HIGH COURT OF TRIPURA
AGARTALA

WP(C)No.1207 of 2019

Sri Pankaj Kumar Bhowmik

…….Petitioner(s)

Versus

State of Tripura & Others

…….Respondent(s)

For Petitioner(s)	:	Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. D. Sharma, Addl. G.A.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

10/12/2020

Heard Mr. K. Nath, learned counsel appearing for the petitioner as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

2. Briefly stated, the case of the petitioner is that on 31.01.2018, the petitioner fell seriously ill and he was taken to BMS Hospital, Kamalpur, Dhalai. The Emergency Medical Officer of that hospital had referred the petitioner to AGMC and GBP Hospital/ILS Hospital, Agartala. From the discharge certificate issued by the Emergency Medical Officer, BSM Hospital, Kamalpur [Annexure-1 to the writ petition] it is apparent that the petitioner was suffering from CVA C HTN & (L) Sided Weakness. The petitioner was brought to Agartala and taken to ILS Hospitals. The petitioner had suffered

cerebral stroke and the consequential paralysis. The petitioner was admitted in ILS Hospitals on 31.01.2018. The petitioner had undergone surgery conducted by a Neurosurgeon in ILS Hospitals on 03.02.2018. He was continuously treated in the said hospital till 09.03.2018. After recovery, the petitioner submitted Medical Reimbursement Bills to the extent of Rs.7,04,286.57 [Rs.5,88,819.84 + Rs.1,15,466.73] supported with necessary documents, vouchers and the medical certificates and records to the Chief Engineer, PWD (DWS) through the proper channel. Out of the said amount, only Rs.2,00,466/- had been sanctioned and reimbursed but the remaining amount as not released, the petitioner has approached this court, praying the following relief :

> "For directing the respondents to sanction the remaining amount to the extent of Rs.5,03,818/- as the reimbursement of the medical expense and release the same with interest @ 12% p.a."

3. The respondents by filing their reply has categorically stated that the said claim of the petitioner cannot be allowed inasmuch as the medical reimbursement claim as submitted by the petitioner for treatment in ILS Hospitals, Agartala can only be admissible to the extent, which is covered by the package rate of CGHS for Super Speciality Hospital and according to that rate, the petitioner had been released the reimbursement amount pursuant to the office memorandum dated 17.08.2010.

4. Mr. D. Sharma, learned Addl. G.A. appearing for the respondents has submitted that whatever amount has been released in terms of the letter dated 27.07.2018 issued by the Director of Health Services, Government of Tripura, the petitioner is not entitled to any amount more. Mr. Sharma, learned Addl. G.A. has referred to the communication dated 27.07.2018 [Annexure-R/2 to the reply], and the office memorandum dated 17.08.2010 [Annexure-R/3 to the reply]. From the communication dated 27.07.2018, it transpires that the petitioner is only entitled to get the package rate of CGHS for Super Speciality Hospital vide the office memorandum dated 17.08.2010 [Annexure-R/3 to the reply]. The revised package rate under CGHS was accepted by the Government of Tripura, but in the memorandum dated 17.08.2010, it has been categorically stated that the hospitals empanelled under CGHS shall not charge more than the package rate/rates.

5. Mr. Sharma, learned Addl. G.A. has produced one order generated from File No.2(10-43A)-DHS/Set/MR/2012 dated 04.05.2018 whereby ILS Hospitals, Agartala has been re-empanelled as the Super Speciality Hospital for modern treatment and diagnostic facilities. In the said order, it has been clearly observed that ILS Hospitals should enter into an agreement and also undertake not to charge higher than approved rates from the patient under referral. In para-3 of the said order dated 04.05.2018, the following has been provided :

> **"3. Package rates for different producers approved by CGHS for super speciality hospitals covered under this category are Cardiology and Cardio-thracic Surgery, Gastroenterology & GI Surgery, Joint replacement Surgery, Arthroscopy & Arthroscopic Surgery, Spinal diseases & Trauma and complicated limb injuries by Department of Orthopedic Nephrology & Urology selective cases for which treatment facilities are not available in Govt. hospital. The rate chart can be uploaded from the website of www.mohfw.nic.in/cghsnew/index of CGHS."**

Mr. Sharma, learned Addl. G.A. has submitted that the petitioner's claim is not supported by any authority under which the petitioner can claim such entitlement.

6. Mr. K. Nath, learned counsel appearing for the petitioner has submitted that the order dated 05.04.2018 has not been phrase to cover incidence all of medical emergencies, like the one which took place on 31.01.2018.

There is no dispute in respect of medical emergency or requirement of immediate intervention by the Super Speciality Hospital and the surgery as done on the petitioner. The respondent's objection as surfaced is that the petitioner cannot get reimbursement beyond the package rate of CGHS for the Super Speciality Hospital.

7. That apart, attention of this court has been drawn to the memorandum dated 09.08.2005 [Annexure-6 to the writ petition] whereby the medical reimbursement facility has been extended to the Group-C and Group-D government employees for treatment on referral outside the state and also for treatment of Cancer in the Cancer hospital of the state. Para-2(A)(i) of the said memorandum dated 09.08.2005 provides as follows :

> **"When a Group-C/Group-D Government employee himself/ herself suffering from disease other than cancer is referred to Medical Institution/Hospital to which he/she is referred to, the cost of treatment in that Institution/Hospital excluding the cost of journey is admissible for reimbursement. This benefit is not admissible in respect of any member of the family of such a Government employee."**

In the present case, the government employee had suffered the medical emergency and he had been rushed to ILS Hospitals, Agartala.

8. From the averments of the writ petitioner, it is not clear whether at that time, ILS Hospitals was a referral hospital or not. But it has not been denied by the respondents that at that relevant point of time ILS Hospitals was a referral hospital. Even Mr. Sharma, learned Addl. G.A. has not raised any objection in respect of the status of ILS Hospitals as the referral hospital of the government.

9. Having regard to that aspect, it is observed that even if, that ILS Hospitals was a non-referral hospital at that relevant point of time, having noticed the medical emergency and non-availability of treatment facility in the government hospitals, the petitioner had rushed to ILS Hospitals for saving his life, the benefit of the said memorandum dated 09.08.2005 has to be extended to the petitioner. As such, the petitioner is entitled to the medical reimbursement at the rate of the referral hospitals.

10. Hence, the respondents are directed to recalculate the claim of the petitioner on the basis of the rate of the referral hospitals and if it is found that ILS Hospitals was the referral hospital

at that point of time, the re-computation has to be carried out in terms of the rate or the agreed rate with the ILS Hospitals or at the rate of SSKM Hospitals, Kolkata [the referral hospital]. On such calculation, the difference shall be paid to the petitioner within a period of three months from the date when the petitioner shall submit a copy of this order.

This order has been passed as the office memorandum dated 17.08.2010 has not been adopted by the Government of Tripura by any express notification. Prior to 04.05.2018 as issued by the Secretary to the Government of Tripura, Health and Family Welfare Department the memorandum dated 09.08.2005 [Annexure-6 to the writ petition] was in force and hence, in terms thereof, the above direction has been made.

The petition stands allowed to the extent as indicated above.

A copy of this order be furnished to Mr. D. Sharma, learned Addl. G.A. for doing the needful.

JUDGE

Sabyasachi B