medical bills but restricted to rates prescribed by AIIMS, New Delhi but not the full expenditure incurred at Escorts Hospital.

5. Self preservation is every man's fundamental right for which no prior clearance or sanction is necessary in an emergency so long as the medical rules permit and the law provides for reimbursement then the petitioners would have an actionable right to medical reimbursement on expenditure incurred in treatment at Escorts Hospital but bills presented would be restricted to the rates prescribed in Government hospital/AIIMS, New Delhi. In *Ram Lubhaya Bagga* the Supreme Court held that the policy dated February 13, 1995 was not open to challenge. The Court held that the financial aspect is a relevant consideration; every fundamental right is to be construed within permissible reasonable restrictions; if certain expenses are excluded in the policy then a claim would not lie for reimbursement of medical expenses incurred in private hospitals. The ruling in *Ram Lubhaya Bagga* case has been applied by the Supreme Court in subsequent decisions including in Secretary Irrigation and Power, Govt. of Punjab and others vs.

Surjit Singh, (1999) 9 SCC 219; State of Punjab and others vs. Mohan Lal Jindal, (2001) 9 SCC 217 and State of Rajasthan vs. Mahesh Kumar Sharma, (2011) 4 SCC 257.

6. Mr. Sharma points out that the petitioner has been sanctioned medical reimbursement on expenses incurred at Escorts Hospital, New Delhi but at Government rates which is within the law stated in *Ram Lubhaya Bagga*. It is always open to the Government not to provide for treatment in a private hospital beyond the rates prescribed for Government hospitals/AIIMS, New Delhi which institute serves as a benchmark in cases of medical reimbursement being a premier Government Medical Institute in the country of outstanding status. Consequently, the prayer for medical reimbursement to the extent of full expenditure incurred beyond approved rates is declined and the petition to that extent is dismissed.

7. For the foregoing reasons, the writ petitions are allowed to the extent that medical reimbursement would be restricted to rates approved by Government hospitals in Punjab and AIIMS, New Delhi for the type of treatment taken in Escorts. The same be calculated and paid to the petitioners, if remaining unpaid within two months.

(RAJIV NARAIN RAINA)
JUDGE

22.04.2016
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