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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8450-2023

Date of decision: 17.05.2024

KRISHAN LAL

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

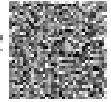
Present:- Mr. Rajiv Kumar Saini, Advocate for the petitioner.

Ms. Geeta Rani, Advocate for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

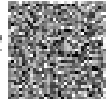
1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to decide the legal notice dated 02.09.2022 (Annexure P-5) and to pay medical reimbursement of bills which have been rejected vide memo No.21/MB/EG-9/20-21 dated 21.05.2021 (Annexure P-3).

2. Learned counsel for the petitioner submitted that it is a case where the petitioner is working as a Lower Divisional Clerk in the respondent-Nigam. He further submitted that the wife of the petitioner was suffering from a knee problem for which she had earlier undergone surgery of knee transplant and an implant was inserted in her knee but it did not work well and she was having swelling in her knee for some time but thereafter, swelling and pain increased to such an extent that she even had fever because of breakage of screw inside her



knee. While referring to the aforesaid factual position, learned counsel for the petitioner referred to discharge summary (Annexure P-2), which clearly suggests that it was a case of non union fracture shaft of femur, left sided with screw breakage and it can only be treated by surgical management. It has also been stated in the aforesaid discharge summary that the pain gets aggravated while walking and symptoms have increased since last one month. He further submitted that having no option but to get his wife treated, the petitioner had gone to Multi Speciality Hospital, namely, Positron at Rohtak and she was admitted in the aforesaid hospital on 31.10.2020 and she was operated upon for implant removal and refixation with DFLCP (synthes titanium) with bone grafting on 02.11.2020 and thereafter, she was discharged in stable condition on 05.11.2020. In this regard, a certificate was also issued by the concerned Doctor of Orthopedics of the aforesaid hospital, which has also been annexed as Annexure P-4 with the present writ petition.

3. Learned counsel for the petitioner also submitted that the aforesaid certificate was sent to the respondent-Nigam along with the bills amounting to Rs.1,85,825/- but the claim of the petitioner for reimbursement has been declined by the respondent-Nigam by giving a reason that it was a case of an elective surgery and as per the Instructions of the respondent-Nigam, it has been so provided that only in case of an emergency, a person can go and get treatment from an unapproved hospital. He further submitted that the Doctor of the respondent-Nigam had opined that it was a case of an elective surgery and therefore, no medical reimbursement could have been given to the petitioner. He further submitted that the present was not a case of an elective surgery because it was a case of breakage of screw inside the knee regarding which

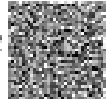


although there was a swelling earlier also but the pain had aggravated and therefore, there was no option with the petitioner but to get the treatment of his wife done from a Multi Speciality Hospital. He also submitted that it was not only for the purpose of relieving of the pain but it was also for the purpose of saving the life of the wife of the petitioner as she was suffering due to severe pain and it was within his rights to have approached a Multi Speciality Hospital of his own choice and therefore, the petitioner could not have been declined the medical reimbursement only because of the aforesaid reason.

4. On the other hand, learned counsel for the respondents submitted that when the petitioner had raised medical bills of his wife amounting to Rs.1,85,825/-, then an opinion was obtained from the Senior Consultant (Medicine) of the respondent-Nigam, who opined vide Annexure P-3 that the aforesaid amount cannot be given because the wife of the petitioner had non union fracture shaft femur and prescribed with pain and swelling for one year and therefore, it was an elective surgery and cannot be considered under the relaxation of Rules. She further submitted that the discharge summary (Annexure P-2) would also suggests that the wife of the petitioner was suffering from last one year and therefore, it was not a case of any emergency but it was a case of an elective surgery and therefore, medical reimbursement was rightly denied.

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

6. The certificate Annexure P-4 issued by the concerned Doctor of the aforesaid hospital, who had conducted surgery of the wife of the petitioner is reproduced as under:-



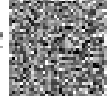
TO WHOM MAY IT MAY CONCERN

*This is to certify that patient Mrs. **Arunaanchal W/o Shri. Krishan Lal (K.L Saini)** R/o- **Kirpal Nagar, Rohtak**, Reg No-**20200118008**, IP No- **IPV2000255** was admitted on 31/10/2020 in **Positron Hospital Sector-35, Rohtak (A Unit Of MK Super Speciality Hospital Pvt. Ltd.)**. She was admitted with c/o severe pain and swelling over left knee joint & inability to bear weight without support. She was diagnosed with **Non Union Fracture Shaft Of Femur, Left Sided**. Considering the severity of pain and swelling, the condition was considered as an emergency. She was taken up for surgery, i.e. **Implant Removal and Refixation with DFLCP (Syntes Titanium) with Bone Grafting** on 02/11/2020 and was discharged in stable condition on 05/11/2020.*

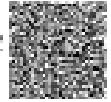
Dr. Zile Singh Kundu
Orthopedics
MS, DNB, PhD.
Positron Hospital. Rohtak

7. Part 5 of the Instructions issued by the respondent-Nigam, which has been reproduced in the reply and relied upon by learned counsel for the respondents, is also reproduced as under:-

“5. The criteria for taking treatment in emergency would be based on any medical assistance necessitated on account of accident while the employee was in transit from/to his place of residence and/or his life was endangered for want of immediate treatment. However, for prolonged treatment, the employee will have to move to the nearest Government approved Hospital.”



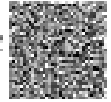
8. A perusal of the aforesaid certificate (Annexure P-4) issued by the concerned Doctor of the aforesaid hospital, who had conducted surgery of the wife of the petitioner would show that it has been specifically so stated by him that considering the severity of pain and swelling, the condition of the wife of the petitioner was considered as an emergency and therefore, she was taken up for surgery. Although the aforesaid certificate is undated but learned counsel for the petitioner has pointed out in para No.5 of the present writ petition, wherein he has specifically stated that the respondents have not considered the aforesaid certificate issued by the aforesaid Doctor that she was admitted having severe pain and swelling. When the respondent-Nigam filed reply to the present writ petition, the aforesaid assertion made by the petitioner in para No.5 of the present writ petition has not been denied. Apart from the above, the petitioner also issued a legal notice dated 02.09.2022 (Annexure P-5) and again in para No.4 of the aforesaid legal notice, it was so stated by the petitioner that the aforesaid certificate was not considered by the respondent-Nigam. However, the aforesaid legal notice was never replied to by the respondent-Nigam till date. Therefore, it is clear and deemed an admitted position that the petitioner has supplied the aforesaid certificate of the concerned Doctor to the respondent-Nigam but the same was not considered and rather respondent-Nigam relied upon its own internal Doctor who stated that since it was a case of an elective surgery, the Rules cannot be relaxed. This Court is of the considered view that the certificate (Annexure P-4) issued by the concerned Doctor of aforesaid hospital, who had conducted the surgery of the wife of the petitioner will always have a precedence over any other opinion of internal Doctor of the respondent-Nigam. It was duty of the respondent-Nigam to have at least



considered the certificate issued by the concerned Doctor, who had performed the surgery but the same was not done and the respondent-Nigam rather relied upon its own internal Doctor's opinion.

9. A perusal of the discharge summary (Annexure P-2) would also show that although the wife of the petitioner was having knee problem for the last one year but it was a case of a screw breakage within the knee and implant had to be taken out by way of performing a surgery and discharge summary so suggests that the pain got aggravated by walking and symptoms had increased since last one month. In other words, even the aforesaid discharge summary would suggest that although the wife of the petitioner was having a problem for last about one year but it got aggravated and symptoms also got increased from last one month and therefore, it cannot be said that it was a case of an elective surgery. A patient who is having pain and also inflammation due to breakage of screw in the knee and he wants to get the same to be immediately removed and get relief then it cannot be said to be an elective surgery but it is a compulsive surgery for getting relief.

10. Whenever a patient is having a problem which needs immediate and urgent medical attention to get relief from the pain or to save the life then first of all he would not see that he has to approach a Government hospital/approved hospital so as to satisfy the conditions of some Instructions issued by the respondent-Nigam but the foremost focus would be to save the life and to relieve the pain and for that purpose patient would have a right to approach any Multi Speciality or any such hospital of his choice and would not go and look into the list of the approved hospitals in order to get reimbursement



in future. The plea of the respondents is an antithesis of the Right to Life guaranteed under Article 21 of the Constitution of India.

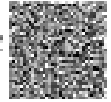
11. In this regard, Hon'ble Supreme Court in **Shiva Kant Jha versus Union of India, 2018(16) SCC 187** has also dealt with this issue in detail. The relevant portion of the aforesaid judgment contained in para Nos.9, 13 and 14 are reproduced as under:-

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“9. Further, the writ petitioner was admitted in emergency condition with complaint of breathlessness on 11.11.2013 in Fortis Escorts Health Institute, which was a non-empanelled hospital at the relevant time. He underwent angiography on 12.11.2013 which revealed diffused disease in left anterior descending coronary artery 50-60%. He had been implanted the CRT-D device (Combo) as part of cardiac resynchronization therapy (CRT) on 12.11.2013. The hospital charged an amount of ₹11,56,293/- for the said treatment, out of which, an amount of ₹10,70,000/- was for the cost of the unlisted cardiac implant (CRT-D) and an amount of ₹3,19,950/- was paid by the Insurance company directly to the hospital.

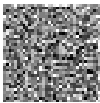
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13. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment



should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. 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.

14. *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.”

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12. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondents are directed to reimburse the medical bills of the wife of the petitioner to the petitioner in accordance with the Rules, within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple). However, there shall be no order as to costs.

17.05.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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