

\$~86

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

+ **W.P.(C) 5112/2017**

ASHWANI KUMAR SARPAL

..... Petitioner

Through: Mr Ravi Gupta, Senior Advocate with
Mr Sachin Jain, Advocate.

versus

THE GOVT OF NCT OF DELHI AND ANR Respondents

Through: Mr Ramesh Singh, Standing Counsel
with Mr Sandeepa Pathak, Advocate
for GNCT.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **13.10.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- a. Issue a writ of mandamus or any other appropriate writ, order or direction against the respondents to recognize the treatment taken by the petitioner through acupuncture therapy as a permissible medical therapy and allow him to take such treatment from expert doctor even working in private hospital not on the panel of DGHS.
- b. Issue a writ of mandamus or any other appropriate writ, order or direction against the respondents to reimburse all the medical expenses of the petitioner incurred on his treatment relating to his ailments through acupuncture therapy submitted in past and to be submitted in future, in the interest of justice and equity;"

2. The petitioner is a Judicial Officer and is stated to be suffering from Chronic Trigeminal Neuralgia and Migraine problems for the last several years. The petitioner states that he has been informed that there is no

medicinal solution for his medical problem. According to the petitioner, Trigeminal Neuralgia can be cured through surgery but the same is fraught with unacceptable risks.

3. The petitioner states that he has been availing treatment under the allopathic system of medicine from MAX Hospital, Saket and MAX Hospital, Patparganj, Delhi. Admittedly, his medical expenses for such treatment have been reimbursed.

4. The petitioner asserts that he became aware that there could be an effective treatment for his ailment under the Chinese system of 'acupuncture' and has been availing of such treatment from doctors at Sir Ganga Ram Hospital with effect from 21.11.2016. He claims that he has already incurred a considerable expense on his treatment. The petitioner submitted its medical bills for reimbursement of such expenses with the office of respondent no.2, however, the same were rejected as inadmissible on the ground that Sir Ganga Ram Hospital was not on the panel of respondent no.1 (DGHS).

5. The petitioner asserts that acupuncture treatment has been recognised by the Ministry of Health and Family Welfare, Government of India and the treatment for various ailments under the said system (acupuncture) has also been approved by the Government of West Bengal and Maharashtra. It is further stated that such treatment is also available with some well reputed Government Hospitals such as AIIMS and Safdarjang Hospital. However, the petitioner claims that he has been availing treatment from Sir Ganga Ram Hospital as it is more convenient to him.

6. Mr Ravi Gupta, learned Senior Counsel appearing for the petitioner submitted that there are only few large hospitals that provide the treatment through *acupuncture* including Sir Ganga Ram Hospital and not empanelling such hospitals – thus disabling the government employees/pensioners for availing of such treatment - is violative of Article 21 and Article 47 of the Constitution of India.

7. He submitted that denial of reimbursement of the petitioner's medical bills falls foul of the petitioner's fundamental rights. He relied on the decision of the Supreme Court in ***State of Punjab and Ors. v. Ram Lubhaya Bagga etc.*: AIR 1998 SC 1703**; the decision of the Punjab and Haryana High Court in ***Roshani Devi v. State of Haryana*: 2002 (4) RSJ 364**; and the decision of the Madras High Court in ***E. Ramalingam v. The Director of Collegiate Education, Tiruchirapalli Region*: 2006 (4) CTC 832** in support of his aforesaid contention.

8. Mr Ramesh Singh, learned counsel appearing for respondent no.1 countered the submissions made on behalf of the petitioner. He submitted that the petitioner had been availing treatment under the allopathic system of medicine and such expenses were duly reimbursed. He further submitted that acupuncture was only an alternative system of medicine and the question whether private hospitals ought to be empanelled for providing such treatment was solely at the discretion of the concerned authorities. He submitted that the State had limited resources and it was at their discretion to determine the manner in which the same could be utilised for providing health services. He submitted that even though acupuncture was an alternative system of healing, treatment under the said system for certain

ailments was concededly available with certain Government Hospitals and, therefore, the petitioner could not insist on empanelment of private hospitals.

9. I have heard the learned counsel for the parties.

10. There is considerable merit in the submission that given the limited resources available with the State, the discretion as to the manner in which the same are used to provide health services would be at the discretion of the State Authorities. Concededly, the treatment being availed by the petitioner is available at certain Government Hospitals. Thus, as long as the medical treatment is provided at certain hospitals, respondent no.1 cannot be compelled to empanel private hospitals for providing such treatment.

11. The only reasons indicted by the petitioner for availing treatment from Sir Ganga Ram Hospital are (i) that "*Sir Ganga Ram Hospital is nearer and convenient to the place of residence/ place of posting of petitioner*" and (ii) that famous and reputed acupuncturist have been appointed by Sir Ganga Ram Hospital. Although in the grounds, it is also stated that Government Hospitals have a big rush, there is no material to substantiate the same. The petitioner has also not pleaded any particulars to indicate the waiting period for such treatment at the Government Hospitals. There is no averment to the effect that the petitioner had attempted to avail treatment from Government Hospitals but the same was effectively denied to him on account of a long waiting period. There is also no material on record from which such inference can be reasonably drawn.

12. It is apparent from the pleadings that this is not a case where the

petitioner has been deprived of or denied any medical treatment that is essential for his good health. As stated earlier, the present petition has been filed as the petitioner does not find it *convenient* to avail treatment from the Government Hospitals. Plainly, this cannot be construed as depriving the petitioner of his right to life as guaranteed under Article 21 of the Constitution of India. Undeniably, in terms of Article 47 of the Constitution, the State has a primary duty to improve public health; however, given the limited resources of the state, Article 47 cannot be read to provide a citizen in this Country a right to receive medical treatment at his convenience.

13. The decision in the case of ***Ram Lubhaya Bagga etc.*** (*supra*) is of little assistance to the petitioner. On the contrary, the said decision supports the contentions advanced on behalf of respondent no.1. In that case, the Supreme Court considered the question whether the policy framed by the State Government of Punjab was arbitrary, unreasonable or violative of any law or principle warranting the policy to be struck down. In terms of the policy in question, employees and pensioners were at liberty to get treatment in any private institute/hospital of their choice provided the employee/pensioner gave an undertaking out of his/her free will and in unambiguous terms that he/she will accept reimbursement of expenses incurred by him/her on his/her treatment to the level of expenditure as fixed by the Director, Health and Family Welfare, Punjab, for a similar treatment package or actual expenditure, whichever is less.

14. The petitioner in that case had suffered a heart attack and was admitted to Escorts Heart Institute and Research Centre in an Emergency. He underwent a coronary heart bypass graft surgery. He thereafter sought

reimbursement of the expenses incurred by him for the treatment, surgery and post-operative check-up etc. It was contended by the petitioner that denial of reimbursement would amount to curtailment of his right to life and hence violative of Article 21 of the Constitution of India. In this context, the Supreme Court examined the policy in question and observed as under:-

“25. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by a Committee of technical experts.

“The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalize the roles of various treatment packages.”

26. No State or any country can 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 7 of the Constitution of India.”

15. It is relevant to point out that in ***Ram Lubhaya Bagga*** (*supra*), the Supreme Court was concerned with a matter where the petitioner therein had been admitted to the hospital in an Emergency and there was an imminent danger to the petitioner’s life if the treatment was not provided immediately. Even in those circumstances, the Supreme Court upheld the policy for

curtailing the amount of reimbursement of medical expenses to the level as determined by the DGHS and held that such policy was not arbitrary. In the present case, the petitioner has not been deprived of the treatment as desired by him but is asserting that the same should be provided by the doctors of his choice and at his convenience. This, plainly, is not a facet of Article 21 of the Constitution of India.

16. In *Roshani Devi* (*supra*), the Punjab and Haryana High Court was concerned with the challenge to denial of reimbursement of medical expenses claimed by a widow of a deceased government employee (patient). The patient was suffering from Cirrhosis and Portal Hypertension. The condition of the patient became serious and he was taken to the hospital at Hisar where he was not attended by any Doctor and was verbally advised to go to the P.G.I.M.S. Rohtak or to Apollo Hospital. He was admitted in Apollo Hospital for approximately 10 days and, thereafter, he was taken to another hospital in Hisar where he expired. The Government of Haryana had a policy to reimburse expenses incurred on such treatment in certain private hospitals *albeit* equivalent to the rates charged by AIIMS, New Delhi/ PGI Chandigarh. It is at this context, that the Court held that the petitioner ought to be reimbursed expenses at the same rates at AIIMS and the Government had not acted on the rational manner in denying reimbursement. As is apparent from the above, the facts and the issues raised were materially different from those involved in this case. Given the policy that an employee was entitled to reimbursement of expenses incurred in a private hospital, the question of denying him expenses at the same rate because he was taken to a non empanelled hospital in an emergent situation, was found to be

unreasonable.

17. In the present case, it is not the respondent no.1's policy to provide any reimbursement of expenses for treatment through *acupuncture*, which is an alternate system of healing, in any private hospital. Thus, the only question that arises is whether the said policy is unreasonable or arbitrary. As discussed earlier, this Court finds no reason to answer the said question in the affirmative.

18. The decision in the case of *E Ramalingam* (*supra*) is also wholly inapplicable in the facts of the present case. In that case, the claim was denied on the ground that it was delayed and the stenting procedure was not included in the Government Orders. The petitioner therein was admitted to a hospital due to a heart attack and underwent a stenting procedure. The Court found that the Government orders were subsequently revised and both the hospital at which the petitioner was treated and the procedure were recognised for the purposes of reimbursement of medical expenses. It is, in that context, that the Court held that the petitioner's claim for reimbursement could not be withheld on technical grounds.

19. In view of the above, the petition is dismissed. No order as to costs.

VIBHU BAKHRU, J

OCTOBER 13, 2017
RK