

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.628 OF 2020

Bina Saxena
w/o Late Ravendra Kumar Saxena
Age 74 years, R/at C2/302,
Kumar Shantiniketan,
Pashan Sus Road, Pashan,
Pune - 411 021.

....Petitioner

V/S

1 Union of India
Through The Secretary,
Ministry of Health,
Nirman Bhavan,
New Delhi – 110 011.

2 The Addl. Deputy Director General,
Directorate General of Health Services,
Nariman Bhavan,
New Delhi -110 011.

3 The Addl. Director,
C.G.H.S. Swasthya Sadan,
2nd Floor, Mukund Nagar,
Pune – 411 037.

....Respondents

...

Ms. Annie Nadar a/w Ms. Linet Jadhav for the Petitioner.

Mr. A.D. Shetty a/w Mr. A.A. Garge for Respondent Nos.1 to 3.

...

**CORAM: NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 26 JUNE 2023.

JUDGMENT (per SANDEEP V. MARNE, J.)

Rule . Rule is made returnable forthwith. Heard finally with the consent of learned Counsel for the Petitioner and the learned Counsel for the Respondents.

2 Petitioner assails judgment and order dated 5 April 2019 passed by Central Administrative Tribunal, Mumbai dismissing the Original Application No.176 of 2018. The Original Application was instituted by Petitioner seeking reimbursement of balance amount of medical expenses of Rs.3,78,986/- incurred for medical treatment of her late husband at Ruby Hall Clinic, Pune.

3 Petitioner is the spouse of Central Government pensioner, who retired from service in the year 2001 and who was the enrolled as a beneficiary of Central Government Health Scheme (CGHS). Petitioner's husband was suffering from chronic kidney disorder and used to visit CGHS Welfare Centre frequently. On 14 January 2016 he developed acute pain in the urinary bladder and was required to be admitted to Ruby Hall Clinic, which is a CGHS empanelled hospital. After taking treatment for about 17 days, he was discharged from the said hospital on 2 February 2016. He was again required to be admitted to that hospital on 12 February 2016 with complaint of severe pain in the urinary

bladder. He was kept in Intensive Care Unit (ICU) of the hospital from 12 February 2016 to 19 February 2016 and was discharged on 19 February 2016. He did not claim any reimbursement for expenses incurred for these two hospitalizations, but took benefit of mediclaim policy. On 24 February 2016 Petitioner's husband again complained of acute pain in the urinary bladder and was required to be rushed to Ruby Hall Clinic in an emergency situation. Petitioner contends that since pain was experienced by her husband in the evening of 24 February 2016, it was practically impossible to take him to CGHS Wellness Centre, which usually closes at 1400 hours. On 25 February 2016 Petitioner's husband was diagnosed urinary bladder cancer. On 9 April 2016 he passed away due to multiple organ failure.

4 An expenditure of Rs.13,47,879/- was incurred by the Petitioner for medical treatment of her husband at Ruby Hall Clinic during 24 February 2016 to 9 April 2016. Accordingly, she submitted medical reimbursement claim in the prescribed format with Additional Director, CGHS, Pune. However, as against total expenditure of Rs.13,47,879/-, an amount of Rs.9,68,893/- came to be sanctioned and reimbursed to the Petitioner.

5 Petitioner filed Original Application No.176 of 2018 before Central Administrative Tribunal, Mumbai (**Tribunal**) claiming balance amount of

reimbursement of Rs.3,78,986/-. The Original Application was opposed by the Respondents by filing Affidavit-in-Reply before the Tribunal *inter alia* contending that for the entire treatment availed by Petitioner's husband amount of Rs.9,68,893/- was sanctioned and reimbursed as per CGHS rates. Petitioner's claim of admission in emergency situation was also contested by the Respondents. By judgment and order impugned in the present Petition, the Tribunal has proceeded to dismiss the Original Application.

6 Appearing for Petitioner Ms. Nadar, the learned Counsel would submit that Petitioner's husband was required to be admitted to Ruby Hall Clinic in an emergency situation and that it was impossible to collect a Referral Memo from CGHS Wellness Centre. She would further submit that the Tribunal has erroneously dismissed the Original Application by taking into consideration factually incorrect contents of email of the hospital to the effect that the admission of Petitioner's husband was not an emergency case and that patient took treatment in the normal ward. She would invite our attention to the Certificate dated 7 May 2016 issued by Ruby Hall Clinic certifying that the admission was done in an emergency. She would also rely upon the Medical Report dated 25 February 2016 and Interim Bill dated 26 February 2016 to demonstrate that the patient was admitted in the Critical Care Unit (CCU). She would therefore submit that the Tribunal gave unnecessary weightage to

factually incorrect contents of the email and ignored other documents demonstrating emergency admission and treatment in CCU. She would submit that the email, on which the Tribunal has placed reliance, is not an authentic document. That Ruby Hall Clinic had a special mechanism for treatment of CGHS patients in emergency in absence of Referral Memo by treating them as 'CGHS paying patients'. She would invite our attention to the handbook of CGHS, under which medical reimbursement is permissible in case of emergency even in respect of non-empanelled hospitals. That Ruby Hall Clinic is an empanelled hospital and there is no reason why the entire amount of reimbursement of the Petitioner cannot be paid. She would submit that in pursuance of liberty granted by this Court vide order dated 22 June 2022, Petitioner has filed additional documents such as medical reports, discharge summary, etc. on record evidencing emergency situation

7 In support of her contentions Ms. Nadar would rely upon following judgments:

- i) *Shiva Kant Jha vs. Union of India*, (2018) SCC OnLine SC 370;
- ii) *Narendra Pal Singh vs. Union of India & Ors.*, ILR 1999 Delhi 315 (Delhi High Court);
- iii) *Basant Dabas vs. Government of India* in Writ Petition (C) No.9849 of 2015, decided on 31 July 2019 (Delhi High Court).

8 *Per contra* Mr. Shetty, the learned Counsel appearing for the Respondents would oppose the Petition and support the order passed by the Tribunal. He would submit that the hospital itself certified that the patient was admitted in non-emergency situation. That the patient ought to have obtained Referral Memo from CGHS Wellness Centre which would have ensured charging of CGHS rates by Ruby Hall Clinic. That absence of Referral Memo from CGHS Wellness Centre resulted in the empanelled hospital charging excess amount (over and above CGHS rates) from Petitioner. Mr. Shetty would submit that the subsequent Certificate dated 7 May 2016 issued by the hospital (after death of Petitioner's husband on 9 April 2016) is required to be ignored in the light of specific email sent by very same hospital certifying that the admission of patient was not in emergency situation. Alternatively, he would submit that whether the case involved emergency or not, the Respondents have paid the entire amount of treatment as per CGHS rates and they cannot be compelled to reimburse amount over and above the CGHS rates. He would place reliance on Office Memorandum dated 5 October 2016 in support of his contention that even in cases of procedural lapses, reimbursement is required to be restricted to CGHS rates or actual expenses, whichever is less. He would pray for dismissal of the Petition.

9. Rival contentions of the parties now fall for our consideration.

10 It must be noted at the very outset that the Petitioner raised claim for reimbursement for amount of Rs.13,47,879/-, out of which an amount of Rs.9,68,893/- is already sanctioned and paid by the Respondents. The dispute is in respect of balance amount of Rs.3,78,986/-. Thus, about 70% of the claim is already sanctioned and reimbursed by the Respondents to the Petitioner.

11 There was some degree of debate before the Tribunal as to whether admission of Petitioner's husband was under emergency situation or not. The Tribunal has considered the factual controversy and has recorded its findings after taking into consideration the documents placed on record by both the parties. The Tribunal has relied upon email dated 25 July 2017 sent by Ruby Hall Clinic in pursuance of a query raised by the Respondents. The hospital certified that "*this patient has never brought any CGHS memo at the time of taking admission in the hospital nor at any time during the treatment. Also please note that both the second and third admission was not an emergency case. Patient has taken regular admission in the normal ward.*"

12 Petitioner has sought to counter email's contents by placing reliance on the Certificate dated 7 May 2016 as well as Medical reports and interim bill showing occupation of CCU. Thus the issue whether the

patient was admitted in Ruby Hall Clinic in an emergency situation or not was a hotbed of controversy before the Tribunal. After considering the entire documents on record, the Tribunal has arrived at the finding that the patient was not admitted in the hospital in emergency situation. Though Petitioner has called upon us to go into the issue of sustainability of that finding of the Tribunal, we would clear of this factual controversy as, in our opinion, the Tribunal being the Court of first instance, has determined the factual controversy and recorded its own finding. While exercising power of superintendence over the decision of the Tribunal within contours specified in the Constitution Bench judgment in *L. Chandra Kumar vs. Union of India*, 1997 (2) SCR 1186, we are not expected to sit in appeal over finding of fact recorded by the Tribunal. Two sets of documents were presented before the Tribunal by the rival parties in support of their respective contentions. The Tribunal has proceeded to accept the contents of specific email sent by the hospital certifying that the admission of the patient was not in emergency situation. The said email was addressed by the hospital to the Respondents in the light of specific query relating to reimbursement of medical expenses. Thus, 'emergency' within the context of reimbursement of medical expenses was required to be certified by the hospital and has been so certified by way of Email dated 25 July 2017. As against this, the Certificate dated 17 May 2016 is in a standard format and is not issued in the context of reimbursement of medical expenses.

The Tribunal has proceeded give more weightage to the contents of the email over the certificate. In our view, the Tribunal was entitled to do so. We, therefore, do not find any perversity in the finding recorded by the Tribunal.

13 It must be added here that a lame attempt is made on behalf of the Petitioner to question genuineness of the Email dated 25 July 2017 by contending that the same was sent from unverified email id. However, upon being questioned as to whether this was pleaded before the Tribunal, Ms. Nadar, would fairly concede that the same was never pleaded before the Tribunal. Therefore, we need not enter into this controversy.

14 Though the factual dispute about nature of patient's admission was a serious matter of debate before the Tribunal, the said issue has become academic in the light of the fact that Petitioner has been reimbursed the entire costs of the treatment as per CGHS rates. In para 13 of Affidavit-in-Reply filed before the Tribunal, the Respondents pleaded as under:

“13. With reference to Para 4.7, I say and submit that irrespective of whether the case is emergency or non-emergency, or whether the Applicant has followed the procedural formalities or not, she was reimbursed an amount of Rs.9,68,893/- as per the admissibility considering the unfortunate death of her husband. A detailed worksheet showing the amount passed as per the CGHS schedule of rates is annexed hereto and marked as Exhibit-R2.”

(emphasis added)

15 Thus, whether the case involved emergency or not, Petitioner has been paid the entire amount towards medical treatment, *albeit* at CGHS rates. In that view of the matter, the factual controversy with regard to the situation under which the Petitioner's husband was admitted into Ruby Hall Clinic becomes academic. It is contended on behalf of the Respondents that the CGHS beneficiaries cannot be paid reimbursement over and above CGHS rates. In this connection reliance is placed in para 1(ii) of the Office Memorandum dated 5 October 2016 reads thus:

“ii) Permission/ex-post facto approval in cases involving procedural lapse:

Requests for approval of elective treatment/investigations in empanelled hospitals/diagnostic centres without recommendation of Govt. Specialist or CMO and without prior permission in respect of Pensioners/ex-MP/freedom Fighters, etc., shall be considered by Addl. Director of concerned CGHS city/Zone subject to the reimbursement being restricted to CGHS rates or actual expenditure whichever is less.”

16 Therefore, even if it is to be assumed that admission of Petitioner's husband was an emergency case, the only amount to which Petitioner would be entitled to is as per CGHS rates. In short, expenditure for the entire treatment availed at Ruby Hall Clinic by Petitioner's husband is reimbursed, *albeit* at CGHS rates. No rule or administrative instruction is placed on record by Petitioner to show that any amount over and above CGHS rates can be reimbursed. Therefore, no fault can be found in the

action of the Respondents who have taken sympathetic view of the matter and have reimbursed the entire costs of medical treatment (at CGHS rates) by ignoring the fact that Referral Memo was not obtained from CGHS Wellness Centre and Petitioner's husband was not admitted in emergency situation. In this manner, substantial amount of Rs.9,68,893/- has been reimbursed to the Petitioner. Petitioner's claim for reimbursement of additional amount over and above Rs.9,68,893/- is not supported by any rule or administrative instructions.

17 What remains now is to deal with judgments relied upon by Ms. Nadar:-

i) In *Shiv Kant Jha* (supra), Petitioner therein incurred total expenditure of Rs.13,84,440/- for treatment in two hospitals at New Delhi and Mumbai for cardiac stroke, cerebral stroke and paralytic attack. An amount of Rs.5,84,885/- was reimbursed and an amount of Rs.7,99,555/- was denied. The medical treatment was availed from non-empanelled hospital. The Apex Court has held as under:

“14. 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.

15. 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.

16. 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.”**

(emphasis added)

Thus, the relief is granted by the Apex Court in *Shiv Kant Jha* (supra) in exercise of its jurisdiction under Article 142 of the Constitution of India, which jurisdiction this Court does not possess. Furthermore, the Apex Court itself has clarified that the decision in *Shiv Kant Jha* (supra) is confined to that case alone. There was no doubt about admission of Petitioner therein in emergency situation, which fact is denied by the hospital in the present case. The judgment in *Shiv Kant Jha* (supra) is thus clearly distinguished.

ii) In *Basant Debas* (supra), the case involved reimbursement under the Employees State Insurance Scheme and the claim of the Petitioner therein was denied only on the ground that Pace-maker implantation is not undertaken in emergency situation. In that case, a specific certificate was issued by the hospital that the Petitioner therein was presented in emergency with sudden unresponsiveness and loss of postures. In that case, the entire amount of reimbursement was denied whereas in the present case substantial amount of reimbursement (over 70%), is already sanctioned and paid to the Petitioner. The facts in *Basant Debas* (supra) are thus clearly distinguishable.

iii) *Narendra Pal Singh* (supra) involved issue of treatment in non-CGHS covered area. On that count the entire claim of the Petitioner therein was rejected. In the present case Petitioner's claim is not rejected on the ground of taking treatment in Ruby Hall Clinic. The same is actually sanctioned but at CGHS rates. The judgment in *Narendra Pal Singh* (supra) would therefore have no application to the present case.

18 Resultantly, we find the judgment and order of the Tribunal to be unexceptionable. Petition filed by the Petitioner is devoid of merits. It is dismissed without any orders as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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