



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-12590-2021 (O&M)
Date of Decision:17.12.2024

Anil Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vinod Dahiya, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Ms. Sehaj Sandhawalia, Advocate for respondents No.2 and 3.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed seeking issuance of a writ in the nature of mandamus for directing the respondents to reimburse the complete medical claim for the actual expenses in full with consequential benefits incurred at SIMS Hospital, Chennai.

2. While giving the facts of the present case, learned counsel for the petitioner submitted that the petitioner was working as Junior Engineer in the office of respondent-Haryana State Agriculture Marketing Board (hereinafter to be referred as 'Board') and he was suffering from acute liver disease. The petitioner was under treatment in one of the renowned institute of the country namely Institute of Liver & Biliary Sciences (ILBS), Vasant Kunj, New Delhi, India and he got himself checked in a routine manner because his liver was damaged and it needed liver transplant at the earliest for the purpose of saving



his life. In this regard he referred to Annexure P-1 i.e. bill estimation for liver transplantation issued by the aforesaid institute of New Delhi, wherein it has been mentioned that the petitioner is suffering from advanced chronic liver disease and requires liver transplantation as part of a life saving treatment.

3. Learned counsel submitted that, for the purpose of liver transplant, a donor was required, and the petitioner's daughter was initially identified as the donor. Consequently, the liver transplant was to be undertaken at the aforementioned Institute of Liver & Biliary Sciences. He submitted that the aforementioned institute is an empanelled hospital of the respondent-Board, and therefore, the liver transplantation, based on the donation by his daughter, was to be undertaken at the empanelled hospital in New Delhi. He further submitted that however, unfortunately at the advanced stage of investigation it was found that the daughter of the petitioner was not fit to give a part of her liver to save the life of the petitioner and the aforesaid institute therefore did not permit the petitioner for transplantation on the basis of the aforesaid donor who was his daughter. In this way his liver transplant could not take place.

4. He further submitted that however in the meantime since the petitioner had enrolled himself on the national portal of donors for the purpose of liver transplantation for receiving the organs, a call was received from another renowned institute namely SRM Institute of Medical Sciences (SIMS), Vadapalani, Chennai, Tamilnadu and on the basis of the aforesaid donor being available in Chennai, he was recommended to be shifted from the aforesaid institute of New Delhi to the aforesaid hospital of Chennai for the purpose of liver transplant because the same could have been done only at the



aforesaid institute of Chennai. In this regard, a certificate was issued by the Institute of Liver & Biliary Sciences, New Delhi (vide Annexure P-10), specifically stating that the petitioner required a liver transplant but a suitable donor was not available. Due to the urgency, the liver transplant was carried out at SIMS, Chennai. This certificate was issued as a Medical/Fitness Certificate after the transplantation was done.

5. He further submitted that in the aforesaid special circumstances where the petitioner was to save his life by way of liver transplant which was totally damaged and was on advance stage of chronic liver disease, the petitioner had no option but to go to Chennai to the aforesaid hospital i.e. SIMS for getting liver transplantation done and the same took place on 10.01.2020 and thereafter he was discharged from the hospital. He submitted that the aforesaid SIMS hospital, Chennai is not an empanelled hospital, as per learned counsel for respondent-Board. However, in order to save his life and with no other option available, the petitioner was compelled to shift to SIMS, Chennai in an emergency condition for liver transplantation and the same was done in an emergency condition.

6. He also referred to the emergency certificate (Annexure P-8) issued by the aforesaid SIMS Institute for Medical Science, Vadapalani, Chennai, in which it has been certified that the petitioner was suffering from liver disease and was admitted to the aforesaid hospital in an emergency situation and on 10.01.2020, he got liver transplant treatment which could not have been delayed as essential requirement for saving of his life. He further submitted that the aforesaid emergency certificate has not been disputed by the respondents.



7. Learned counsel also submitted that the petitioner as an employee of the respondent-Board was although bound by the different administrative instructions issued by the respondent-Board but the life of petitioner was at stake. Initially he diligently went to the approved hospital which was the Institute of Liver & Biliary Sciences, New Delhi, for the purpose of treatment and was to undergo transplant at that particular hospital which was an empanelled hospital for which he was entitled to get full reimbursement but due to demand of the situation the aforesaid institute of New Delhi which was an empanelled hospital, could not conduct the surgery of liver transplantation because the daughter of the petitioner who was the donor was ultimately declared to be unfit for donation and therefore the petitioner had to go to hospital at Chennai which was an unapproved hospital because the donor was available at Chennai and there was no other option available to the petitioner except for going to Chennai for liver transplantation in order to save his life.

8. He further submitted that the total bill which was raised by the petitioner pertaining to the aforesaid transplantation done at Chennai was about Rs.21,00,000/- and out of the aforesaid amount, the respondents-Board had paid only an amount of Rs.11,00,000/- to the petitioner and the reasons as to why the aforesaid amount of Rs.11,00,000/- was paid that as per the respondents there are instructions of the Government to the effect that if the hospital is not empanelled and the employee is admitted under emergency conditions, medical reimbursement is paid at PGI Chandigarh rates. However, if the employee is treated at an empanelled/approved hospital, full reimbursement is to be given. He submitted that the decision to not to go to an empanelled hospital for the liver transplant was not within the petitioner's



control, as the exigency of the situation demanded otherwise. In this regard he referred to a judgment of this Court bearing **CWP No.4800-2024** titled as ***Raj Kumar Garg Vs. Haryana State Agricultural Marketing Board and others decided on 27.09.2024*** and submitted that case of the petitioner is fully covered by the aforesaid judgment passed by this Court in which reference has been made to the judgment of Hon'ble Supreme Court in case of ***Shiva Kant Jha Vs. Union of India, (2018) 16 SCC 187***.

9. On the other hand, learned counsel appearing on behalf of respondents-Board submitted that so far as the aforesaid factual position is concerned, the same is not disputed. The only objection raised by the respondents-Board in the present case is that the petitioner did not receive treatment at an empanelled/approved hospital. Since the liver transplantation/surgery was performed at the unapproved hospital, i.e., SRM Institute of Medical Sciences (SIMS), Chennai, the respondents-Board is bound by the instructions of the Government vide Annexure R-2/3 which provides that full reimbursement will be given in all the Government hospitals and also in all the Government medical colleges in the country and full reimbursement for the treatment taken in an emergency in unapproved hospitals will be allowed equal to PGI, Chandigarh rates with the approval of Administrative Department subject to the conditions that the patient is admitted in an emergency condition. She further submitted that so far as the condition of the petitioner being admitted in an emergency condition for the purpose of saving his life by way of undergoing a surgery for liver transplantation, the same is not in dispute because he has already attached Annexure P-8 i.e. an emergency certificate. However, he was entitled to



medical reimbursement only at the PGI Chandigarh rates, as per the aforesaid general conditions issued by the Government of Haryana. Therefore, he was paid only Rs. 11,00,000/- instead of the full amount of Rs.21,00,000/- .

10. I have heard learned counsels for the parties.

11. The issued involved in the present case is as to whether the petitioner who was admittedly admitted in an emergency condition for the purpose of liver transplant in the aforesaid hospital at Chennai which is an unapproved hospital is entitled for grant of full medical reimbursement or not.

12. The facts pertaining to the liver transplant of the petitioner are not in dispute. He was initially under treatment at the Institute of Liver and Biliary Sciences, New Delhi, which is admittedly an empanelled/approved hospital of the respondent-Board. Therefore, it is clear that the petitioner was diligent in seeking treatment at an empanelled/approved hospital and the aforesaid institute is also an esteemed hospital in the country. The donation of the part of the liver was proposed to have been made by his own daughter but later on it was found that the daughter of the petitioner was not fit for the purpose of being donor and therefore liver transplant could not take place at the aforesaid hospital of New Delhi which is an approved hospital of respondent-Board.

13. It is well known that in India there is a national portal where the donors and the donees are put on the site for the purpose of correlating their vitals for organs donations. It is the case of learned counsel for the petitioner that he was informed by the aforesaid institute of Chennai that one donor was available who was compatible with the petitioner pertaining to the vitals and other medical conditions and therefore the petitioner had no option but to rush



to the aforesaid Institute of Chennai namely SIMS for the purpose of liver transplantation and as the facts suggest that the petitioner actually got treatment of liver transplant from Chennai and he has been discharged from the hospital and as per the learned counsel for the petitioner he is medically well now.

14. In other words, in the entire scenario, the petitioner in order to save his life had gone to SIMS Hospital at Chennai in an emergency condition, which is an unapproved hospital, for the purpose of liver transplantation and saved his life. This Court had an occasion to deal with such like situations in the case of ***Raj Kumar Garg Vs. Haryana State Agricultural Marketing Board and Others (Supra)***. In the aforesaid case, it was so held that when a patient is rushed to a hospital in an emergency condition in order to save his life then the technicalities pertaining to whether the hospital was an unapproved hospital or an approved hospital would not be relevant in the light of Article 21 of the Constitution of India. The relevant paragraphs of the aforesaid judgement is reproduced as under:-

6. *It is a case where it is not in dispute that the petitioner was admitted in emergency condition in the aforesaid hospital i.e. Avanti Hospital, Ujjain, from where he was shifted to Medanta Super Speciality Hospital, Indore wherein he underwent Coronary Artery Bypass Grafting Surgery. It is clear from Annexure P-3 which is issued by the Medical Director & Director Cardiac Surgery, Medanta Super Speciality Hospital, Indore that the petitioner was admitted in an emergency condition. The objection which has been raised by learned counsel for the respondent-Board based upon the reply was that in view of the policy of the Government of Haryana (Annexure R-1), full reimbursement cannot be given to the petitioner because*



when a patient is treated in an unapproved hospital even in emergency condition, he will be entitled for reimbursement according to PGI, Chandigarh, rates.

7. The law with regard as to whether the full medical reimbursement in case of emergency treatment is to be given or not is no longer *res integra*. This Court had an occasion to deal with such like situation in **CWP No.10669 of 2017** titled as **Raghubir 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.”

8. This Court is of the considered view that whenever an employee 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 at the risk of life.

9. *The present is a case where as per the discharge summary and as per the certificate (Annexure P-3), the petitioner was having chest pain when he was in Ujjain and was rushed to Avanti Hospital, Ujjain. However, due to lack of facilities for treating a major cardiac shock, he was shifted to Medanta Super Speciality Hospital, Indore where he got treatment and underwent 'Bypass surgery'.*

10. *The reliance which has been made by learned counsel for respondent-Board on some medical policy by making distinction between approved or unapproved hospitals is absolutely violative of Right to Life guaranteed under Article 21 of the Constitution of India. Not only this the aforesaid stand taken is also contrary to the law laid down by Hon'ble Supreme Court in the case of **Shiva Kant Jha's case (supra)** in this regard.*

11. *In view of the aforesaid facts and circumstances and in view of the aforesaid settled law, present petition is allowed and the petitioner is entitled for an amount of Rs.16,63,808/- out of Rs.22,00,040/-. The respondents are directed to pay to the petitioner balance amount of medical reimbursement within a period of three months from today.*

12. *There shall be no order as to costs and interest.*

15. This Court in the aforesaid judgment has also referred to a judgment of Hon'ble Supreme Court in the case of **Shiva Kant Jha vs. Union of India (supra)**.

16. Considering the aforesaid totality and circumstances of the present case, this Court is of considered view that the case of the petitioner is fully covered by the aforesaid judgment passed by this Court and therefore the



present petition is hereby allowed and the petitioner is entitled for balance amount of Rs.10,00,000/- (Ten lacs). The respondent-Board is directed to pay to the petitioner balance amount of medical reimbursement i.e. Rs.10,00,000/-(Ten lacs) within a period of three months from today.

17. There shall be no order as to costs and interest.

(JASGURPREET SINGH PURI)
JUDGE

17.12.2024

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No