

**228 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.2161 of 2015 (O&M)
Date of decision : July 22, 2016**

Pawan Kumar Jain

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjay Jain, Advocate for the petitioner.

Mr. Gagandeep Singh Wasu, DAG, Haryana.

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

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KULDIP SINGH J. (ORAL)

Petitioner-Pawan Kumar Jain, who retired from Government service, is suffering from advanced COPD with Type-II respiratory failure. Vide invoice (Annexure P-1), he purchased one oxygen concentrator instrument for ₹2,30,000/-from Gurman Medical, SCP 114, Top Floor, Phase 11, Mohali (Pb.). Though this writ petition, he seeks reimbursement of the price of the said instrument.

The disease of the petitioner is not in dispute. The certificates issued by the Appollo Hospital (Annexure P-2), Civil Hospital, Amabala (Annexure P-3) and Civil Surgeon, Panchkula (Annexure P-9) show that the petitioner is suffering from the said disease and he needs oxygen concentrator. The Civil Surgeon recommended that the same may be allowed as per government rates.

The stand of the respondents in written statement is that the Government fully reimburses for the treatment of all the retired employees but not for the instruments. It has been pleaded in the affidavit of Dr. D.P. Lochan, Director General, Health Service, Haryana that even though the instrument was not to be reimbursed but taking a sympathetic view, the Government decided to reimburse for the portable oxygen concentrator, which is indigenously manufactured and available in India and the price is to be accordingly reimbursed. It is further stated that the said instrument purchased by the petitioner is available with the price of ₹2,10,000/- on quotations.

The Government further took the stand that it has purchased 18 units of oxygen concentrator on 16.02.2011 @ of ₹33,676/- per unit exclusive of tax/duty. The said amount has already been reimbursed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, the petitioner is suffering from Type-II respiratory failure and he is unable to breathe himself. In order to survive, he supposed to inhale oxygen and to carry with him is required portable oxygen concentrator. The requirement of the petitioner has not been denied. Therefore, the oxygen concentrator is, in fact, the treatment of the petitioner and as such the instrument is meant for treatment and it is necessary for the survival of the petitioner, which deemed to be included in the reimbursement of treatment clause of the Government Policy.

Now, further question would arise as to whether reimbursement should be made as per the Government rate, on which the Government has

purchased the oxygen concentrator in the year 2011 i.e. @ ₹36,676/-. The huge difference in the price is due to the fact that the instrument purchased by the Government are locally manufactured, whereas the petitioner has purchased the instrument, which is manufactured in U.S.A., but easily available in India. Admittedly, the quality of both the instruments is unlikely to be same.

Keeping in view the nature of the disease, the petitioner was not required to go here and there and seek whether locally manufactured oxygen concentrator is available somewhere and whether it is having good quality because once the instrument fails, the inevitable result would be the death of the petitioner. In these circumstances, the petitioner in his wisdom decided to rely upon the U.S.A. manufactured oxygen concentrator. It cannot be said that there is any bad intention of the petitioner. He was merely worried about his life. When the question of survival comes, one cannot compromise with the quality.

In these circumstances, when the question of life is involved, the petitioner was justified in relying upon the high quality oxygen concentrator, imported from U.S.A. and he is to be reimbursed for the same, notwithstanding that some lower quality oxygen concentrator is available in the Indian market.

Admittedly, the quality control of the medical equipment in India and U.S.A. is entirely different. The quality control in U.S.A. is very strict. According to the affidavit of Director General, Health Services, Haryana, the said oxygen concentrator purchased by the petitioner is available in the Indian market @ ₹2,10,000/-. Admitting that the said

assertion of the Director is correct, it is deemed proper that the reimbursement should be allowed to the tune of ₹2,10,000/-.

In view of the matter, the present writ petition is allowed. The respondents are directed to reimburse ₹2,10,000/- to the petitioner within one month from the date of receipt of the copy of this order.

(KULDIP SINGH)
JUDGE

July 22, 2016

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No