2023:PHHC:077504

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

247

CWP-12624-2021
Date of decision: 25.05.2023

SUMAN JAIN .....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS .....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Rishabh Jain, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Harsh Aggarwal, Advocate
for respondent No.3.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present Writ petition is to the order dated 25.06.2020 (Annexure P-12) issued by the respondent authorities in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897 to the extent whereby the competent authority had denied the benefits of the capping of the charges to be demanded by the private hospitals/medical colleges in the State of Haryana for extending treatment to any Covid-19 patient.

2. Briefly summarized the facts of the present case are that the mother of the petitioner remained admitted in respondent No.3-Hospital

from 08.05.2021 to 20.05.2021 on account of Covid-19 where she breathed her last. Copy of the death summary and the medical treatment extended to the mother of the petitioner has been attached as Annexure P-1. As per the above said discharge summary, the mother of the petitioner remained admitted for treatment for Covid-19 and there was no other medical problem being treated or cured by the respondent No.3-Hospital. She was having PNB-Oriental Medi Claim Policy for a cover of Rs. 5,00,000/-. The respondent No.3-hospital raised a bill to the tune of Rs.6,43,024/- for hospitalization of 13 days. As the bill raised by respondent No.3-hospital exceeded the sum assured value of the insurance policy and with a view to avoid delay in delivery of the dead body of his mother, the petitioner deposited the entire amount of Rs.6,43,024/- demanded by the hospital, on an assurance from the hospital that in the event of the approval granted by the insurance company, the excess amount received by the hospital shall be refunded to the petitioner. After settlement of the amount from the insurance company, the hospital refunded the sum of Rs. 5,58,035/-.

3. It has been averred that the petitioner became aware from the newspaper that a District Level Committee had been formed to look into the complaints of overcharging from the Covid-19 patients by the private hospitals in Panchkula and more particularly about respondent No.3-hospital wherein a bill of Rs. 7,59,831/- had been raised and the actual liability of the patient was finally assessed at Rs. 2.91 lacs. More such and similar articles of over-charging by the Hospitals from the Covid patients appeared in the newspaper during the said period. Certain enquiries about the grievances were also conducted by respondent No.1 & 2, however, no steps were taken

by the said officials to protect people from being fleeced in such hour of extreme crisis, Finally, the authorities seized of the issue and looked into the large scale reports of exorbitant billing to redress, the grievance espoused by the helpless citizens. Covid-19 having been declared as a “Notified Disaster” vide letter dated 14.03.2020 by the Ministry of Home Affairs, Union of India under the Disaster Management Act, 2005, the provisions of the Disaster Management Act, 2005 as well as the Epidemic Diseases Act, 1897 were brought in force. The respondent-authorities accordingly passed an order, bearing No. 2020/2 PM-Pkg (COVID-19)/3567-3766 dated 23.03.2020 in exercise of the powers under the Haryana Epidemic Diseases (Covid-19) Reg.2020 dated 11.03.2020 under the Act of 1897 whereby they capped the charges to be levied by the hospitals for the patients admitted for treatment under Covid-19. Clause C (1) (b) of the order/direction bearing No.2020/2 PM- PKg (Covid-19) 3567-3766 dated 23.03.2020 passed by respondent No.1 defined “general public” and categorized the same as under:

> *"General Public:*
>
> *(i) Fully insured (with any private/Govt. Insurance agency): rates as per the insurance policy.*
>
> *(ii)Partially insured (ie. part payment is made by Insurance agency and part by the individual): Rates to be charged should not more than the proposed package rates.*
>
> *iii) Uninsured: Rates to be charged should not more than the proposed package rates."*
>
> *(Emphasis supplied)*

4. It is evident from a perusal of the abovesaid order dated 23.03.2020 that the rates for the fully insured person had been kept as per

the rates of the insurance policy while for the partially insured and the uninsured persons, rates could not more than proposed package rates. Thereafter, caps on the bills that private hospitals could charged from Covid Patient was reviewed and revised by the respective State Governments from time to time. Copy of such order issued by the State of Haryana, Punjab as well as NCT Delhi had been attached.

5. It is worthwhile to point out at this juncture that before the Government determined the charges to be levied by the private hospitals, a Committee under Niti Ayog had been constituted to determine the rates that may be charged for COVID-19 related treatment by the private hospitals with the proviso that the COVID beds would be given at rates given by the Committee subject to an upper limit. The above said Committee took stock of the bed capacity, the facilities to be provided, the medication to be administered and all other incidental expenses to be incurred. The said rates would to be inclusive as a package and not limited just to bed, food and other amenities. Monitoring, nurse care, doctors visits/consults, investigations including imaging, treatment as per national protocol for Covid care and standard care for co-morbidities, oxygen, blood transfusion etc. Significantly, the order passed by the Government of National Capital Territory of Delhi on 20.06.2020 also notice that the package rate would include cost of medical care of underline co-morbid conditions including supportive care and cost of medication thereof, for the duration of care for COVID. Hence, there was an exercise undertaken by the Government before assessing the charges that may be demanded by the concerned hospitals. Similar clauses were also incorporated in the order issued by the

Government of Punjab bearing No. COVID-19/NHM/PB/20/8477 dated 11.01.2021 as well as the Chandigarh Administration.

6. In supersession of its earlier order dated 23.03.2020, the Government of Haryana passed a fresh order on 25.06.2020 and the same are extracted as under:

Hospital rates per patient per day of admission (in Rs.)			
Type of Hospital	**Isolation beds**	**ICU <u>without</u> Ventilator care**	**ICU <u>with</u> Ventilator care (Non-invasive/invasive)**
Non-NABH accredited Hospitals	8000/-	13000/-	15000/-
JCI/NABH accredited (including Entry level NABH) Hospitals	10000/-	15000/-	18000/-

7. Similar conditions about co-morbidities were also included in the above said order.

8. The grievance of the petitioner emanates from the categories excluded from the benefits of price capping vide order dated 25.06.2020, which have been referred to in Clause 3 thereof.

> *"3) These orders are not applicable for the following categories:*
>
> *a) The beneficiaries of PMJAY Ayushman Bharat (AB) scheme will avail treatment on cashless basis, as per the existing AB Scheme at every hospital empanelled under the AB scheme.*

*b) The patients, who are not AR beneficiaries and are **referred by concerned Civil Surgeon** to notified COVID hospital will avail treatment on cashless basis The COVID-19 hospital shall charge as per the package rates of Ayushman Bharat scheme and submit bills against the provided treatment to the concerned Civil Surgeon, from where the patient has been referred.*

C) Persons having personal family health insurance cover may avail treatment as per the terms & conditions of the individual policy."

(Emphasis Supplied)

9. It has been submitted that once the respondents had notified a price cap subject to the total bed capacity as notified thereunder, being a citizen welfare measure, the State could not have ousted or denied the partially insured persons from the benefit of the said price cap especially when the order Annexure P-8 dated 23.03.2020 stipulated that the person who was partially insured would be subject to a rate that should not be more than the proposed package rate and more so when the mother of the petitioner fell in the category of partially insured. The order (Annexure P-12) excluded all persons who were covered under any Health policy from availing the benefit of the Government order without any reasonable basis and/or objects ought to be achieved by excluding such persons from the benefit of the said order and leaving them at the mercy of the concerned hospitals to charge the way that they may determine in consultation with the concerned Insurance Companies. The rates at the relevant point of time were being charged exorbitantly and there could be no discrimination amongst persons admitted for treatment of Covid-19 and they could not be

made to suffer and to pay a higher per day cost as compared to other similarly placed persons merely because they had got their risk partly or fully covered under an Insurance policy. Such discrimination not only tends to discriminate the petitioners as against other similarly situated persons but also the same is not likely to advance the object of the order aimed to curtail the patients/persons suffering from Covid-19 being exploited or over-charged under the given circumstances.

10. A short written statement on behalf of respondent No. 3 had been filed wherein it was stated that the Hospital has been working in the field of Health Care with the object of ensuring health care facility for all and turn it into a reality. The respondent does not dispute that Covid-19 was notified as a disaster under The Disaster Management Act, 2005 vide notification dated 14.03.2020. It is contended that the order of 23.03.2020 (Annexure P-8) was superseded by the subsequent order dated 25.06.2020 (Annexure P-12) and that the mother of the petitioner fell in the excluded category of persons and as such, the bill that has been raised cannot be faulted. Since the Hospital was not governed by the price cap notified by the said order viz-a-viz the mother of the petitioner, hence, the charges have been levied as per the applicable rates under the policy.

11. It is further averred that mother of the petitioner was admitted to the Hospital on 08.05.2021 with symptoms of fever, cough and shortness of breath and an amount of Rs. 40,000/- was deposited at the time of the admission and particulars of the PNB-Oriental Mediclaim Policy, 2017 were also furnished. After initial assessment and stabilization, she was shifted to Covid isolation for further management. Her lab investigations were

conducted on 10.05.2021, the condition of the patient however deteriorated and she was shifted to Covid ICU and put on Oxygen support of 10 liters. On 12.05.2021, the saturation of the patient was 79% on high flow mask whereupon she was put on BiPAP support. Antibiotics were upgraded in view of sepsis (TLC-18370) to Inj. Meropenem & Inj. Targocid, however, her condition deteriorated despite the best efforts by the doctors and the staff. The guarded prognosis was discussed with the family at regular intervals and her antibiotics were upgraded on 15.05.2021.

12. The cardiac consultation was also done on 18.05.2021. On 20.05.2021, her shock and hypoxia became refractory and the same was explained to the attendants. An intubation and mechanical ventilator support was suggested but the same was not consented by the attendants. The patient developed Bradycardia Hypotension (low blood pressure due to low heart rate). Depsite CPR and ACLS protocols she could not be revived and was declared dead on 20.05.2021. The bill qua the treatment and itemized medication to the tune of Rs. 6,43,024/- was handed over to the petitioner and the differential amount was deposited by him. The amount of Rs.5,58,035/- was disbursed by the Insurance company directly to the Hospital whereupon refund was given. It is averred that the patient was treated with due diligence, prudence, utmost care, caution and without any negligence or deficiency in service. The prayer was thus made that the writ petition may be dismissed as there was no illegality in the action of the Hospital and that the charges were being levied as per the applicable State notified policy decisions.

13. A separate reply had also been filed on behalf of respondents No.1 & 2 through Director Health Services, Haryana wherein while admitting all other factual aspects noticed above, the stand of the respondents is as under:

> *"4. That the Government of Haryana made all efforts to make healthcare accessible to general public by providing free testing and treatment in Government Hospitals across the State. However, the disparity in the charges across various private hospitals was hampering egalitarian and equal access for inpatient hospital care. Therefore, it was observed by the Government that there is an immediate need of standardization of rates for various facilities in private hospitals/medical colleges for treatment of COVID-19.*
>
> *5. That it is again respectfully submitted that the Government of Haryana in Department of Health after going through the recommendations of the committee constituted by the Government of India in the Department of Health and Family welfare under the Chairmanship of Dr. V.K. Paul, (Member, NITI Aayog), and by taking into account the financial viability of the private hospitals and by studying the precedents in other States like Delhi, Tamil Nadu, Maharashtra and Telangana, in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897; made provisions that no private hospital/medical college in the State of Haryana shall charge any amount in excess of those as prescribed in the table below, for the treatment of any COVID-19 patient:-*
>
> *1. Hospital rates per patient per day of admission (in Rs.)*

Type of Hospital	*Moderate Sickness*	*Severe Sickness*	*Very Severe Sickness*
	Isolation	*IC without*	*ICU with*

	beds (including supportive care and oxygen	*Ventilator care*	*Ventilator care (Non-invasive/invasive)*
Non-NABH accredited Hospital	*8000/-*	*13000/-*	*15000/-*
JCI/NABH accredited (including Entry level NABH) Hospitals	*10000/-*	*15000/-*	*18000/-*

a) The prescribed rates shall be all inclusive as a package. The rates will include, but be not limited to, charges such as, all lab investigations, charges, drugs, consumables including PPE/ masks/ gloves/ etc. Doctor's visit/ consultation, radiological diagnostics, monitoring Nursing care, physiotherapy, procedural charges (such as intubation, intra-arterial/ neck line, catheterization of all types chest tube, splintage, cardio version, Haemodialysis or bedside dialysis, echocardiography, etc.), transfusion of Blood & its components including Blood grouping & Cross match, deploying of equipment (such as alpha bed, infusion pump, multi-para monitors, intermittent pneumatic compression (IPC) devices, nebulisers, etc.), diet, etc., as per the National Guidelines for management of COVID-19. However, this will not include the experimental therapies (e.g. Remdesivir, Tocilizumab, etc.).

b) The rates will include the costs of medical care of underlying co-morbid conditions including supportive care and cost of medications thereof, for the duration of care for COVID-19 patients have conditions such as hypertension, diabetes, cardiovascular problems etc. the charges for medical care of such co- morbidities will be a part of the package.

c) These rates shall apply to paediatric patients as well.

d) For pregnant women, costs of delivery (normal/C-section) and care of new born are not included in the package and may be charged by the hospital extra as per prevailing PMJAY rates of relevant packages.

e) The rates will not include the cost of COVID-19 diagnostic test (s) as well as IL-6 levels.

f) The hospital shall provide seamless and hassle free services to the patients suffering from COVID-19, shall extend all normal courtesies and facilitate admission/ treatment/ counselling of relatives/ discharge etc. to patients without any delay or denial of medical facilities.

g) The hospital shall not in any case compromise on the standards of treatment of the patients with COVID-19.

2. These orders are not applicable for the following categories:-

a) The beneficiaries of PMJAY Ayushman Bharat (AB) scheme will avail treatment on cashless basis, as per the existing AB scheme at every hospital, empanelled under the AB scheme.

b) The patients, who are not Ayushman Bharat beneficiaries and are referred by concerned Civil Surgeon to notified COVID hospital will avail treatment on cashless basis. The COVID-19 hospital shall charge as per the package rate of Ayushman Bharat scheme and submit bills against the provided treatment to the concerned Civil Surgeon, from where the patient has been referred.

c) Persons having personal/family health insurance cover may avail treatment as per the terms & conditions of the individual policy.

d) It is clarified that all COVID beds shall be at fixed package rates subject to an upper limit of 60 per cent of the total hospital bed capacity.

6. That with regard to exclusion of persons having their individual or family health insurance, it is submitted that the same was decided on the pretext that all the Health Insurance Policies have their own terms and conditions prescribed and agreed to by the insurer and beneficiary; as per guidelines issued and amended from time to time by Insurance Regulatory & Development Authority of India (IRDA).

7. That IRDA is an independent authority under the Union Government, which regulates various insurance policies and executions thereof, considering all the pros and cons, terms and conditions of such insurance policies. Any intrusion by State

Government into the domain of such authority may have initiated involving policyholders, insurance companies and IRDA various disputes/litigations involving the stakeholders such as policy holders, insurance companies and IRDA etc.

8. That the reason behind exclusion of beneficiaries of Ayushman Bharat Scheme for the orders dated 25.06.2020, was that the Ayushman Bharat Scheme of Government of India has already been implemented and being run successfully in various States of India including Haryana.

9. That this mechanism was devised to facilitate the COVID patients, in view of large number of patients and to make the Government Health Facilities more efficient. Hence, the office of answering respondent did not have any biased intentions to exclude the holders of personal/family health insurance policies and beneficiaries of the Ayushman Bharat Scheme; and the orders dated 25.06.2020 were issued in larger public interest.

10. That moreover the respondent No.3 was directed to submit the status report in view of the provision mentioned in sub-para c of Clause 2 of the guidelines which speaks thus:-

> *"It is clarified that all COVID beds shall be at fixed package rates subject to an upper limit of 60 per cent of the total hospital bed capacity."*

The detailed report received from the concerned hospital i.e. respondent No.3 is annexed herewith as ***Annexure R-1*** *for kind perusal of this Hon'ble Court.*

11. That provision of Annexure R-1 clearly goes to show that occupancy of the respondent No.2 was 70% on the date on which the mother of the petitioner was admitted. Moreover, the patient was admitted in the hospital without having been referred by the concerned Civil Surgeon and with the declaration of having a health insurance cover. Meaning thereby, there cannot be said to be any non-compliance of the provisions of the order dated 25.06.2020 on the part of respondent No.3."

Arguments by the Petitioner

14. Learned counsel appearing on behalf of the petitioner has argued that the respondents had notified the policy for the Welfare of the citizens and to cap the prices which hospitals could charge for treatment of Covid-19 during the pandemic are as notified by the Government of India, there was no reason why the benefit of such capping ought not be extended to all other similarly placed persons. He contends that the respondents have stated in their short reply, that the order for standardization and rationalization of the rates had been passed so as to remove the disparity in the charges across various private hospitals and to provide equal access for in patient hospital care. It is also pointed out that a Committee had been constituted by the Government of India in the Department of Health & Family Welfare under the Chairmanship of Dr. V.K. Paul (Member Niti

Ayog) and the said Committee took into account and all the circumstances including the financial viability and all actual plus ancillary costs of the private hospitals and by studying the precedents in other States like Delhi, Tamil Nadu, Maharashtra, Telangana etc. and thereafter determined the prices to be charged. Such prices were based on consultation with all the stakeholders and after taking all factors into consideration. Thereafter, there was no reason why the petitioners ought to have been excluded and were not be kept at par with other patients who were covered or were beneficiaries of the PMJAY-Ayushman Bharat scheme and/or those who were referred to the Hospital by the concerned Civil Surgeon to be treated on cashless basis especially when the rates under the PMJAY-Ayushman Bharat scheme as also the patients referred by the concerned Civil Surgeon was lesser than the rates as notified under the above said order. Hence, out of the total 03 excluded categories, rates qua category A & B were already lower than the rates notified by the Government vide the above said order where as the rates that were applicable to the category of person under category 'C' were higher than the rates notified. He contends that the aforesaid category has been seemingly exempted on the premise that there is a contractual agreement between the Insurance company as well as the insured and the hospital qua the lower rates and that any higher rate is likely to come in conflict with the terms and conditions of the Insurance policy and give rise to litigation, whereas the charges were actually higher. Hence, only the insured person get a raw deed. Counsel for the petitioner contends that the reason for excluding the aforesaid category from the beneficial provision of the above order is misconceived. It is well settled that in the event of any conflict/contradiction in a contractual clause viz-a-viz an order issued an

exercise of the statutory power, the provision of the statute has to override the contractual clause and all contractual arrangements have to be read and interpreted in terms of the statutory provisions. Further, when the object of the order was to impose a cap on the rates that may be charged for the admitted indoor hospitalization, there was no reason why the petitioner or any other person who has partially insured ought to be extended the benefit and should be denied the said concessions by the State to add to their misery and sense of loss.

Arguments by the Respondents

15. Per contra, counsel for the respondents contend that the persons who had been excluded from the above said category were a class that could afford hospitalization expenses under the policy and the public exchequer ought not to have been burdened with such additional costs. They further contends that since there is a contractual arrangement and agreement between the parties and the Insurance company was required to pay for the expenses that were incurred, hence, in order to sustain the financial health and viability of the hospitals, the person who were insured were thus consciously excluded from the purview of the aforesaid order and was subjected to the agreement and/or terms and conditions of the policy. It is further contended by the counsel for the respondent that the petitioner did not fall in the 60% of the hospital bed capacity for the purposes of availing the benefit under category ‘B’ of the aforesaid order and being an insured person, she fell under category ‘C’ and was thus excluded from the benefit of the abovesaid order. He further argues that the policy/orders in question had been issued after taking holistic stock of the circumstances in totality

and also the financial constraints of the State and that extension of such benefit to the persons who have been excluded, is likely to have an impact on the financial capacity of the State and its ability to bear the increased financial burden.

16. A pointed query was raised to the State Counsel to refer to any material on the basis whereof it could be determined that such financial assessment had been done and its impact thereof has been taken into consideration by the State Government while excluding the aforesaid category of persons. However, no such detail was forthcoming on the file of the department, that had been shown to the State counsel. Counsel for the State was also questioned as to whether the recommendations of the Niti Ayog Commmittee excluded the category of insured persons or the prescribed rates were universal. The above said question had been specifically posed since no such exception had been carved out in the order passed by the Government of National Capital Territory of Delhi dated 20.06.2020 which had adopted the above said rates on the recommendation of the Niti Ayog Committee. Learned State counsel could not refer to any recommendation of the Niti Ayog which excluded the persons covered by the Insurance Policy. Further, a specific question was also asked as to why the earlier category of partially insured (which was originally covered under the package rates) had been excluded, however, he could not refer to any objective material that was available with the State Government for denying the benefit to the partially insured patients. A query was also raised as to whether the rates applicable to the PMJAY- Ayushman Bharat scheme were lower than the rates applicable as per the insurance policy or not, he

fairly conceded on instructions from the official present from the Department that the rates applicable to the persons under the PMJAY Ayushman Bharat scheme were lower than the package rates.

17. Learned senior counsel representing the Hospital has reiterated the arguments raised by the State Counsel and has emphasized that the Hospital has raised the bills as per the applicable order passed by the State Government. The deceased suffered from various co-morbidities and was partially insured under the medi claim policy. He further submits that the hospital having already been disbursed the claims under the respective insurance policy should not now been called upon to reduce its bills which has already been cleared. More so when the act of the Hospital cannot be stated to be in violation of any applicable laws. He, however, could not dispute the fact that mother of the petitioner was admitted for the COVID-19 and passed away as a result thereof. It was also not disputed that all other co-morbidities were duly covered under the said order and had to be managed in the said price cap itself. The questions posed to the State Counsel were also put to the counsel for the respondent No.3 and he could not refer to any material on record to the contrary.

18. I have heard the learned counsel appearing for the respective parties and have gone through the documents appended alongwith the present petition with their able assistance.

19. Even though, it is not disputed that in the matters pertaining to policy and/or administrative decisions of the State Government, the scope of judicial review is limited and restricted, however, where the foundation of such decision and the decision making process suffers from improper

considerations and/or a consideration which is invalid in law, the power of judicial review shall be available and the Constitutional Court shall have the authority to examine the legality of such an action.

20. The Hon'ble Apex Court has also held so in the matter of ***"Amarendra Kumar Pandey versus Union of India and others"*** reported as 2022 SCC OnLine SC 881, the relevant extract thereof is as under:

> *"30. The action based on the subjective opinion or satisfaction, in our opinion, can, audicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not Inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.*
>
> *31. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. [See Director of Public Prosecutions v. Head, [1959] A.C. 83 (Lord Denning).*
>
> *32. When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion. The distinction between insufficiency or inadequacy of evidence and no evidence must of course be*

> *borne in mind. A finding based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. [See Reg. v. Governor of Brixton Prison, Armah, Ex Parte, [1966] 3 WLR 828 at p. 8411."*

21. The basis which is claimed to lay the foundation for a decision should be reflected from the proceedings that had transpired or contemporaneous evidence in the absence of reference to any such material of placing the same on record to establish its objective consideration, such a plea is nothing more than an after thought and an eye-wash. It is evident that the determination of charge by the respective State Governments was done by adopting the recommendations of the Committee comprising of Dr. V.K. Paul, a member of the Niti Ayog. The State could have easily justified its decision to bring the insured persons under the excluded category by referring to the recommendations made by the Dr. V.K. Paul Committee (if such an exclusion existed in its recommendations). Since the same has not been done either by the State or by the private respondent, this Court has no option but to infer that there was no such exclusion in the recommendation made by the Committee of Niti Ayog. Under such a circumstance and especially when the State Government had seemingly accepted the recommendations of the Dr. V.K. Paul Committee, it should have referred to the deliberation that transpired for excluding the insured policy holders from the benefit of price fixation. Needless to mention that the Court is not required to go into sufficiency of cause, however, existence of a cause and consideration at the time of decision making ought to have been referred to.

The explanation put forth at the time of arguments as well as in the reply seemingly is not supported in the notings files of the Department. The material that weighed with the State Government at the time of its decision making is what was relevant and not the explanation that is being put forth in the proceeding instituted before a Court. Hence, I am of the opinion that the decision taken by the respondent State Government to deny the benefit of price fixation to a category of COVID patients cannot be said to be beyond the powers of judicial review vest in a High Court under Article 226 of the Constitution of India.

22. Having held so, it is now deemed necessary to peruse the orders dated 23.03.2020 (Annexure P-8) as well as the order dated 25.06.2020 (Annexure P-12).

23. A perusal of the orders dated 23.03.2020 (Annexure P-8) as well as 25.06.2020 (Annexure P-12) shows a mischievous change in the exclusions that were originally stipulated. While the initial order dated 23.03.2020 extended the benefit of the package rates to the partially insured persons, however, the entire category of insured (partial or fully insured) were excluded from the beneficiaries in the subsequent order.

24. It has also been noticed that the capping of rates had been issued in exercise of the powers under Section 2 of the Epidemic Disease Act, 1897. The relevant provision reads thus:

> *2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—(1) When at any time the [State Government] is satisfied that [the State] or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the [State Government], if*

> *[it] thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as [it] shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.*
>
> (*2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may take measures and prescribe regulations for-*
>
> *Xxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx*
>
> *(Emphasis supplied)*

25. A perusal of the aforesaid Section clearly shows that the Government is empowered to pass such orders and take such measures including the manner and by whom any expenses incurred, including compensation if any is required to be defrayed. The contention of the respondent that the prices had to be capped to avoid any further financial burden on the State is not only a masquerade but a ruse that has been created. The capping of the price at the notified rate qua the insured person would not have added any financial burden on the State. The said payment had to be made by the Insurance company and therefore no financial implication of such capping would have flown on to the State Government and would have only benefitted the insured as they would have to pay the lesser cost for availing the same facilities. The argument itself shows an either non-application of mind by the concerned persons and they seemed to be ruling under impression rather than objectivity and in their zeal to extend

opportunity of revenue maximization to the hospitals instead of ensuring that the protection of the statue is extended to all, the State Government opted to compromise the statute and to give precedence to a contractual arrangement qua the rates resulting in creation of different classes. The persons who had some cover under the Insurance were denied the concessions that were being extended to all other citizens.

26. The Hon'ble Supreme Court has held in the matter of ***"Manish Kumar versus Union of India and others"*** reported as ***(2021) 5 SCC 1***, as under:

> "*It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonably arbitrary; that it does not rest on any rational basis having regard to the objects which the legislature has in view. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.*
>
> *A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase "similarly*

situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.

The classification must be founded on some reasonable ground which distinguishes persons who are grouped together and the ground of distinction must have rational relation to the object sought to be achieved by the rule or even the rules in question. It is a mistake to assume a priori that there can be no classification within a class. The principles which govern the legitimacy of a sub-class within a class, are based essentially on the very principles which are discernible in regard to reasonable classification under Article 14 of the Constitution. It is clear that the law does not interdict the creation of a class within a class absolutely. Should there be a rational basis for creating a sub-class within a class, then, it is not impermissible. A class within a sub-class, is indeed not antithetical to the guarantee of equality under Article 14 of the Constitution."

(Emphasis Supplied)

27. Thus, while classification is permissible in law, the test prescribed is reasonable classification and intelligible differentia. The ignite factors for such reasonableness and intelligible differentia is the purpose or object of the Statue/the State action. The perusal of the orders passed by the State show that the object behind regulating the price was to dispense with the disparity in the charges across various private hospitals which was hampering egalitarian and equal access for impatient hospital care. The

intent of the State Government was to make all efforts to ensure that health care is accessible to general public, hence, the rates for various facilities in the private hospitals/medical colleges needed to be standardized. It is thus evident that the object of the order was to ensure that the hospitals do not treat the miseries of the common man as an opportunity of a life time and resort to taking pounds of flesh from the dead and suffering. The price fixation was not aimed to provide for better fiscal health of the hospitals rather, the same was occasioned as a result of high handedness and arbitrariness of the hospitals in claiming rates and charges as per their will. There is no material available qua the reasons that led to introduction of any such class or even as to whether the Committee constituted by the Niti Ayog was seized of the said aspects or not. Hence, the explanation put forth for creation of a class cannot be said to be rational or reasonable as it is not in furtherance of the object behind the order. To the contrary, it discriminates between two identical sets of persons who were being treated at the same time for the same disease and under same facilities.

28. As a social welfare sovereign State, the object of the State ought to have been to extend the benefits of its order and schemes to all persons similarly situated without any discrimination. In the present circumstances when such benefit of capping was being extended to persons who were not in a position to pay the money and the Government was itself defraying the expenses, there was no valid justification as to why the benefit ought not to have been extended the persons who could pay the capped price. The stand of the State is contradictory when the Committee had already taken into consideration all relevant factors including the cost that are to be incurred

and models of various States before notifying a capping price, there was no tangible or objective data available with the respondents to exclude the beneficiaries from the said scheme.

29. Apparently the mischief in the order of exclusion was rather perpetuated on a premise that it was more beneficial to the insured to be admitted/charged as per the terms of the Insurance Policy. The intent of the order as reflected from the exclusions rather supports a conclusion that the State intended to cap the price where there was no other more beneficial price package available. The exclusion category of PMJAY scheme had lesser package price. Placing the insured persons in the said category is propelled by a belief that the agreed rate between the Insurance Company and the Hospital is lower than the package rate approved by the Government. It would not have the intent to bring two different sets of people together as one class where one category would claim lower than the package price notified while the other category would be left to fill for have rather have been better served if such clarification could have been timely issued. The price cap as notified by the State Government was not the Bench cost or charge to be recovered by the hospital, rather, the same was a maximum capping that could be done. The contractual clauses of the policy govern the mutual obligations so long as they are not in conflict with law and have to be in compliance thereof. The aforesaid clarification would not have brought the policy in conflict with law at any point of time and the order of the Government in exercise of the statutory powers would operate as fixing the above price bar. It seems that the authorities allowed the underline object to be fogged so that the view is

not clear. It is shocking to the conscious of the Court, that clauses of the order have been permitted to be misconstrued to the prejudices of citizens who suffered the blow of the epidemic and the institutional insensitivity.

30. Learned counsel for the respondent, however, at this stage also argued that the respective hospitals have already received the benefits from the insurance companies and as such, any capping of the price and/or reduction of the bills that had been charged would amount to giving premium to the insurance companies and the insured and that the hospital shall be deprived of the cost that had incurred in the treatment.

31. The above said contention of respondent No.3 fails to inspire this Court to agree with him or to give them premium for their wrongs. The price having already been capped by the State Government by an order, the hospitals were required to be compliants. Furthermore, they cannot be permitted to retain a benefit under a contractual agreement when such contractual agreement was clearly in conflict with the order passed under a statute intended to extend the benefit.

32. Learned counsel appearing on behalf of the petitioner contends that in case the capping is held applicable, the petitioner was liable to pay only a cost of Rs. 2,34,000/- and as against the same, they had to make a payment of Rs. 6,43,024/-. Hence, an excess amount of Rs. 4,79,000/- has been charged from them which is more than 100% of the amount which they were liable to pay under the orders issued by the government in exercise of the powers under Section 2 of the Epidemic Diseases Act, 1897.

33. He further contends that since the Insurance company has refunded the bill to the extent of Rs. 5,58,035/- and the petitioner paid only a

sum of Rs. 84,989/- and as the mother of the petitioner passed away, it would not make any difference to him whether the differential amount is refunded to the Insurance Company or retained by the Hospital. Such a matter may be agitated by the Insurance Companies and he would not press a claim for the Insurance Company but would restrict to the extent of Rs.84,989/- (which would be in excess of Rs. 5,58,035/- refunded by the Insurance company and had been paid by the petitioner). Learned counsel for the petitioner further submits that he does not seek a refund of that money for himself and would have no objection in case the entire amount is donated to the "Poor Patients Welfare Fund' of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh",.

34. Ordinarily, this Court was initially inclined to impose heavy and exemplary cost against respondent-hospital and also inclined to direct enquiry into the manner in which the changes had been brought in and the orders misconstrued and misapplied.

35. Learned State Counsel, however, pleaded for being exempted from levy of cost. Counsel for the petitioner also extended graciousness by not pressing imposition of the cost. Hence, the concession is being extended.

36. Taking into consideration the said circumstances, claim of the petitioner is allowed and respondent No.3 Hospital as well as respondents No.1 & 2-State Government shall be jointly and severally liable to refund the above said amount of Rs. 84,989/- that now becomes due to the petitioner. The above said amount shall be deposited with the "**Poor Patients Welfare Fund'** of the **Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh**" within a period of 04

weeks of receipt of certified copy of this order. In the event of failure to deposit the same within 04 weeks as ordered, the same shall carry interest @ 6% p.a. from the date of its deposit till its disbursement.

The writ petition is accordingly disposed of.

(VINOD S. BHARDWAJ)

MAY 25, 2023 **JUDGE**

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No