

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5714 of 2014

Date of Decision: 6.1.2016

Hari Chand

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. S.P. Garg, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, 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. The decision inviting issue of medical reimbursement of half of the amount of expenses incurred by the petitioner for his life saving Live Liver Transplant operation in the present case was formulated in the interim order dated December 17, 2015 in the following terms:-

“Mr. Manuja, on instructions from Dr. Shaminder Singh Kang, O/o DHS Pb. who is present in Court, submits that the facility of Live Liver Transplant was not available in AIIMS, New Delhi. The treatment was administered by the Apollo Hospital, New Delhi. The petitioner was operated on 01.01.2010. It is pointed out from the medical reimbursement policy (P-7) under the Head (b) “treatment in private hospital in the country” the reimbursement of medical expenses for treatment in private institute/hospital (of their own choice) is available provided the patient gives an undertaking that in an unambiguous terms that he will accept reimbursement of expenses incurred by him on his treatment to the level of expenditure as per rates fixed by

the Director, Health & Family Welfare, Punjab for similar treatment package or actual expenditure whichever is less. The scheme approves package treatment as was in the present case.

To understand the authority of the Director, Health & Family Welfare, Punjab in fixing the expenditure for “similar treatment” it is necessary that he should appear in Court to explain what is meant by the policy at page 97 of the paper-book. Similar can only mean that treatment is available elsewhere. If treatment is not available elsewhere then how does the policy work.

List for the purpose on 23.12.2015.

To be shown in the urgent list.

Order dasti.

The Director, Health & Family Welfare, Punjab to appear in Court on the next date of hearing.

In the meanwhile, he may file an additional affidavit explaining the position with advance copy to Mr. S.P. Garg, learned counsel for the petitioner.”

2. Dr. Bhagmal, Director, Health Services, Punjab is present in Court. He has hardly any cogent point of view to offer to the Court which may lead to the dismissal of the petition. The option available with him of filing an additional affidavit explaining the position has not been availed. The right thus stands waived.

3. The brief facts necessary to be stated are that the petitioner was a Social Studies Master teaching school. In the year 2009 the petitioner developed symptoms of liver cirrhosis which is a chronic disease and a type of cancer. He was initially admitted for treatment at the Dayanand Medical College and Hospital, Ludhiana where the doctors advised him to undergo Liver Transplantation. The nearest hospitals where such treatment could be had were either at the Indraprastha Apollo Hospital or the Sir Ganga Ram Hospital, both in New Delhi, and the line of treatment advised was to

remove the liver from a live donor and transplant it in the patient, the petitioner. The procedure involves the donor and the recipient to be operated at the same point of time, one for removal, the other for transplantation simultaneously. The petitioner was operated on January 01, 2010 and was discharged from Apollo Hospital, New Delhi, the chosen hospital, on January 22, 2010. The operations were successful. The total medical expenses incurred in the Apollo Hospital were in a sum of Rs.22,43,818/-. On return, he submitted his medical reimbursement bill together with his representation with supporting documents on February 05, 2010 for sanction by the competent authority and payment. When the amounts were not released in his favour the petitioner was compelled to approach this Court by way of CWP No.938 of 2011 which was disposed of on January 19, 2011 directing the respondents to consider and decide the claim of the petitioner within two months. The respondents did not obey the order which brought COCP No.2211 of 2012 to this Court.

4. On notice, the respondents released part of the claim and the rule was discharged on April 29, 2013. Liberty was granted to the petitioner to avail his appropriate remedy against the order dated April 26, 2013 in accordance with law. By then, the petitioner had received about 50% of the expenses towards medical reimbursement. It is not disputed that the procedure of Live Liver Transplant was not available at the relevant time in any of the Government hospitals in Punjab or even at AIIMS, New Delhi.

5. The challenge in this petition is to the order dated April 26, 2013 denying half of the amount of medical reimbursement. The other half of the claim has been rejected by the respondents for the reason that the

integral part of the expenses incurred was as an inpatient. There is no dispute that the question involved was one of life and death. Article 21 of the Constitution of India is invoked on the principle of right to healthy life.

6. In the counter-affidavit filed by the respondent-Department, it is averred that the claim of the petitioner was considered and verified as per Punjab Government rates and those prevailing at AIIMS, New Delhi. That is how the claim was sanctioned in a sum of Rs.11,91,898/- and paid by cheque dated June 11, 2011 duly credited in the account of the petitioner.

7. Claims for medical reimbursement are processed under the Punjab Services (Medical Attendance) Rules, 1940 (the “rules”) which right is available to both Punjab Government employees and its pensioners. Treatment in hospitals other than in Government hospitals have been recognized by the rules. The rules clarify that treatment taken from a private hospital would be subject to the condition that an undertaking would be given by the employee/pensioner for reimbursement to be claimed as per rates fixed by the Director Health and Family Welfare, Punjab and as per the advise issued by the technical committee constituted by the Director Health to finalize the admissible rates. An ex post facto sanction of the amount paid is all that the Government can grant to the petitioner for treatment. This is the sum total of the defence in the counter-affidavit dated July 21, 2014.

8. Mr. S.P. Garg, learned counsel appearing for the petitioner contends that the instructions on medical reimbursement dated February 13, 1995 (P-7) provide under head “(b)” that the treatment taken in private institute/hospital, of the choice of the patient is available as per rates fixed

by the Director, Health, Punjab for similar treatment package or actual expenditure incurred, whichever is less. He submits, and rightly so, that similar treatment was neither available in any of the hospitals in Punjab or in AIIMS, New Delhi and if this was true then the entire medical expenses should have been sanctioned because similar treatment was not available elsewhere. The choice between Indraprastha Apollo Hospital, New Delhi and Sir Ganga Ram Hospital, New Delhi was an available choice exercised by the petitioner in a hospital where he reposed trust and faith to cure his serious medical problem which might save his life. The instructions fall clearly in favour of the petitioner to bring him the remaining amount of reimbursement when the Government does not dispute that the Live Liver Transplant facility could not be had in a hospital in Northern India other than the aforesaid two which offered such treatment at the relevant time.

9. Dr. Bhagmal has not been able to lay his finger on any rule to the contrary which would oust the rights of the petitioner under the 1940 Rules, which are the governing law on medical reimbursement in the State of Punjab. Doubts, if any, have been dispelled by the Supreme Court in **State of Punjab vs. Ram Lubhaya Bagga**, (1998) 4 SCC 117. The Supreme Court considered the issue of medical reimbursement falling in Articles 21 & 47 of the Constitution of India. The Supreme Court considered the Punjab policy dated February 13, 1995 and recognized the right of the State to change its policy from time to time under changing circumstances. The Court held that the policy was not open to challenge; 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 expenses incurred in private hospitals. The Supreme Court recognized the right of Bagga for full medical reimbursement incurred in undergoing heart surgery at Escorts Hospital, New Delhi at the rates prescribed by AIIMS but not the full expenditure incurred at Escorts. On point of fact, the treatment undergone by Bagga was available at AIIMS, New Delhi but the patient could not be taken to AIIMS as there was a strike and hospital facilities were not available. That is how Bagga took the emergency treatment at Escorts to save his life. The relevant passage which is of moment in the present case is in para.33 of the judgment. Para.33 reads as follows:-

“33. So far as the appeal arising out of SLP(C) No. 11968/97 is concerned, we find that the respondent had the heart attack on 9th February, 1995 and was advised to go to Delhi on 18th February, 1995 but on account of long strike in the All India Institute of Medical Sciences (AIIMS) he was admitted in the Escorts. On those facts we are not inclined to interfere. The respondent has been paid at the admissible rate in AIIMS but claims the difference between what is paid and what is admissible rate at Escorts. Looking to the facts and circumstances of this case, we hold that the respondent in SLP (C) No. 11968/97 is entitled to be paid the difference amount of what is paid and what is the rate admissible in Escorts then. The same should be paid within one month from today. We make it clear reimbursement to the respondents as approved by us be not treated as precedent but has been given on the facts and circumstances of these cases.”

10. The decision in *Ram Lubhaya Bagga* has been applied by the Supreme Court in its 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. These are all cases which uphold payment of medical reimbursement at the rates prevailing at AIIMS, New Delhi. *Surjit Singh* is also a case of treatment taken at Escorts Heart Institute, New Delhi after the new policy of February 13, 1995 came into force, limiting expenses at AIIMS, New Delhi rates. These case are distinguishable on facts.

11. The question presently arising is that Live Liver Transplant facility was not available at AIIMS, New Delhi when the treatment was taken. If it is not available at AIIMS, New Delhi then the policy dated February 13, 1995 has to be read clearly in favour of the petitioner to bring his entire balance claim to his pocket since there is no fixed point of assessment incurred towards medical expenses. Therefore, the treatment at Indraprastha Apollo Hospital, New Delhi was in the nature of a medical emergency and the expense package in the final bill lies no matter what in the province of life and death. In other words, the situation arising was do or die, take it or leave it. The choice between the two poles can be easily imagined and needs no forensic reasoning. There is also no bar contained in the 1940 Rules or in the instructions issued from time to time, including the one under consideration, which could result in disallowing the claim altogether. It is, therefore, not open to the State to penny-pinch and decline the request for the remaining half of the expenses incurred in the treatment which was not available in Punjab or at premier medical institute at AIIMS, New Delhi. This was a Hobson's choice.

12. I would, therefore, allow the petition and partly set aside the order dated April 26, 2013 and direct the State to pay the balance amount to

the petitioner within three months from the date of receipt of certified copy of this order. The request for interest on delayed payment is declined in view of the law in **Om Prakash Gargi v. State of Punjab**, (1996) 11 SCC 399 since the grant of which has been held by the Supreme Court on amounts of medical reimbursement to be neither expedient nor proper exercise of jurisdiction.

(RAJIV NARAIN RAINA)
JUDGE

6.1.2016
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