



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

253

CWP-8870-2024 (O&M)
Date of decision: 04.12.2024

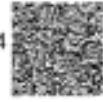
Subhash Chander
....Petitioner
Versus
State of Haryana and Another
...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Amandeep Vashisth, Advocate for the petitioner
Mr. Tapan Kumar, DAG Haryana

AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present petition is for quashing the impugned order dated 06.02.2024, which is in violation of order dated 25.09.2023, passed by this Court in CWP-13165-2017.
2. Learned counsel would contend that the petitioner, about 70 years old, who was suffering from liver cirrhosis, had undergone a liver transplant surgery in emergency situation at Manipal Hospital Bengaluru, which is Super Specialty Hospital registered under N.A.B.H. (National Accreditation Board for Hospital and Health Care) and on panel hospital of Karnataka State Government. He had incurred a total expense of 24 lacs, out of which, only 10 lacs was reimbursed on the ground that the treatment had been taken from the hospital, other than empanelled hospital and was entitled to the same at PGI rates, regarding which CWP-13165-2017 was filed by him, which was disposed of on 25.09.2023, while referring to the judgment in **Shiva Kant Jha vs. Union of India**,



CWP-694-2015, decided on 13.04.2018, with the direction to reconsider the claim for remaining amount of 14 lacs, however, the claim was rejected, but for grant 1 more lac vide order dated 06.02.2024, with no reference to the observations made by the Court. He while drawing the attention of the Court to averments made in paras 9 and 10 of the petition, submitted that the petitioner had also got registered himself with Medanta Hospital, where the cost of liver transplant was stated to be 21.75 lacs, LBS Hospital, New Delhi as well as Ganga Ram Hospital, however, he received no call from any of the above hospitals (Approved or Non-approved), whereafter, his medical condition having deteriorated, he got admitted in the aforesaid hospital, wherein he was operated, however, even thereafter, he suffered a brain stroke, however, with timely intervention by the doctors of the same hospital, his life was saved. Civil Surgeon, Karnal on perusal of the treatment record that the treatment taken in the aforesaid hospital had also issued a certificate dated 24.08.2016, Annexure P-13 that it was an emergency (chronic liver disease liver transplantation).

3. This Court in **Kamla Devi vs. State of Haryana and others** CWP-10015-2015, decided on 23.01.2024, allowed the claim of medical reimbursement to an employee, who had also undergone a liver transplant, wherein the petitioner with regard to the room rent had stated that it be reimbursed at PGI rates, which even learned counsel for the petitioner has stated in this case, the relevant paras whereof read thus:

“9. It is a settled principle of law that any action which is to be taken by the department should be supported by the rules governing the service qua the said aspect or any instructions, which have been issued by the State. In the present case, policy



dated 03.10.2017 which has been brought into operation by the respondents, was not in existence at the time when the surgery of the husband of the petitioner was undertaken, reimbursement of which has been sought by the petitioner in the present case, hence the same could not be brought in operation to decide the claim of medical reimbursement raised by the petitioner.

10. In the absence of any such policy so as to put restriction upon the amount to be reimbursed, respondents were under an obligation to reimburse the full amount incurred on the liver transplant to the petitioner.

11. Learned counsel for the respondents submits that the claim of the petitioner has been considered as if, the surgery is presumed to have been undertaken at PGIMER, Chandigarh .

12. Said argument is also fallacious. Once the liver transplant surgery was not available at PGIMER, Chandigarh, the question of presuming the same to be undertaken at PGIMER, Chandigarh so as to decide the claim of the petitioner for medical reimbursement is totally artificial and has no basis and hence, reimbursement of medical claim on the basis of the PGIMER rates cannot be accepted in the facts and circumstances of the present case.

13. Learned counsel for the respondents further submits that the expenses incurred by the petitioner while donating the part of her liver for liver transplant of her late husband may be granted but the other expenses incurred on other facilities such as, consumables as well as room rent be fixed as per the rates of PGIMER, Chandigarh as per the entitlement of the patient.

14. The said argument has force. The consumables, which have been used while undertaking the surgery, for which the reimbursement is being sought, will be reimbursed as per the rate prevalent when the consumables were purchased by giving



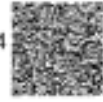
bills of the said consumables to the authority concerned. With regard to the room rent, the same be reimbursed as per the rate of PGIMER, Chandigarh as per the entitlement of the employee concerned.

15. Learned counsel for the petitioner submits that the details of expenditure qua consumables has already been submitted with the respondents, copy of which has been appended as Annexure R-1 by the respondents themselves hence, the same be taken into consideration while passing order on the claim of the petitioner qua full reimbursement of medical expenses.

16. Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. The respondents are directed to finalize the claim of the petitioner for reimbursement of the medical expenses in pursuance to the present order, within a period of 08 weeks from the date of receipt of copy of this order and the amount so calculated be released to the petitioner by deducting the amount already paid to the petitioner.”

4. By placing reliance on Shiva Kant Jha (supra), this Court in **Sandeep Kumar vs. State of Haryana and others**, CWP-138-2020, decided on 18.03.2024 observed and held thus:

“6. It is the case where the respondent-Nigam has issued instructions that in case the petitioner seeks treatment from the empanelled hospital then he will be granted full reimbursement but in case he is admitted in private hospital, which is not empanelled, no medical reimbursement is to be granted unless he is admitted in an emergency and in case he is admitted in an emergency then the entitlement is to be restricted only to the extent of PGI rates. The relevant portion of instructions as supplied by learned counsel for respondents No.2 to 5 is reproduced as under:-

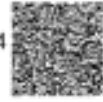


“4. Un approved Hospitals:-

a) The reimbursement for the treatment taken in an emergency in an un approved hospital will be allowed equal to PGI, Chandigarh rates with the approval of the Administrative Department.

b) Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency.”

7. In the present case, after meeting with an accident, the petitioner went to Government Hospital, Jhajjar, from where he was referred to PGIMS Rohtak being in critical condition. A perusal of Annexure P-5 would show that the father of the petitioner had requested the Medical Superintendent of PGIMS, Rohtak that COD Number be provided to him because he had to be shifted to Sunflag Global Hospital because there was no ventilator in the PGIMS, Rohtak. However, a stand has been taken by the respondents to contend that the petitioner has not been able to show the documents that there was no ventilator available in the PGIMS Rohtak. This Court disagrees with the argument raised by learned counsel for the respondents that the petitioner was to show that there is no ventilator in view of Annexure P-5 and also in view of the fact that once the petitioner was referred to a hospital i.e. PGIMS, Rohtak, then why he would get himself shifted to a smaller hospital i.e. Sunflag Global Hospital, Rohtak. There can be no reason to believe that the petitioner despite the fact that the ventilator was there he is shifted to a private hospital. The petitioner got shifted from PGIMS Rohtak to a private hospital because of want of ventilator, which was a life saving device. When he was shifted to Sunflag Global, Hospital, Rohtak, he was, as per the learned counsel for the petitioner, put on ventilator and in this way, his life was saved. It is not the case of the parties that the petitioner had straight away approached



the private hospital or a non-empanelled hospital, so as to deprive him the full medical reimbursement under the instructions. Firstly, it is a case where the petitioner went to a Government Hospital, Jhajjar from where he was referred to PGIMS, Rohtak and thereafter, under compulsion he was shifted to Sunflag Global Hospital, Rohtak. This was done in order to save the life of the petitioner so as to put him on ventilator and actually his life was saved. The Supreme Court in Shiva Kant Jha's case (supra) also observed that because of such kind of medical technicalities, the legitimate rights of reimbursement cannot be defeated. If the treatment of an employee in a non-empanelled hospital was genuine because there was no other option left with him then he is entitled for entire reimbursement.

8. In view of the aforesaid facts and circumstances of the present petition, the same is allowed and the impugned order (Annexure P-1) is hereby set aside. The respondent-Nigam is directed to pay the balance of the medical reimbursement to the petitioner within a period of two months from today. However, there is no order as to any interest or costs.”

5. In **Roshan Lal Garg vs. State of Haryana and others** CWP-19105-2021, decided on 08.07.2024, this Court allowed the claim by observing thus:

“7. The only point involved in the present case is as to whether the petitioner is entitled for grant of full medical reimbursement on the basis of the facts and circumstances of the present case or will he be entitled for partial reimbursement of PGI, Chandigarh rates in accordance with the policy of the Government of Haryana (Annexure R-1) which provides that when a patient is treated in an unapproved hospital even in emergency condition then he will be entitled for reimbursement

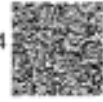


according to PGI rates.

8. The facts and circumstances of the present case make it crystal clear that son of the petitioner is a handicapped person as per Annexure P-1 and as per learned counsel for the petitioner he is also a mentally challenged person. There is no dispute that he was suffering from severe abdominal pain on 06.12.2019 at the time when he was shifted to the aforesaid hospital which is an unapproved hospital and on the date of admission, he was operated upon and was discharged on the next date i.e.07.12.2019. This Court had an occasion to deal with in such like situation in CWP No.10669 of 2017 titled as Raghbir Singh Vs. Chief Administrator and others wherein this Court while referring to the judgment of Hon'ble Supreme Court in "Shiva Kant Jha Vs. Union of India", (2018) 16 SCC 187 held that the petitioner was entitled for full reimbursement in the light of Article 21 of the Constitution of India. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court in Shiva Kant Jha's case (Supra) is reproduced as under:-

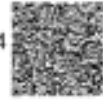
"13. Further, the writ petitioner was admitted in emergency condition with complaint of breathlessness on 11.11.2013 in Fortis Escorts Health Institute, which was a non-empanelled hospital at the relevant time. He underwent angiography on 12.11.2013 which revealed diffused disease in left anterior descending 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.

17. 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.

18. 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.”

9. The facts of the present case suggest that it has not been disputed by the respondent-department that son of the petitioner was taken to the aforesaid hospital in an emergency condition which is also supported by a certificate issued by the aforesaid hospital and also by the Civil Surgeon, Gurugram. Whenever a patient is suffering from an emergency condition then the entire focus is always on saving the life of the patient and in case there is some pain then the focus is also to relieve the pain. It would be inhuman to say that whenever such like emergency situation arises then an employee should keep on searching the list of approved hospitals and should first go to an approved hospital or a government hospital by ignoring the developing pain and at the risk of life. It would be not only perverse but it will also be violative of Right to Life guaranteed under Article 21 of the Constitution of India.



10. In view of the aforesaid facts and circumstances of the present case, present petition is allowed. The respondents are directed to pay full medical reimbursement of Rs.75,037/- to the petitioner after deducting the amount already paid to the petitioner within a period of three months from today.”

6. In **Anita Chaudhary vs. State of Haryana and Others**, CWP-2792-2023, a case involving liver transplant of the husband of the petitioner from Vellammal Medical College and Hospital, Madurai, Tamil Nadu, a super specialty hospital registered under NABH (National Accreditation Board for Super Specialty Hospitals and Health Care), which also on the panel of Tamil Nadu State Government, this Court disposed of on 05.08.2024.

7. Learned State counsel despite best efforts was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

8. Accordingly, the present petition is disposed of in terms of **Kamla Devi, Sandeep Kumar and Roshan Lal Garg** (supra).

(AMAN CHAUDHARY)
JUDGE

04.12.2024
M.Kamra

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