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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14577-2018
Date of Decision:March 02, 2020

Sanjay Rana

.....Petitioner

Versus

State of Haryana through the Financial Commissioner & Secretary to Govt. of Haryana, Health Department, Haryana and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.Rajesh Goyal, Advocate for
Mr.K.L.Dhingra, Advocate
for the petitioner.

Mr.Pankaj Mulwani, DAG, Haryana.

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NIRMALJIT KAUR, J. (ORAL)

The prayer in the present petition is to reimburse the medical claim of the petitioner suffering from chronic disease in full or at the PGI rates and 75% of total expenditure on two surgeries/operations separately with consequential benefits to the petitioner in view of the Government instructions dated 28.7.2004, Annexure P/1A.

The written statement has been filed. It has been hotly argued by learned counsel for the respondent-State that as per the policy, the re-imbursement is provided only in the case of Government run institution, approved hospitals and the empanelled hospitals. The petitioner took treatment from the Bombay Hospital at Indore which is neither a Government hospital nor empanelled hospital. Hence, he is only entitled to the re-imbursement equivalent to the rates of the PGI and AIIMS. It is

further stated that the petitioner, out of his own choice, went to Bombay Hospital, Indore. The said hospital was not recommended by anybody. Infact, he remained admitted at Ambala on 1.3.2017. On the same day, he, on his own, went to Fortis Hospital where he remained admitted uptill 8.3.2017. Thereafter, he got himself admitted in Medanta Hospital on 8.3.2017 itself where he remained admitted uptill 24.3.2017. He was discharged from Medanta Hospital on 24.3.2017 and he was hale and hearty uptill 6.6.2017 when he suddenly got himself admitted at the Bombay Hospital in Indore on 6.6.2017 where he got treated only for liver transplant but also for another disease, namely, Hepatojejunostomy on 16.6.2017. While disputing the claim of the petitioner, it was further contended by the learned counsel for the respondent-State that the petitioner was suffering from acute severe Alcoholic Hepatitis and Chronic Alcoholic Liver disease as he was taking 250 ml. liquor daily for the last 25 years. The petitioner was not referred to Medanta Hospital, rather he left Fortis Hospital at his own and against the medical advice. Therefore, he is not entitled for re-imbursement beyond the rate of the Government. While arguing still further, it was pointed out that the facility of liver transplant was available to the petitioner at PGI, Fortis Hospital and Medanta Hospital as his wife was admittedly ready to give the liver but in spite of the same, the petitioner chose to go to Bombay Hospital, Indore for the said transplant.

Replication has been filed. It is specifically stated in the replication that “the petitioner is suffering from decompensated chronic liver disease and he required early liver transplant. During the treatment period in Medanta Hospital, Gurgaon, the concerned doctor asked the wife of the petitioner to donate the liver. Thereafter they examined her and her blood

group was mismatched i.e. AB plus. She was declared unfit verbally for liver donation. It is further pertinent to mention here that the petitioner has one son and one daughter, who were minors and his father was 71 years old at that time, therefore, they cannot donate the liver to the petitioner. Since all the conditions have to be matched with the petitioner, i.e. age of the donor and donee, blood group of the donor and donee, height of the donor and donee etc, the petitioner did not get the donor from his family since the conditions were not matched. Therefore, he registered for the diseased donor liver transplant (DBLT) as per the notification of Ministry of Health and Family Welfare, dated 27.03.2014 (human organ transplantation gazette notification) at various government organizations:

i) ZCCK No.5888 (Bangalor)- Zonal Coodination Committee of Karnataka- OPD NIMHANS, Hosur Road, Bangalore.

ii) TNOS No.18821 Selam (Tamil Nadu)- Tamil Nadu organ sharing.

iii) Jeevandaan No.28548001100099 (Andhra Pradesh) – Tummalapalli Kalakshetram Bus Stand Road, Opp: Hanumanpet, Vijayawada (Andhra Pradesh 520 002)

iv) Bombay Hospital, Indore (MP) Registration No.BH 2156300 dated 06.07.2017 – Ring Road, Indore (M.P.).

On the instruction of the above said Government Organisation, the petitioner was advised to consult the concerned hospitals, as given below:

i) Yoshoda Hospital, Hyderabad Registration No.115895032 dated 20.04.2017.

ii) Manipal Hospital, Banglore Registration No.MH002244108 dated 22.04.2017

iii) Bombay Hospital, Indore (MP) Registration No.BH2156300 dated 06.07.2017

iv) Global Health City, Chennai, Registration No.485110 dated 24.03.2017.

> Copy of the Notification dated 27.03.2014 is attached as Annexure P/16."

From the above, it is evident that the petitioner was suffering from decompensated liver disease and required liver transplant. It is also not disputed that it was a case of emergency. The petitioner cannot be blamed for getting his liver transplant at the Bombay Hospital, Indore, where the liver was made available to him in pursuance to his application to the various hospitals including Bombay Hospital, Indore, as per the Notification of the Ministry of Health and Family Welfare, dated 27.03.2014. In such circumstances, the respondents cannot reject claim of reimbursement solely on the ground that the hospital, where he was treated, was not empanelled in the Government order. In such cases, all that the authorities are required to ensure is that the treatment was now actually undertaken by the claimant and the said treatment is duly supported by the record. The respondents do not dispute the fact that the petitioner did undergo treatment at the Bombay Hospital at Indore. The Division Bench of this Court in the case of **Ram Pal** vs **Central Administrative Tribunal and others**, 2019(1) SCT 763 pleased to hold in almost similar set of circumstances by taking into consideration the judgments rendered in the case of **Shiva Kant Jha** vs **Union of India**, 2018(2) SCT 529: AIR 2018 SC 1975 as under:-

> "Hon'ble the Supreme Court in **Shiva Kant Jha vs Union of India**, 2018(2) SCT, 529 : AIR 2018 SC 1975 considering this question has held that a Government employee during his life time or after retirement is entitled to get the benefit of medical facilities and that no fetters can be placed on his rights. It was further held that the claim of reimbursement cannot be rejected solely on the ground that the Hospital where he was treated was not

included in the Government order, it was held that in such a case 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 that is established, the claim cannot be denied on technical grounds.

The relevant observations are 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."

The facts in the present case, as narrated above, speak the truth for themselves. It is surprising that the respondents have resisted the grant of medical reimbursement in such a serious ailment where he had no choice but to go to the first hospital that made the liver transplant available.

In view of the above, writ petition is allowed. The respondents are directed to reimburse the expenses incurred by the petitioner in the Bombay Hospital at Indore.

March 02, 2020 **(NIRMALJIT KAUR)**
meenuss **JUDGE**

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No