

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19575 of 2021 (O&M)

Date of Decision:28.09.2021

Dr. Sandeep Goel, Proprietor Chandigarh Heart Centre

.....Petitioner

Versus

State of Punjab and others

..... Respondents

AND

CWP No.19577 of 2021 (O&M)

Dr. Sandeep Goel, Proprietor Chandigarh Heart Centre

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Piyush Bansal, Advocate
for the petitioner(s).

Mr. Abhay Pal Singh Gill, AAG., Punjab
For respondent no.1.

Mr. H.S.Oberoi, Advocate
for respondent no.2.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This order shall dispose of CWP No. 19575 of 2021 and CWP No. 19577 of 2021, challenging common order dated 31.08.2021, conveyed vide e-mail dated 13.09.2021, Annexure P-12, whereby the petitioner has been directed to refund the amount charged from the private respondents in

the said writ petition i.e., respondent no.6-Raj Kumar and Mangal Singh-respondent no.6 in CWP No. 19577 of 2021, for medical treatment rendered to them.

Petitioner's hospital is an Empanelled Health Care Provider (for short 'EHCP') under the Ayushman Bharat-Sarab Sehat Bima Yojna (for short 'AB-SSBY') since August 2020 and has entered into a Memorandum of Understanding/ and tripartite Agreement dated 20.08.2020. Under the said scheme i.e. AB-SSBY, Third Party Administrator (for short 'TPA') issued various guidelines to 'EHCP' regarding authorization/ pre authorization for performing surgery on the patient and as per guideline conveyed vide e-mail dated 29.04.2020, it is specifically mentioned that 'no surgery is to be performed by the provider without pre-authorization approval and that any provider not adhering to these terms will be letting cases to go into rejection'.

It is submitted that emergency treatment was provided to the patients (private respondent no.6 in both the cases), without pre-authorization as immediate treatment was required. Learned counsel for the petitioner submits that moreover consent for treatment was duly taken from the patient as it was understood by the patient/ their family that delay in administration of treatment may occur in case necessary approvals as required under the Ayunshman Bahrat Scheme were to be awaited.

There is however no dispute that patient/s in question are otherwise covered under the Ayunshman Bharat Scheme. The patient is entitled to cashless treatment from empanelled hospital under this Scheme. In this situation, complaint was lodged against the petitioner before the District Grievance Redressal Committee. Reply was submitted by the petitioner inter-alia raising the pleas as above. However, vide e-mail dated

13.09.2021, petitioner has been directed to return the entire amount charged from the patient submitting the complaint.

Learned counsel for the petitioner has vehemently argued that obtaining necessary approval in an emergent situation may not be proper as it would be prejudicial to the health of the patient as getting requisite approvals is a lengthy process. It is stated that in the interregnum, an irreparable loss can be caused to the patient, even leading to his death in a given situation. Mr. H.S.Oberoi, Advocate, representing respondent no.2 to whom an advance copy of the writ petition has been supplied, submits that in order to meet emergent situations, emergency approvals can be obtained.

Be that as it may, keeping in view the facts and circumstances of the case and the specific provision in the 'AB-SSBY' Scheme regarding the provision of arbitration, I do not deem it appropriate to enter into the controversy, at this stage. As per clause 16 (vii) of the 'AB-SSBY' Scheme, it is specifically provided as under:-

“vii. Law and Arbitration.

- (a) The provisions of this Agreement shall be governed by and construed in accordance with Indian Law.
- (b) Any dispute, controversy or claims arising out of or relation to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996 (as amended from time to time).
- (c) The arbitral tribunal shall be composed of three arbitrators, one arbitrator appointed by each Party and one another arbitrator appointed by the mutual consent of the arbitrators so appointed.
- (d) The place of arbitration shall be Mohali, Punjab and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to

be made, in Mohali, Punjab.

- (e) The arbitral procedure shall be conducted in the English language and any award or awards shall be rendered in English. The procedural law of the arbitration shall be Indian law.
- (f) The award of the arbitrator shall be final and conclusive and binding upon the Parties, and the Parties shall be entitled (but not obliged) to enter judgement thereon in any one or more of the highest courts having jurisdiction.
- (g) The rights and obligations of the Parties under, or pursuant to, this Clause including the arbitration agreement in this Clause, shall be governed by and subject to Indian laws and the courts at Mohali, Punjab, shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.
- (h) The cost of the arbitration proceedings would be borne by the parties on equal sharing basis.”

It is apparent that the petitioner has an alternate efficacious remedy available for redressal of his grievance. In my considered opinion there is no ground which calls for interference in exercise of jurisdiction under Article 226 of the Constitution of India. Needless to say, petitioner is at liberty to avail the remedy as available to him in accordance with law.

Writ petitions are accordingly disposed of.

28.09.2021

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.