IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-15971-1997
Date of decision : 15.04.2024

Nachhattar Singh Brar ….Petitioner

V/S

State of Punjab and others ....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. S.K. Sharma, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Vikas Singh, Advocate for respondents No.2 and 3.

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NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India for issuance of a writ of mandamus directing the respondents to reimburse the balance amount of medical expenses incurred by the petitioner and his wife in accordance with the administrative instructions and grant 18% interest thereupon.

2. Written statement on behalf of respondents No.2 and 3 is already on record, wherein it has been stated as under :-

> *"12. & 13. That as per the existing policy and guidelines the petitioner is entitled to reimbursement at All India Institute of Medical Sciences/P.G.I. rates, which amount has already been released to the petitioner. Furthermore it is reiterated that the petitioner is estopped from raising these pleas in view of his affidavit Annexure P-1."*

3. Learned counsel for the petitioner submits that the petitioner joined as Secretary, Market Committee on 02.11.1963 and retired as such on 31.07.1986, on attaining the age of superannuation. On 09.04.1996, the petitioner was admitted at Indraprastha Apollo Hospital, Sarita Vihar, Mathura Road, New Delhi and had undergone advanced bye-pass surgery and he spent total amount of Rs.78,833/-. Similarly, the wife of the petitioner Smt. Daljeet Kaur also undergone bye-pass surgery at the above-said hospital where she remained admitted from 13.10.1996 to 28.10.1996 and incurred a sum of Rs.1,57,709/- as medical expenses. A sum of Rs.67,853/- were paid to the petitioner vide letter dated 11.06.1997 (Annexure P-6) against a bill of Rs.78,833/- and similarly, a sum of Rs.82,000/- were paid to the petitioner on 13.06.1997 against a bill of Rs.1,57,709/- in respect of his wife medical claim. He submits that the petitioner is entitled for the balance amount of the above-said two bills.

4. Per contra, learned counsel for the respondent Nos.2 and 3 has vehemently opposed the present petition and referred to the affidavits of the petitioner dated 02.10.1996 and 02.11.1996 (Annexure R-1), wherein it has been submitted by the petitioner himself that he is willing to accept the bill according to the directions issued by the Director, Health Services, Punjab or as is sanctioned by him. He has also placed reliance upon the judgment passed by Hon'ble Supreme Court in ***State of Punjab Vs. Ram Lubhaya Bagga : 1998(1) S.C.T. 716***.

5. I have heard learned counsel for the parties and gone

through the relevant record with their able assistance.

6. Hon’ble Supreme Court in its judgment passed in ***Ram Lubhaya Bagga’s case (supra)*** has held as under :-

> *“23. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.*
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> *24. In* **Vincent vs. Union of India, AIR (1987) SC 990***:*
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> > *"In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health..... In a series of pronouncements during the recent years, this court has culled out from the provisions of Part- IV of the Constitution, the several obligations of the State and called upon it to effectuate them in order that the resultant picture by the constitution fathers may become a reality."*
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> *25. The next question is whether the modification of the policy by the State by deleting its earlier decision of permitting reimbursement at the Escort and other designated hospital's rate is justified or not? This of course will depend on the facts and circumstances. We have already held that this court would not interfere with any opinion formed by the government if it is based on relevant facts and circumstances or based on expert advice.*

26. Any State endeavor for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect. 'Article 41 : Right to work, to educate and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want.'

27. It is submitted by the appellants that earlier under the 1991 policy, for bringing in some of the designated Hospital for treatment, sanction from Finance department was obtained. Later upon an appraisal of its expenditure it was found that the bulk of the States budget was being taken by few elites for such treatment like Heart ailment etc. to the detriment of large number of other employees who suffered. hence on the advise of the Finance department by means of order dated 9th September, 1994 the facility of reimbursement of full charges at designated hospital was withdrawn even under the old policy of 1991 from 9.9.94.

28. Financial constraints on the State is also evident from what is recorded in the case of ***Waryam Singh (supra)****, which is also a case from Punjab:-*

> *"Para 30 - When Civil Writ Petition No. 16570 of 1995, the Court issued a notice to the respondents to show cause as to why a direction may not be issued to the Government to decided all pending matters of medical dated 16.11.1995, the learned Government counsel produced before the Court a list of cases pending in 57 departments/offices of the Government of Punjab. these lists show that over*

> *20,000 cases involving claim of medical reimbursement ar pending in the various departments/offices of the Government. In some cases, the claim is for as small amount as of Rs. 10/- and as high as of Rs.1,75,000/-. these lists also show that some cases of medical reimbursement are pending for last more than six years. In other cases, the duration of pendency is less. Reasons given in majority of the cases are absence of sanction of paucity of funds."*

29. Learned Counsel for the appellant submits that in the Writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said be such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Part III of the Constitution is not absolute and it is o be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that government will give due consideration and priority to the health budget in future and render what is best possible.

30. For the aforesaid reasons and findings we uphold governments new policy dated 13th February, 1995 and further hold it not to be violative of Article 21 of the Constitution of India.

> *31. In the Civil Appeals arising out of SLP(C) Nos.13167/97 and 12418/97, the surgery at Escorts was after the introduction of the new policy and therefore the extent of medical reimbursement can be only according to the rates prescribed by AIIMS. However, the respondents therein are not entitled to the full expenditure that was incurred at Escorts. We therefore, allow the appeals in part and direct that the respondents are entitled to reimburse only at AIIMS rate. The appellant will therefore reimburse the respondents to the extent within one month from today."*

7. Since the payments of the medical bills have already been released to the petitioner as per AIIMS/P.G.I. rates and as per sanction accorded by the Director, Health Services, Punjab and in view of the policy and guidelines related to the subject matter and authoritative pronouncement of the Hon'ble Supreme Court in ***Ram Lubhaya Bagga's case (supra)***, no case is made out to reimburse the balance amount of medical bills to the petitioner.

8. Accordingly, the present petition is hereby dismissed.

15.04.2024 **(NAMIT KUMAR)**
kothiyal **JUDGE**

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