

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

CWP No.22833 of 2015

Date of decision : 20.02.2017

Ayoudhia Prasad Duggal

...Petitioner

Versus

CAT, Chandigarh & Ors.

...Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Sanjeev Pandit, Advocate for the Petitioner.

Ms. Anita Balyan, Advocate for Respondent Nos.2 to 4.

Mr. Munish Kapila, Advocate for Respondent No.5.

SUDIP AHLUWALIA, J.

The Petitioner, who retired as a Superintendent from the Customs and Central Excise Department, Chandigarh, seeks issuance of a Writ in the nature of Certiorari for quashing/setting aside the impugned order dated 11.9.2015 (Annexure P-6) passed by the Ld. Central Administrative Tribunal, Chandigarh Bench, Chandigarh, as also the earlier order dated 31.1.2014 (Annexure A-12) passed by Respondent No. 4, on behalf of Respondent No.3, in which, the petitioner's request for reimbursement of the amount charged by the Fortis Hospital (Respondent No. 5), which was over and above the CGHS rate, was rejected, *'as the consent given by the close blood relations of the patient during emergency implies to be the consent given by the patient.'*

2. The factual background happens to be that immediately after his superannuation, the Writ Petitioner became a member of the Central Government Health Scheme (in short "CGHS"). He suffered a massive Heart Attack and was rushed to the Fortis Hospital, which is an empanelled Hospital under CGHS On 03.08.2013. The Petitioner was informed by the Doctors that he had to undergo Permanent Pacemaker Implantation (P.P.I) and the Doctors advised MRI Compatible DDDR Pacemaker (Permanent). On 05.08.2013, the Petitioner underwent P.P.I. He was discharged on 08.08.2013. It is his case that he was charged a sum of ₹ 1,24,500/- by Fortis Hospital i.e. Respondent No. 4 despite being member of CGHS. Thereafter, he submitted a representation on 16.09.2013 to Respondent No. 3 to reimburse the above amount which he paid to the Fortis Hospital. Again the Petitioner was hospitalized on 20.09.2013 in Emergency and he underwent CAT+PTCA+Stent to LAD. This time also the Petitioner paid an amount of ₹ 1,40,557/- as patient's share over and above the amount paid by the CGHS. Vide another representation dated 28.09.2013, he asked for reimbursement of above amount. When the same was not decided, he served a Legal Notice dated 29.10.2013. Vide order dated 31.01.2014, his claim was rejected. He therefore, filed his Original Application in the Central Administrative Tribunal.

3. It was contested on behalf of the Respondents, who filed their separate Written Statements. While the Respondent Nos. 1 to 3 alleged that the Petitioner was admitted in the Fortis Hospital from 1.8.2013 to 8.8.2013 and then from 20.9.2013 to 22.9.2013, yet their contention was that he had chosen the Pacemaker of a superior quality than that permissible under CGHS and he had also submitted an undertaking to pay the additional

amount, over and above the Ceiling Limit of CGHS, as paid by official Respondents to the Fortis Hospital. So he is not entitled to any benefit. The amount paid by the Petitioner for better Pacemaker & Stents could not be reimbursed under the said Scheme, therefore, request of the Petitioner was rejected vide the impugned order.

4. The Ld. Tribunal nevertheless rejected the claim of the Writ Petitioner by observing inter-alia -

*“11. Concededly, the official respondents have already paid the relevant amount under the Cashless scheme of CGHS to respondent no.4. The applicant had directly paid the excess amount to respondent no.4 which he cannot claim from the official respondents. If he has any grouse, he is at liberty to file a suit against respondent no.4, if they had charged from him more amount for the pacemaker than permissible one. It was also advised to him that it is not admissible under the CGHS rates to have better quality of pacemaker, therefore, applicant's request cannot be accepted. It is also held by their lordship of the Hon'ble Supreme Court in case of **State Punjab Vs. Ram Lubhaya Bagga** AIR 1998 SC 1703, though the State have an obligation to ensure medical treatment of its employees which may also include reimbursement of expenses that obligation may not amount to a duty to give full reimbursement, since the State does not possess unlimited resources. The State cannot be put under the financial burden if an employee/patient goes for treatment in private hospital of better facility. The relevant para of the said judgment reads as under:-*

"29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of

fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

12. *The judgment as relied upon by the applicant is also not applicable to the facts and circumstances of the present case. In those cases the applicant therein got the treatment from a private hospital which was not approved under the CGHS. The Court held that if in emergency an employee gets the treatment from a private hospital then reimbursement cannot be denied. Even it has also been recorded that if the hospital charged over and above package rates, then same is to be reimbursed and thereafter issue will be sorted out with the hospital. In the present, it was never informed by the applicant that under the CGHS cashless scheme, the official respondents are not treating them or are not implanting the pacemaker. It is the applicant who chose himself to have a pacemaker of better quality by giving an undertaking to pay the excess amount. Therefore, the judgments as relied upon the applicant cannot help him."*

5. The facts of the case '***State of Punjab Vs. Ram Lubhaya Bagga'*** (*supra*) quoted by the Tribunal in its impugned judgment are however, distinguishable from those in the present case. In that matter, the claimant employee had gone in for treatment in a 'private Hospital of better facility', which ostensibly was not on the approved Panel of the Government. But that is not the case in the matter before us, since admittedly the Fortis Hospital (Respondent No. 5) in which, the present Writ Petitioner underwent treatment is on the empanelled list of CGHS. The only question in the circumstances which therefore, remains before us is as to whether his claim for disbursement of the additional amount paid by him for installation of the allegedly '*better quality Stents and Pacemaker*' are liable to be reimbursed by the Government or not ?

6. We have gone through the documents relied upon by the

contesting parties.

7. The case of the Petitioner, as specifically mentioned in his application dated 24.12.2013 (Annexure A-11) submitted to Respondent No.3, is that *'MRI compatible pace maker as well as the stents were installed strictly as per the recommendation of treating surgeon. For both the treatments there was no other alternative and accordingly differential/excess payments were made to Fortis Hospital and above referred claims were submitted to Addl. Director CGHS Chandigarh'.....I have invariably represented to the Addl. Director CGHS Chandigarh that the choice of pace maker was strictly on the basis of specific requirements, specific recommendation letter for the ideal choice from the treating surgeon was also enclosed (copy also enclosed for your kind perusal). The Stents were also implanted taking on account the situation prevailing at the time of operation. Consent letters signed by the relatives of the beneficiary at the critical moments do not carry any weightage or meaning. There is no option for anybody in emergencies. One has to sign any document or to arrange for money at any cost in do or die circumstances.'*

8. It is therefore, his case that the Consent Forms of the Petitioner's Attendants on the relevant occasions signed in view of the strict and specific recommendation of the Treating Surgeon in the Hospital, and obviously considering Emergency and critical condition of the Petitioner when he had suffered Heart Attack, were the factors, which had induced them to sign the Consent Forms. We have also seen the Consent Forms dated 1.8.2013 and 20.9.2013 signed by the Petitioner's Attendants regarding implanting of the Pacemakers and Stents on 1.8.2013 and 20.9.2013 respectively, which are Annexure A-13 collectively. It is

observed that these are pre-fabricated and stereo-typed printed forms of undertakings, which directly start with reference to the relevant Guidelines of the Government regarding Revision of Ceiling Rates and Guidelines of various 'Coronary Stents' for CGHS/CS(MA) beneficiaries dated 21.2.2013. The relevant Memorandum is on record as Annexure A-1 and it is seen that it covers only 'Coronary Stents' for the purpose of fixing the Ceiling Rates for disbursement. That particular Memorandum does not even refer to any 'Pacemaker' for the purpose of such Ceiling Limit. The letter of Consent-cum-Undertaking allegedly signed by the patient's attendant(s) simply states -

'I have been fully briefed about the guidelines on stents dated 21st February 2013 bearing No.(F. No. Misc. 1002/2006/CGHS (R&H)/CGHS (P) by the billing staff of Fortis Hospital, Mohali and I have read and fully understood the same.

I have been explained about the quality of pacemaker used in the procedure and their costs etc.

I am well aware that there are better quality pacemaker available at Fortis Hospital, Mohali but the same cannot be used as CGHS beneficiaries because of maximum ceiling prescribed in guidelines on stents dated 21st February 2013.

I hereby give my implicit & unconditional consent and I out of my own free will have agreed for the deployment of pacemaker of higher value than the one prescribed in CGHS guidelines on implants without any guarantees or promises having made to me and/or my attendants."

9. There is however, nothing on record to indicate as to what exactly was the 'explanation' given to the patient or his attendant, which would have induced them to go in for 'Better Quality Pacemaker or Stents' in preference to those authorized in the Ceiling Limits. Even the concerned Hospital, which is Respondent No. 5 in the case in its Written Statement has not stated anywhere as to what explanation was given to the patient or his

attendant(s) apart from merely informing them that better quality Pacemaker and Stents were available, but could not be implanted because of maximum Ceiling Price Limit by the CGHS. Undoubtedly, considering the critical condition in which, the petitioner/patient had been brought to the Hospital, his priority and that of his attendant(s) would necessarily be to go in for ultimate 'life saving option', and undoubtedly that aspect of the danger or risk occasioned by not going in for the 'better quality' Pacemaker and Stents would certainly have weighed on their minds for the purpose of signing the Consent-cum-Undertaking Letters pre-fabricated by the Hospital, which is conspicuously silent as to the reason why the Pacemaker/Stents covered in the Government Guidelines 'could not be implanted' for the only reason that better Pacemaker and Stents were 'also available'. No rational person is expected to go in for unnecessary exorbitant treatment knowing fully well that there will be hassles in disbursement, until and unless he or she is under a genuine fear of any life threatening consequences to follow by not going in for 'more expensive/better alternatives'.

10. In this view of the matter and considering that it was the categorical contention of the Petitioner that the MRI compatible Pacemaker as well as Stents were installed strictly as per the recommendation of the Treating Surgeon, taking into account the situation prevailing at the time of Operation, we have no hesitation in coming to the conclusion that the purported letters of Consent/Undertakings signed by the Petitioner's Attendants on 1.8.2013 and 20.9.2013 cannot become a hindrance to him for the purpose of seeking disbursement, since the same were undoubtedly signed under grave mental pressure and fear at the relevant time of Operation, considering the patient's actual situation, and also as a result of

aggressive or forceful representation from the side of the Hospital Authorities or the Treating Surgeon(s). We are therefore, inclined to concur with the decision of the Delhi High Court in a substantially identical matter being '**Daljit Singh Versus Govt. of N.C.T. Of Delhi & Ors.**' WP (C) No.16651/2006 in which, relying upon an earlier decision in the case of '**State of Punjab & Ors. vs. Mohan Lal Jindal**' 2001(9) SCC 217 wherein the stand of the Government in refusing to reimburse the in-patient charges for the treatment in the said Hospital was rejected and the Government was held to be under a constitutional obligation to reimburse the expenses since the right to health is an integral to the right of life, it was observed -

“14. The undisputed position that emerges is that a patient is entitled to reimbursement of the full amount of medical expenses and not only at the rates specified in the circular of 1996 and in case respondent No. 2 has charged a higher rate, than could have been charged, it is for respondent No. 1 to settle the matter with respondent No. 2. The petitioner cannot be deprived of the reimbursement.....

4. In view of the above it is no longer res integra that merely because the Government does not revise the package deal amount under the Medical Attendance Rules from time to time a person cannot be denied actual medical costs, and there has to be reimbursement of the actual medical expenses incurred.”

11. The Writ Petition is therefore, allowed and the impugned order passed by the Central Administrative Tribunal is set aside. The Respondent Nos.2 to 4 are directed to do the needful for disbursement of the outstanding amount of Pacemaker and Stents implanted in the petitioner during his treatment in Fortis Hospital, Mohali in 2013, within three months from the date of communication of this Order. Before parting, we are also inclined to impress upon the concerned Authorities to evolve some mechanism in future which would require the private Hospitals to

incorporate the gist or substance of the explanation given to a patient or his attendant before obtaining his signatures in the Consent Form itself as to why any particular equipment is more appropriate or preferable to that covered in the prescribed ceiling limits, in the interest of transparency.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

February 20 , 2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***