



2024:DHC:9420



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 26th November, 2024*

+ W.P.(C) 10708/2019 and CM APPL.46118/2022

SEEMA MEHTA

.....Petitioner

Through: Mr. Sunil Kumar and Ms. Rekha
Bhardwaj, Advocates.

versus

GNCT OF DELHI AND ORS.

.....Respondents

Through: Ms. Latika Choudhary, Advocate for
Respondent No.1.Ms. Niharika Tanneru, Advocate for Respondent
No.2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a direction to the Respondents to reimburse the medical claims of the Petitioner to the tune of Rs.5,85,523/-.

2. It is the case of the Petitioner as set out in the writ petition that she was appointed with Respondent No.2/School on 08.08.2000. On 18.09.2013, Petitioner met with a serious accident and suffered head injury. She was admitted in the Emergency Ward of Guru Tegh Bahadur Hospital, Shahdara ('GTB Hospital') from where she was referred to and admitted vide Registration No.1356807 at Sir Ganga Ram Hospital ('SGRH') on



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19.09.2013 in a critical condition owing to head injury. Petitioner underwent major brain surgery and after prolonged treatment was discharged from the hospital on 11.10.2013. Petitioner was again admitted on 23.11.2013 and discharged on 25.11.2013. As she was not recovering, Petitioner was hospitalised for the third time on 07.01.2014 and was finally discharged on 11.01.2014. The treating doctor issued medical certificate of fitness on 01.03.2014.

3. Petitioner claims that she has spent approximately Rs.5,85,523/- on the medical treatment and that this was an emergency admission on account of a serious accident, is certified by SGRH in the Emergency Certificate issued on 11.10.2017. Petitioner preferred her claim before various authorities including the Directorate of Education ('DoE') and the School but not a penny was reimbursed. Aggrieved by non-reimbursement of her medical bills, Petitioner approached this Court.

4. Learned counsel for the Petitioner argues that the School is an aided school and receives grant from the Government of NCT of Delhi ('GNCTD') and therefore, the DoE and the School are jointly responsible for reimbursing the medical claims of the Petitioner. It is urged that the School has not given any reason for rejecting the claim in a communication dated 14.12.2017 to DoE, save and except stating that DoE rejected the claim of the Petitioner and insofar as DoE is concerned, the prime reason for rejection of the claim was that SGRH does not fall under the CGHS Scheme, which is an erroneous stand to take since the case of the Petitioner was an emergency case and as per settled law, in case an employee is admitted to a hospital in an emergency, even if the hospital is not an empanelled hospital under a medical scheme, he will be entitled to medical reimbursement of



actual expenses incurred. Reliance is placed on the judgments of this Court in *Milap Singh v. Union of India and Anr., 2004 SCC OnLine Del 493* and *Ram Kumar Kaushik v. Govt. of NCT of Delhi and Ors., 2016 SCC OnLine Del 1467*.

5. Ms. Latika Choudhary, learned counsel appearing on behalf of DoE contends that Government has several empanelled hospitals under CGHS and Petitioner did not approach the empanelled hospitals during the medical emergency and therefore, no reimbursement can be made. It is also submitted that the accident took place on 18.09.2013 whereas the Emergency Certificate dated 11.10.2017 was issued after 04 years. Moreover, Petitioner was terminated after major penalty proceedings were initiated against her and the termination is under challenge before the Delhi School Tribunal and in these circumstances, Petitioner cannot claim medical reimbursement. Learned counsel for the School, on the other hand, only argues that the School is an aided school and acted on the directions of DoE.

6. Heard learned counsels for the parties and examined their submissions.

7. The short question that arises for consideration is whether Petitioner can be denied medical reimbursement on the ground that she did not take treatment from any of the hospitals empanelled under the CGHS Scheme. Petitioner met with a serious accident on 18.09.2013 and was admitted to the emergency ward of GTB Hospital. As the head injury was serious and Petitioner was in a critical condition, she was referred to SGRH on 19.09.2013. Registration No.1356807 of the admission to the said hospital has been furnished in the writ petition and is not controverted. Petitioner underwent a major brain surgery in SGRH and was discharged on



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11.10.2013 but she was hospitalised twice again and finally discharged on 11.01.2014. SGRH has issued an Emergency Certificate dated 11.10.2017 wherein it is certified that Petitioner underwent major brain surgery of '*left fronto-temporal parietal craniotomy and removal of haematoma and decompression placement of free bone flap in abdomen under GA on 19.09.2013 as an emergency life saving procedure*'. The certificate is on record and as can be seen was issued by Vice Chairman and Senior Consultant, Department of Neurosurgery of SGRH and there is no dispute with regard to the authenticity of the certificate. It is therefore clear that the Petitioner was admitted and took treatment in an emergency and therefore as per the settled law, Respondents cannot deny medical reimbursement on the ground that Petitioner did not take treatment from a hospital empanelled under the CGHS Scheme.

8. The law on this issue, as rightly urged by counsel for the Petitioner is no longer *res integra*. In ***Shiva Kant Jha v. Union of India, (2018) 16 SCC 187***, the Supreme Court was dealing with an identical contention by the Respondent that the Petitioner did not approach the empanelled hospital during medical emergency and therefore, rules do not permit reimbursement of medical claim. Negating this contention, the Supreme Court observed that the Government employee during his lifetime or after retirement is entitled to get benefit of 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 and very little scope is left to the patient or his relatives to decide the manner in which ailment is to be treated. Right to medical claim cannot be denied merely because name of the hospital is not included in the Government Order as the real test is factum of



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treatment. Before any medical claim is honoured, authorities are bound to ensure as to whether the claimant had actually taken treatment and the treatment is supported by records duly certified by doctors/hospitals concerned. When an employee is admitted to a hospital in emergency condition, law does not require prior permission where survival of the person is the prime consideration. It is also observed that though it is the claim of the State that the rates in the hospital in question were exorbitant and that the rates charged for such facility and reimbursement can only be at CGHS rates and that too after following the laid down procedure, it also cannot be denied that the Petitioner was taken to hospital under emergency condition for survival of his life, which requirement was above the sanctions and treatment in empanelled hospitals.

9. In this context, I may also allude to a recent judgment of the Division Bench of this Court in *Union of India and Another v. Joginder Singh, 2023 SCC OnLine Del 2707*, where challenge was laid by the Government to an order passed by Central Administrative Tribunal directing the Government to reimburse the balance amount towards claim for medical reimbursement in regard to treatments taken by the Respondent at a private hospital. Dismissing the writ petition and upholding the order of the learned Tribunal, the Division Bench observed that patient has little scope to decide nature of treatment and merely looks forward to an expert guidance/treatment for relieving him from immense pain and suffering. A patient in distress is not in a position to go against the specialist medical advice for surgery in emergency. Significantly, the Division Bench noting that the Respondent had taken treatment in an emergency in the said case held that medical claim for treatment undertaken in emergency should not be denied



for reimbursement merely because the hospital is not empanelled and the test remains whether claimant had undertaken the treatment in emergency as advised and the same is supported with record, as preservation of human life is of paramount importance and State is under an obligation to ensure timely medical treatment to a person in need thereof. Relevant paragraphs from the judgment are as follows:-

“10. Respondent is a retired pensioner, who was merely employed as a Senior Carpenter with the Central Government. On November 03, 2017, he was initially taken to Mata Chanan Devi Hospital, Janak Puri, Delhi since he fell unconscious and was duly examined. Further, as advised at Mata Chanan Devi Hospital, respondent was taken by his wife for treatment to Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi which specializes in Neurosurgery and underwent surgery on November 04, 2017.

11. It may be noticed that “Trigeminal Neuralgia” is a chronic pain condition affecting the trigeminal nerve in the face which carries the sensation from the face to the brain. The symptoms of the disease range from mild to severe facial pain often triggered by chewing, speaking or brushing of teeth. The treatment available to alleviate the debilitating pain may be with combination of medication, surgery and complementary therapies. Generally, if a patient does not respond to the medication or condition worsens over a period of time, surgical option may have to be preferred, which includes stereotactic radiation surgery using gamma knife and cyber knife.

12. It is pertinent to note that prescription dated November 03, 2017 issued by Dr. Jayant Misra, MS M Ch. Consultant Neurosurgeon, Rancan Gamma Knife Centre reflects that ‘the respondent was advised Gamma Knife Radiosurgery as emergency treatment’ apart from other treatment as advised therein. Merely because the respondent was conscious, awake and oriented at time of admission at VIMHANS cannot lead to an inference that his claim of being admitted in emergency, is false. It may further be noticed that an emergency treatment certificate was again issued on October 18, 2018 by Dr. Jayant Misra certifying that the respondent was admitted on November 04, 2017 after OPD consultation on November 03, 2017 on emergency basis for his severe ‘Right Sided VIV2 Region Trigeminal Neuralgia.’ The certificate also reflects that the respondent was unable to eat/drink/sleep/wipe his face/speak at the time of admission on November 04, 2017. In the facts and circumstances, there existed continued emergent condition for undertaking the treatment by



respondent at VIMHANS, as advised at Mata Chanan Devi Hospital. Merely because the respondent was suffering from the 'Right Sided VIV2 Region Trigeminal Neuralgia' for past four months, does not lead to an inference that the medical condition did not require emergent treatment, which was undertaken as a last resort by the respondent as advised.

13. The medical claim for treatment undertaken in emergency should not be denied for reimbursement merely because the hospital is not empanelled. The test remains whether the claimant had actually undertaken the treatment in emergent condition as advised and if the same is supported by record. Preservation of human life is of paramount importance. The State is under an obligation to ensure timely medical treatment to a person in need of such treatment and a negation of the same would be a violation of Article 21 of the Constitution of India. Administrative action should be just on test of fair play and reasonableness. Accordingly, keeping into consideration the constitutional values, the executive instructions need to be applied than rejecting the claim on technical ground of undertaking treatment in a nonempanelled hospital, since the CGHS/State is responsible to ensure proper medical treatment in an emergent condition and further cannot escape the liability, if the treatment undertaken is genuine. Any denial of claim by the authorities in such cases only adds to the misery of the Government servant by further forcing him to resort to Court of law.

14. Observations of the Hon'ble Apex Court in Shiva Kant Jha (supra), as reflected in paras 17, 18 & 19 may also be beneficially reproduced:—

“17. 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.

18. 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 Ministry concerned, 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.

19. 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."

15. It needs to be kept in perspective that patient has a little scope to decide the nature of treatment and merely looks forward to an expert guidance/treatment for relieving him from immense pain and suffering. The patient in distress is not in a position to go against the specialist medical advice for surgery in emergency.

16. Even assuming that in emergency, gamma knife surgery may not render an immediate relief as contended by learned counsel for the



petitioners, but it is an established alternative medical treatment for trigeminal neuralgia as per literature. There may be a difference of opinion on the line of treatment to be adopted by the experts but only the treating physician/surgeon appears to be the best placed to adopt the right course of treatment in an emergent situation.

17. Keeping in view the emergency certificate and the treatment papers filed by the respondent, it cannot be said that the treatment was not taken in an emergent condition or the respondent should have deferred the immediate surgery by gamma knife, as advised by the Specialist.

18. For the foregoing reasons, we agree with the reasons and findings of the Tribunal. The writ petition is accordingly dismissed. No order as to costs. Pending application, if any, also stands disposed of."

10. In my view, case of the Petitioner squarely falls in the aforesaid judgments as the medical certificate issued by SGRH clearly evidences that Petitioner was admitted in emergency on account of a road accident after suffering a serious head injury and underwent brain surgery. Therefore, she cannot be denied reimbursement of her claim merely on the ground that she had not undertaken treatment as per the CGHS Scheme and in a hospital not covered/empanelled under the Scheme. This stand of the Respondents to deny the medical reimbursement claim is therefore wholly misconceived and cannot be accepted. Merely because the certificate was issued by the hospital belatedly can also not be a ground to deny the claim of the Petitioner in the absence of any challenge to the genuineness or authenticity of the said document. In fact, it is not even disputed by the Respondents that Petitioner was admitted in emergency in SGRH and/or that she underwent the surgery and follow-up treatment. In view of the aforesaid, this writ petition is allowed with a direction to the Respondents to disburse a sum of Rs.5,85,523/- to the Petitioner within a period of six weeks from the date of receipt of this order. Petitioner is also entitled to interest @ 6% per annum



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from 14.12.2017 when the claim was rejected by the School till the date of actual payment.

11. Pending application is dismissed.

JYOTI SINGH, J

NOVEMBER 26, 2024

B.S. Rohella/shivam

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 05.12.2024
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