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

\+ **W.P.(C) 4628/2018**

DR. B.P. SINHA ..... Petitioner

Through Mr D.K. Devesh and Mr Hitesh Vats, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr Piyush Sharma, Advocate for R2.
Ms Anju Gupta, Mr Vinod Kumar Tiwari, Mr Roshan Lal Goel, Advocates for R1 and R3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 07.08.2018

CM 30005/2018

1. Allowed, subject to all just exceptions.

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

> "(a) Pass a writ, order or direction in nature of mandamus directing the respondents to reimburse balance medical claim of Rs.2,17,208/- alongwith 18% of interest from the date of submission of his bill, which the petitioner (CGHS beneficiary) has incurred in his emergency treatment;"

3. The petitioner is suffering from cancer of prostate and is under the treatment of the doctors at Apollo Hospital. On 06.07.2017, the petitioner suffered a urinary tract infection (UTI) and high fever. Given the history of the petitioner's medical ailment, he was rushed to the Apollo Hospital, Mathura Road, New Delhi. He was immediately admitted and continued to remain in that hospital till he was discharged on 20.07.2017. His medical bills amounted to ₹4,98,374/- for the aforesaid period.

4. The petitioner is a member of the CGHS Scheme and, therefore, applied for reimbursement of the expenses. Respondent no. 2 examined the matter and accepted that the petitioner was admitted in a non-empanelled hospital in an emergency situation and, therefore, was entitled to reimbursement of the medical bills. However, the respondents have denied the reimbursement of the entire amount incurred by the petitioner. According to the respondents, the petitioner is entitled only to a partial reimbursement, which works out to be ₹2,81,166. The said amount has been paid to the petitioner.

5. The learned counsel appearing for the respondents submitted that since the petitioner was not treated for malignancy, he is not entitled for full reimbursement of the treatment at a non-empanelled hospital.

6. Mr Devesh, the learned counsel appearing for the petitioner countered the aforesaid submissions. He referred to the decision of the Supreme Court in ***Shiva Kant Jha v. Union of India*** in ***W.P. (C) 694/2015*** decided on ***13.04.2018*** in support of his contention that the petitioner would be entitled to the entire amount as the petitioner was admitted in an

emergency situation and could not await for any sanction. In the said case, the petitioner therein was admitted to Fortis Escort Health Institute (which is a non-empanelled hospital) in an emergency, for treatment of a heart ailment. The petitioner received a heart implant at the said Hospital. The Special Technical Committee (STC) did not find the treatment of implant as justified; however, keeping in view the nature of the case, the STC recommended reimbursement of the implant as per CGHS rates. The Supreme Court considered the petitioner's claim for remaining payment and observed as under:-

> **"**13. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the

grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15. In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs.4,99,555/- to

the writ petitioner. We also make it clear that the said decision is confined to this case only."

7. It is not disputed that the petitioner is a patient suffering from cancer of prostate and, is under treatment at Apollo Hospital. The respondents also are also not denying that the petitioner would be entitled to receive full reimbursement of medical bills for treatment of malignancy. The full reimbursement has been denied to the petitioner only on account of the fact that the ailment for which the petitioner was admitted in an emergency was not malignancy but UTI. The petitioner has averred that even though the petitioner has been treated for UTI, it was necessary for him to be treated by specialised doctors considering that the he was suffering from protest cancer and given his condition even a UTI could result in further complications. It is contended on behalf of the petitioner that it was necessary for him to be admitted at Apollo Hospital as the ailment (UTI) could not be considered as un-related to malignancy (prostrate cancer).

8. There is much merit in the above contention. Although the petitioner was treated for UT infection, the same cannot be considered in isolation. The petitioner is under treatment for malignancy and it is understandable that he would require care of specialised doctors.

9. It is also relevant to state that the respondents have accepted that the petitioner was admitted in the emergency and, therefore, had no occasion to take prior sanction. This is evident from paragraph 25 of the counter affidavit filed on behalf of the respondent no. 1 and 3 which reads as under:-

"25. That in reply to this para of the writ petition, it is

> admitted that the STC meeting was held on 15.02.2018 under Chairmanship of Additional DG and the committee was of the opinion that the beneficiary was admitted in emergency and was treated for UTI and urinary obstruction and not for malignancy. Hence reimbursement may be allowed as per CGHS rules. Since it was an emergency admission in non empanelled hospital CGHS rate are permissible as per CGHS norms."

10. In view of the above, the stand of the respondents that the petitioner is not entitled to full reimbursement cannot be sustained. The petition is, accordingly, allowed and the respondents are directed to reimburse the balance amount claimed by the petitioner after verification within a period of four weeks from today.

VIBHU BAKHRU, J

AUGUST 07, 2018
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