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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6993/2016**

% ***Judgment dated 9th August, 2016***

DR. BABA SAHEB AMBEDKAR

HOSPITAL & ANR

..... Petitioners

Through : Mr.Peeyoosh Kalra, ASC, Ms.Sona Babbar, Mr.Shiva Sharma and Ms.Paridhi Dixit, Advs.

versus

ANITA & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM APPL.28725/2016

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 6993/2016

3. Challenge in this writ petition is to order dated 13.4.2015 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which OA No.1877/2014 filed by respondent no.1 herein was allowed and the petitioners herein were restrained from recovering a sum of Rs.86,005/- from respondent no.1.
4. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that respondent no.1 is an employee of petitioner no.1/hospital and has been working as an Assistant Nursing

Superintendent. On 17.9.2012, the son of respondent no.1, who was suffering from Sickle Cell Anaemia (Thalassemia) was admitted to petitioner no.1 hospital after he complained of chest pain along with high grade fever. Petitioner no.1 referred the son of respondent no.1 to Maharaja Agrasen Hospital, which is an empanelled hospital with Delhi Government Employees Health Scheme (hereinafter referred to as 'DGEHS'). On 23.9.2012, the son of respondent no.1 was discharged from Maharaja Agrasen Hospital and he was referred to Indraprastha Apollo Hospital, a higher centre for further treatment. On the same date i.e. 23.9.2012, the son of respondent no.1 was admitted to Indraprastha Apollo Hospital, which is not an empanelled hospital. He was discharged from Apollo Hospital on 24.9.2012. A sum of Rs.20,713/- (approx.) was incurred by respondent no.1 towards the medical treatment of her son. On 3.10.2012, the son of respondent no.1 was again admitted to Indraprastha Apollo Hospital in emergency and he had to remain under treatment in the hospital for ten days. For the aforesaid treatment, petitioner no.1 made payment of an advance of Rs.3,16,980/-, by way of a cheque, to respondent no.1. Upon discharge of the son of respondent no.1 from Indraprastha Apollo Hospital, respondent no.1 submitted a medical claim amounting to Rs.20,713/- and Rs.2,63,298/- for the expenditure incurred by her towards the treatment of her son. On 30.11.2012, respondent no.1 deposited Rs.53,682/- vide Challan no.217 with petitioner no.1 and requested petitioner no.1 for reimbursement of full amount under DGEHS which was charged by Indraprastha Apollo Hospital. Thereafter the bills submitted by respondent no.1 were put up before the Technical Committee, constituted by Director Health Services, Government of NCT of Delhi, for the purpose of relaxation of procedure/rules for full

reimbursement. The proposal was declined by the Technical Committee with the opinion that the patient did not fulfil the criteria for full medical reimbursement and advised to consider the case as per the provisions of DGEHS Office Memorandum dated 25.10.2007 as per entitlement and other applicable CS (MA) Rules 1944. Accordingly, the medical claim of respondent no.1 for Rs.20,713/- was restricted to Rs.15,750/-, which amount was sanctioned vide order no.304 dated 7.5.2014. The second medical claim of Rs.2,63,298/- in respect of the treatment of son of respondent no.1 was processed and restricted to Rs.1,77,293/- after scrutiny. The Committee also opined that the case of son of respondent no.1 did not fulfil the eligibility criteria for full reimbursement in a hospital not empanelled as per the criteria laid down in the Office Memorandum dated 2.2.2010. On 18.2.2014, petitioner no.1 issued a Memorandum directing respondent no.1 to deposit the excess amount of Rs.86,005/- with the petitioner no.1 within fifteen days in lieu of adjustment of advance granted to respondent no.1. Respondent no.1 was further directed to deposit a copy of challan after depositing the said amount. Thereafter respondent no.1 submitted an application dated 3.3.2014 requesting petitioner no.1 to recover amount of Rs.86,005/- in equal installments of Rs.2,000/-, per month, from her salary and not by way of a one-time settlement. The petitioners issued a memorandum dated 19.4.2014 informing respondent no.1 that the balance amount of medical advance would be recovered from her salary in four equal installments as per MA Rules. Aggrieved by this, respondent no.1 filed OA No.1877/2014 before the Tribunal, which was allowed by the Tribunal, which has led to the filing of present petition.

5. Mr.Kalra, learned counsel for the petitioners, submits that the

impugned order passed by the Tribunal is untenable in law. It is further submitted by the counsel that while passing the impugned order, the Tribunal has lost track of the fact that Indraprastha Apollo Hospital, where the son of respondent no.1 was admitted in emergency, is a non-panelled hospital and, thus, respondent no.1 would not be entitled to full reimbursement of the amount incurred by her towards the treatment of her son. It is also contended that the Tribunal has completely ignored the fact that according to DGEHS, cashless treatment facility in emergent conditions is available to all the beneficiaries in recognized private empanelled hospitals/diagnostic centres in addition to the Government Hospitals in Delhi, however, reimbursement would be made by the concerned Department within the ceiling of DGEHS rates. Mr.Kalra also submits that the Tribunal has failed to consider that respondent no.1 herself made a request to the petitioners that a sum of Rs.2000/-, per month, may be deducted from her salary instead of one-time deduction.

6. We have heard learned counsel for the petitioners and also examined the documents placed on record. The basic facts, as detailed hereinabove, are not in dispute. It is also not in dispute that petitioner no.1 had referred the case of the son of respondent no.1 to Maharaja Agrasen Hospital. It is also not in dispute that Maharaja Agrasen Hospital referred the case of son of respondent no.1 to Indraprastha Apollo Hospital, a higher centre for further treatment. Respondent no.1 thereafter admitted her child to Indraprastha Apollo Hospital in an emergent condition, which fact is not disputed by the counsel for the petitioners, and which is evident from the documents placed on record. After discharge of her son from the hospital, respondent no.1 submitted two medical claims to petitioner no.1. The petitioner no.1 referred the

medical claims of the son of respondent no.1 to the Technical Committee for relaxation of Rules. The proposal was declined by the Technical Committee with the opinion that the patient did not fulfil the criteria for full medical reimbursement and advised to consider the case as per the provisions of DGEHS Office Memorandum dated 25.10.2007 as per entitlement and other applicable CS (MA) Rules 1944. The Committee also opined that the case of the son of respondent no.1 did not fulfil the eligibility criteria for full reimbursement in a non-empanelled hospital as per the criteria laid down in the Office Memorandum dated 2.2.2010. Relevant portion of the Office Memorandum dated 2.2.2010 read 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.4-18/2005-C&P Vol 1 – Pt.(I) dated 20.2.2009), as follows:

- 1.*
- 2. All cases involving requests for relaxation of rules for reimbursement of full expenditure will henceforth be referred to as a Technical Standing Committee ___ by the Director Health Services, Govt of NCT of Delhi with SPO (DGEHS) as Member Secretary and subject matter specialists as decided by chairman as members. If the Technical Standing Committee recommends the relaxation of rules for permitting full reimbursement of expenditure incurred by the beneficiary, the full reimbursement may be allowed by the Pr. Secretary (Health & Family Welfare), Govt of NCT of Delhi in*

consultation with Finance Department. A check list for consideration of requests for reimbursement in excess of approved rates may include:

- a. The treatment was obtained in a private non-empanelled hospital under emergency and the patient was admitted by others when the beneficiary was unconscious or severely incapacitated and was hospitalised for a prolonged period;*
- 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;*
- d. The treatment was taken under emergency in higher type of accommodation as rooms as per his / her entitlement are not available during that period;*
- e. The treatment was taken in higher type of accommodation under specific conditions for isolation of patients to avoid contacting infections;*
- f. The treatment was obtained in a private non-empanelled hospital under emergency when there is a strike in Government hospitals;*
- g. The treatment was obtained in a private non-empanelled hospitals under emergency, while*

on official tour to non DGEHS covered areas;

h. Approval for airfaire with or without attendant on the advise of treating doctor for treatment in another city even though he/she is not eligible for air travel/treatment facilities are available in the city of residence and

i. Any other special circumstances.”

7. Clause 3(II) of the Office Memorandum dated 2.2.2010 provides a check list for consideration of requests for reimbursements in excess of approved rates is not exhaustive. In fact sub-Clause ‘i’ of Clause 3(II) includes “*Any other special circumstances*”. Thus, the short question which arises for consideration is whether the case of respondent no.1 would fall in any of the Clauses of check list provided from ‘a to i’.
8. The aim and objection of the Office Memorandum dated 2.2.2010 is to ensure that a person who is covered under the DGEHS ordinarily approaches an empanelled hospital and the amounts are to be reimbursed as per the ceiling limit of those hospitals. It is also the objective of this Office Memorandum to see that this procedure is not misused and the beneficiaries do not approach hospitals which are not empanelled to take treatment or the disease is of such a nature which can be treated in any hospital which is empanelled.
9. The discharge summary of son of respondent no.1 from Maharaja Agrasen Hospital has been placed on record, as per which the son of respondent no.1 was diagnosed with the following diseases:

“(1) Sickel Cell Anaemia i Sickel Cell Crisis T Septicaemia.

- (2) *Thalessemia triat*
- (3) *Puse-splienectomy*
- (4) *R+ femur avascular necrosis.”*

10. The discharge summary of the son of respondent no.1 shows that he was not suffering from any ordinary disease and it is only for this reason that petitioner no.1, Dr.Baba Saheb Ambedkar Hospital, referred the case of the son of respondent no.1 to Maharaja Agrasen Hospital, which is an empanelled hospital and Maharaja Agrasen Hospital further referred the case of the son of respondent no.1 to Indraprastha Apollo Hospital and it was not respondent no.1 who on her own approached the Apollo Hospital. The ailments of son of respondent no.1 left the helpless mother with little or no choice except to take her child to Indraprastha Apollo Hospital where she had been referred to by Maharaja Agrasen Hospital, for which she cannot be faulted.
11. In our view, the ailments of the son of respondent no.1 would very well be covered under sub-Clause ‘i’ of the check list which is ‘*Any other special circumstances*’. There cannot be a better example of a special circumstance for a single mother to take her ailing child to Indraprastha Apollo Hospital when she was advised to do so.
12. As far as the submission made by Mr.Kalra, counsel for the petitioners, that respondent no.1 herself had requested petitioner no.1 vide her application dated 3.3.2014 to recover the amount of Rs.86,005/- in equal installments of Rs.2,000/-, per month, from her salary, is concerned, we find that this request was made by respondent no.1 prior to filing of O.A. before the Tribunal and once the O.A. was filed by respondent no.1, the said offer would stand withdrawn and in any case the same would have no bearing to the order passed today.
13. In view of above, we find no grounds to interfere in the impugned order

dated 13.4.2015 passed by the Tribunal. Accordingly, the present writ petition stands dismissed.

CM APPL. 28724/2016 (STAY)

14. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

AUGUST 09, 2016

msr

I.S. MEHTA, J

