

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5226 of 2019

Smt. Rehana Khan W/o Shri B. A. Khan Aged About 63 Years R/o Vikas Nagar, Kondagaon, District - Kondagaon Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District - Raipur Chhattisgarh.
2. Director, Directorate, Urban Administration And Development, Indravati, Bhawan, Atal Nagar, Raipur District Raipur Chhattisgarh
3. Joint Director, Regional Office Urban Administration And Development, Bastar Division, Jagdalpur Chhattisgarh.
4. Chief Municipal Officer, Nagar Panchayat, Bhairamgarh, Bhairamgarh, Dt. Bijapur Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Shrawan Agrawal, Advocate
For State	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/07/2019

1. The relief sought for by the petitioner in the present writ petition is for an appropriate direction to the respondents for the reimbursement of the medical bills which the petitioner incurred during her treatment at the Seven Hills Hospital, Vishakhapatnam.
2. The facts of the case is that the petitioner was working as a Chief Municipal Officer at Bhairamgarh Nagar Panchayat, District Bijapur in the year 2017. According to the petitioner, she fell seriously ill on 14.08.2017 and she had great difficulties in breathing and had also other complications and she was immediately sent to the Community Health Centre, Bhairamgarh. The Doctor

attending the petitioner at the Community Health Centre immediately referred the patient to be sent to a higher centre for better treatment. The petitioner was immediately taken to the Seven Hills Hospital, Vishakhapatnam, which is the nearest best hospital available, which is hardly 200 kms away from the place where the petitioner was posted.

3. The petitioner undertook the treatment there and incurred the expenses of around Rs. 1,09,516.50. On getting well and resuming her duties the petitioner had raised the bills for reimbursement for the said amount. The Joint Director under whom the petitioner was working i.e. the respondent No.3 made a recommendation for the release of the amount of Rs.1,04,741/-. The said amount was also approved by the President in Council of the Nagar Panchayat, Bhairamgarh. The said amount was also approved by the Chief Medical and Health Officer of District Bijapur, however inspite of all these recommendations being made in favour of the petitioner, till date the reimbursement part has not been done by the respondents.
4. The counsel for the petitioner referred to the **Rule 49** of the **Chhattisgarh Municipal (Executive) Rules, 1973**, under which the petitioner was entitled for the reimbursement of the medical expenses undertaken.
5. The counsel for the petitioner at this juncture submits that the only hurdle on the part of the respondents in not releasing the amount could be the ground of the petitioner having undertaken the treatment at an hospital, which is otherwise not in the approved list of the Hospitals by the State Government. According to the petitioner, since the condition of the petitioner on 14.08.2017 was critical, she had no other option but to approach the nearest best hospital that was available and the petitioner immediately rushed to the

said hospital i.e. at the Seven Hills Hospital, Vishakhapatnam. The petitioner further submits that even to this hospital she had gone only after she had reported first to the Community Health Centre, Bhairamgarh, who had referred for immediately better treatment to a higher centre, therefore, according to the petitioner she could not have been deprived of the reimbursement part.

6. The State counsel on the contrary opposing the petition submits that the petitioner perhaps since has taken the treatment from an hospital, which is not the approved hospital by the State Government, she may not be entitled for the same. Moreover, according to the State counsel, there does not seem to be any document by which the petitioner was asked or referred to the said hospital at Vishakhapatnam for treatment, thus the State counsel opposed the petition on this ground.
7. Having heard the contentions put forth on either side and on perusal of record, particularly taking note of the admitted facts as it stands that the petitioner did suffer from some serious ailment on 14.08.2017. She immediately had rushed herself to the Community Health Centre, Bhairamgarh. The Doctor at Community Health Centre, Bhairamgarh immediately advised the petitioner for going to a higher centre for better treatment. What also is not in dispute that the claim for reimbursement has already been recommended by the Joint Director of the Department, the Chief Medical and Health Officer of the district and also has been approved by the President in Council of the Nagar Panchayat, Bhairamgarh.
8. At this juncture, it would be relevant to refer to a recent decision of the Hon'ble Supreme Court in the case of **“Shiva Kant Jha v. Union of India”**

reported in **(2018) 16 SCC 187**, wherein the Hon'ble Supreme Court in paragraph No.17 has held as under:

“17. It is a settled legal position that the Government employee during his lifetime 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.”

9. Given the facts and circumstances of the case, if in the event of emergent situation which led to the petitioner taking treatment from an private hospital, rejection of his claim for reimbursement on the premise that the treatment has been taken from a private hospital, not recognized or approved by the State Govt. would not be sustainable. The State Govt. is always considered as a model employer. If there is no doubt or dispute so far as the ailment and the treatment undertaken is concerned, non making of reimbursement under such circumstances would be too harsh a decision. The Supreme Court in the case of **Consumer Education & Research Centre and others Vs. Union of India and others** reported in **(1995) 3 SCC 42** in paragraphs 22 & 27 held as under:

“22.The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of person and to live a life with dignity and equality.

27. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a

fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.”

10. The view of this Court further stands strengthened from a couple of decisions of this Court i.e. WPS No. 1212/2013 decided on 28.08.2017 and WPS No. 2365/12 decided on 19.03.2013.

11. The Supreme Court in the case of **Suman Rakheja Vs. State of Haryana and another, (2004) 13 SCC 562**. It was observed thus :

“4. Counsel for the appellant submitted that in similar case (Annexure P-4) i.e. by the order of the High Court of Punjab and Haryana in **Sant Prakash v. State of Haryana** where in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the appellant's husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in an emergency condition in the hospital. In the present case the discharge certificate also shows that the case was an emergency one. In **Sant Prakash** case the Division Bench held that the petitioner therein would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto.

5. In the result, in this appeal also, the appellant herein would be entitled to get the refund of the amount of 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto.”

12. The High Court of Gauhati also in the case of “**Angom Sushila Devi v. State of Manipur & Anr. reported in 2007(3) GLT 176**, in paragraph No. 7 has held as under:

“7. The Apex Court in the case of State of Punjab and Ors. v. Mohinder Singh Chawla and Ors. observed that it is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. Right to health life is the constitutional right of every citizen of India. It is an obligation of the State to tone up health services and to give way to the right of the public at large. The Articles 41 and 47 of the Constitution give recognition to this aspect.”

13. Similar view has also been taken by this Hon'ble Court in the case of “**Balram Prasad Shukla v. State of Chhattisgarh & Ors.**” reported in **2018(4) CGLJ 390**.

14. Taking into consideration the facts and circumstances of the case and also the legal position as has been laid down by the Hon'ble Supreme Court, this Court is of the opinion that ends of justice would meet if the respondents No.2 to 4 are directed to take appropriate steps for issuing necessary instructions to the concerned Department for reimbursement of the medical bills of the petitioner as has been put up before the authorities at the earliest.
15. Let the respondents No.2 to 4 take all necessary steps ensuring that the petitioner is reimbursed of the medical bills that she has raised as also recommended by the Department.
16. With the aforesaid observations, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved