

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 5th April, 2023

+ **W.P.(C) 1808/2020**

BRAHM DUTT

..... Petitioner

Through: Mr. Vivek Kumar, Advocate.
versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Satya Ranjan Swain, Mr. Sahaj
Garg & Mr. Kutilya Birat, Advocates
for UOI with Dr. Karthik Raman.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by Mr. Brahm Dutt, who was an officer working with the CPWD, and later retired on 31st January, 1991. The Petitioner was issued a lifelong Central Government Health Scheme ('CGHS') card for free treatment in terms of CGHS norms.
3. The wife of the Petitioner-Mrs. Leela Vati (*'the deceased'*) was a kidney patient, who was initially treated in the Institute of Liver and Biliary Science ('ILBS'), Vasant Kunj, New Delhi and in the said hospital the deceased was undergoing dialysis with a 'single use dialyzer'. It was noticed that the deceased was having a history of clotting due to which the Nephrologist at ILBS had prescribed a single use dialyzer. Between 2012 to 2014, the deceased continued to receive treatment from ILBS. The payment for the single use dialyzer was made by the Petitioner to the ILBS hospital,

and was later reimbursed by the CGHS to the Petitioner.

4. Thereafter, between 2015 to 2019 the Petitioner and his wife shifted their residence to Faridabad. The deceased started undergoing dialysis at a CGHS empanelled hospital in Faridabad i.e., Metro Heart Institute with Multi-speciality Hospital, Faridabad (*'Metro Hospital'*). Even in the said Hospital the deceased was prescribed a single use dialyzer due to the history of clotting. The Petitioner has, however, not been reimbursed by Respondent No.2- Director of CGHS for the single use dialyzer by the Metro Hospital. The stand of the CGHS is that the single use dialyzer by Metro Hospital was not approved by the CGHS. Hence this writ petition.

5. Vide order date 1st November, 2022, the Court had observed that the Respondents were unable to point out any prohibition for use of a single use dialyzer and hence relaxation of the same as per Para 2(3) of the Office Memorandum dated 15th July 2014, the reimbursement was not even needed. The said order reads as under:

"1. Pursuant to the last order passed, learned counsel representing the respondents has placed for the consideration of the Court the terms as set forth in an Office Memorandum [O.M.] dated 15 July 2014 and on the basis of which it is contended that the claim for medical reimbursement was forwarded for the consideration of another medical practitioner and expert in light of the provisions made in Para 2(3) of O.M. That clause reads as follows: -

"(3) All cases involving requests for relaxation of rules for reimbursement of full expenditure will henceforth be referred to the Technical Standing Committee, to be chaired by the DGHS/Spl.DGHS and Specialists of concerned subject as members. Addl. DDG (MG-Section), Dte.GHS shall be member

secretary for organizing the meetings of Technical Standing Committee. If Technical Standing Committee recommends the relaxation of rules for permitting full reimbursement of expenditure incurred by the beneficiary, the full reimbursement may be allowed by the Secretary (Health & Family Welfare) in consultation with IFD. A check list for consideration of requests for reimbursement in excess of the approved rates may include:”

2. The Court fails to countenance the stand as taken bearing in mind the fact that Para 2(3) deals with requests for relaxation of Rules for reimbursement. Presently the respondents have been unable to place for the consideration of the Court any material or policy statement in terms of which treatment by the use of a dialyzer was prohibited. The Court notes this aspect since it would only be in the case of a prohibition or restriction placed under the Rules that Para 2(3) would have come into play.

3. Prima facie the Court also finds merit in the submission of Mr. Garg, learned senior counsel appearing for the petitioner who contends that once a particular line of treatment had been adopted by the attending doctor, the same could not have been doubted by the respondents based upon the opinion obtained from another medical professional and who had not even examined the patient.

4. List again on 06.12.2022.”

6. The matter has been heard today. Dr. Karthik Raman from the CGHS has apprised the Court that the ILBS had recommended a single use dialyzer. However, if the CGHS had been informed in advance that the single use dialyzer has been recommended, the CGHS could have approved a package which was much more economically beneficial to the CGHS so

that the Petitioner's hospital i.e. the Metro Hospital could have been reimbursed directly. However, this did not happen. The Petitioner paid the extra amount on his own and, thereafter, sought reimbursement from CGHS which led to the present dispute.

7. Ld. counsel for the Petitioner submits that, the Metro Hospital in view of the history of the deceased utilising a single use dialyzer at ILBS for treatment, recommended the single use dialyzer, which was well within the knowledge of the CGHS. The Court has also perused the prescription of the Senior Nephrologist from the Metro hospital where Dr. Tajinder Chauhan at the Metro hospital records as under:

Patient Medication Plan for the Month _____,

20_____

Rx. 6/05/....

(sign)

26/05/15

*In view of frequent clots in dialysis. It is advised for
single use dialyser*

(Dr. Tajinder Chauhan)

Senior Nephrologist

Patient Medication Plan for the Month _____, 20____

Rx. 6/5

76 muscles 12 ns 26/05/11

STROM injection 30 (

26/05/11

of frequent clots

dialyzer It is advised for single use

dialyzer

26/05/11

(Dr. Tajinder Chauhan)

TRUE COPY

Vivek Kumar

VIVEK KUMAR, Advocate
(Reg. No. P/1360/2016)
H. No. 621, Sector-21A,
FARIDABAD - 121001 (Hr.)
Mob. 8802939359

Dialysis Patient Manual & Record Book © JVD Health Pvt Ltd. Page 36

8. After perusing the deceased's prescriptions at the ILBS and the Metro hospital, it is clear that the deceased required a single use dialyzer. This judgment of the doctor or senior nephrologist cannot be doubted, in this petition, wherein the fact that the Petitioner's wife was undergoing dialysis is not even doubted. The Petitioner's wife has since passed away.

9. The CGHS was well aware that due to the history of clotting, the Petitioner's wife was always recommended a single use dialyzer. There is

no prohibition in the use of the said dialyzer from the submissions made before the Court. According to the Petitioner, there is no approved package for use of single use dialyzer.

10. Considering these facts, the Respondent- CGHS is directed to reimburse the Petitioner for the expenditure incurred on the single use dialyzer for the deceased. If the payment is made within eight weeks, no interest shall be payable. However, if the same is not paid within eight weeks, interest @6% (simple interest) shall be payable to the Petitioner on the claimed amount, from the date of submission of the application for reimbursement i.e. 13th May 2016.

11. Apart from the Petitioner's bills in respect of which reimbursement have been already mentioned/claimed in the writ, if there are any other pending bills of the Petitioner, the same shall also be produced before the CGHS.

12. The Petitioner shall appear before CGHS on 13th April, 2023 at the CGHS, South Zone Office and meet Dr. Karthik Raman who shall then verify the bills and process the same for payments. The payment shall be made subject to verification of the bills.

13. With these observations, the present petition, along with all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 5, 2023
dj/dn