$~5

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

\+ W.P.(C) 1379/2012

L.K.BATRA ..... Petitioner

Through: Mr Prashant Mehra, Advocate.

versus

UNION OF INDIA ..... Respondent

Through: Ms Archana Gaur, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 21.07.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia,* praying that an order be issued to the respondent to reimburse the medical expenses due to the petitioner in terms of the OM No.S.11011/4/2003 – CGHS(P) dated 19.02.2009.

2. The petitioner who is a senior citizen met with an accident on 28.07.2008 and fractured his hip. The petitioner underwent a surgery on 01.08.2008 and remained in hospital till 06.08.2008. In terms of the policy in vogue at material time, all members covered under the CGHS Scheme would be entitled for medical expenses upto a particular limit as specified for different treatments. However, in cases where the persons were also covered by a medical insurance policy in addition, any payment received from the insurance company would be deducted from the amount payable

under the CGHS Scheme.

3. This policy underwent a material change with the issuance of the OM dated 19.02.2009 and the members covered under the CGHS who also had purchased medical insurance policy, would also be entitled to reimbursement of medical expenses under the CGHS scheme, which they were otherwise entitled to for treatment, without taking into account any payment received from the insurance company; this was subject to the condition that the cumulative amount received by them would not exceed the actual medical expenses.

4. The petitioner put his claim under the insurance policy and was paid a sum of ₹1,47,000/- which was released to the hospital directly by the insurance company. This amount was significantly less than the amount actually incurred by the petitioner and the petitioner had to pay an additional amount of ₹1,99,586.74 to clear the hospital bill. In the event, the petitioner did not have an insurance policy, the petitioner would have been entitled to reimbursement under the CGHS Scheme to the extent of ₹1,43,500/-. It is seen that if the petitioner was paid the full amount upto his entitlement under the CGHS scheme as well as by the insurance company, both the amounts would not cumulatively cover the actual expenses incurred by the petitioner. Thus, if OM dated 19.02.2009 was applicable, the petitioner would be entitled to ₹1,43,500/- from CGHS.

5. The petitioner put his claim with CGHS on 06.11.2009, which was rejected on 18.01.2010 on the ground that it was not covered under the OM dated 19.02.2009.

6. Paragraph 4 of the aforesaid OM clearly stated that *"these instructions take effect from the date of issue and past cases are not to be re-opened and supercede earlier instructions on the subject (cited above)*". There is no dispute that under the instructions that were in force prior to 19.02.2009, the petitioner would not be entitled for the reimbursement of any additional amount from CGHS since that amount specified under the scheme for reimbursement was less than the amount paid by the insurance company.

7. Thus, the only question that falls for consideration by this Court is whether the petitioner's case could be considered as past cases which according to the OM dated 19.02.2009 was not required to be reopened. The learned counsel for the petitioner submitted that since the petitioner had not made a claim earlier on account of his being indisposed, the petitioner's case could not be considered as a past case which had obtained closure. He also submitted that the petitioner's claim has not been denied on account of delay.

8. This Court is not persuaded to accept the contention advanced by the learned counsel for the petitioner. The expression "past cases" would also plainly include cases where no claims were made with the CGHS as per the then prevalent policy. The petitioner had made its claim with the insurance company as at that stage, the petitioner could not make a claim under the then applicable policy. The petitioner's case was thus settled. Thus, his case cannot be placed at a higher footing than a case of person who did make such claim, which was rejected.

9. In the event, OM dated 19.02.2009 is interpreted in the manner as suggested by the learned counsel for the petitioner, it would be applicable in all cases where the patients had not made any claim under the policy existing prior to 19.02.2009 for the reason that payments made to them by the insurance company had exceeded their entitlement from CGHS.

10. In the aforesaid circumstances, this Court is unable to accept that the rejection of the petitioner's claim is arbitrary or unreasonable and falls outside the policy of the CGHS. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

JULY 21, 2017
MK