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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-10669-2017
Date of Decision: 02.04.2024

Raghubir Singh

..... Petitioner

Versus

Chief Administrator and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Dinarpur, Advocate with
Mr. Rohit Singh, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Ashish Yadav, Advocate,
for respondent Nos.2 to 5.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 28.08.2015 (Annexure P-7) passed by respondent No.3 declining to consider OPD treatment of wife of the petitioner emergent for the purpose of releasing medical reimbursement of expenses incurred by the petitioner on her treatment with a further prayer in the nature of *mandamus* for directing the respondents to release full medical reimbursement amount of Rs.6,53,892/- incurred by him on the treatment on his wife for chronic disease i.e. Brain Tumor along with interest.

2. The brief facts of the present case are that the wife of the petitioner, who was dependent upon him, was admitted in Indraprastha

Apollo Hospital on 02.10.2014 in an emergency condition wherein she felt unconscious. After she was admitted she was diagnosed with Brain Tumor and on 03.10.2014 itself, she got operated by the Neurosurgeon. Thereafter, she was discharged from the aforesaid hospital on 07.10.2014. The medical reimbursement bill for the aforesaid period to the tune of Rs.3,89,931/- was raised by the petitioner, out of which, Rs.52,837/- was paid to the petitioner but the remaining amount was not paid to him. Thereafter, the wife of the petitioner had taken follow up treatment from the same hospital i.e. Indraprastha Apollo Hospital from 13.10.2014 till 03.12.2014 and as per the learned counsel for the petitioner thereafter within a period of one week, the wife of the petitioner died. With regard to this period of follow up/OPD treatment from the same hospital, a bill of Rs.2,63,961/- was raised but the same has not been reimbursed to the petitioner till date. The prayer in the present petition is for grant of full medical reimbursement along with interest.

3. Learned counsel for the petitioner submitted that a policy dated 06.05.2005 vide Annexure P-1 was framed by the Government of Haryana which was applicable to the respondent-Board wherein a detailed policy has been made pertaining to getting treatment from approved/Government Hospital and also from the de-empanelled hospital. It has been so provided in the aforesaid policy that when a reimbursement on account of treatment is taken from non-Government hospital but approved hospital, it shall be paid at the rates equivalent to the PGI, Chandigarh rates. It has been further provided in Clause-4 that the reimbursement for the treatment taken in emergency in an unapproved hospital will be allowed equivalent to PGI,

Chandigarh rates with the approval of the Finance Department and the Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency. In the aforesaid policy, the present hospital, namely, Indraprastha Apollo Hospital, New Delhi finds mentioned in the list of approved hospital vide Annexure-B at serial No.5 and the date of approval has been mentioned as 31.10.2002. He further submitted that however in the year 2013, the list of approved hospitals was changed by the Government of Haryana vide Annexure P-10 dated 24.06.2013 whereby the aforesaid Indraprastha Apollo Hospital does not find mention in the list of approved hospitals.

4. Learned counsel for the petitioner further submitted that the aforesaid admission of the wife of the petitioner took place in the year 2014 i.e. on 02.10.2014 and the petitioner was not even aware as to whether there had been a change in the empanelment of the hospital or not nor was there any notice issued to any of the employee since the respondent-Board follows the Policy issued by the Government of Haryana. He submitted that be that as it may, even otherwise also when the wife of the petitioner became unconscious, she was required to be admitted in Super Speciality Hospital in order to save her life since the aforesaid Indraprastha Apollo Hospital was earlier also an empanelled hospital and the petitioner was not even aware as to whether the aforesaid hospital has been de-empanelled and even otherwise also in order to save the life of his wife, she was admitted in the aforesaid hospital wherein it was found that she was suffering from Brain Tumor and immediately surgery was conducted in an emergency condition and there was no occasion for the petitioner to have found first from the

department as to whether the aforesaid Indraprastha Apollo Hospital was an empanelled hospital at that point of time or not, since the entire focus at that point of time was only on saving the life of his wife, which he did and got her admitted in the aforesaid hospital. He further submitted that when the wife of the petitioner was operated a total bill of Rs.3,89,931/- was raised and the same was submitted by the petitioner for reimbursement but in view of the aforesaid policy dated 06.05.2005 vide Annexure P-1 only PGI, Chandigarh rates were given to him i.e. only Rs.52,837/- was reimbursed to the petitioner.

5. Learned counsel for the petitioner further submitted that once the surgery was conducted in the aforesaid Indraprastha Apollo Hospital then the follow up/OPD treatment had to be done from the same hospital and there was no occasion for the petitioner to have got her admitted in any other approved hospital, if any or in a Government Hospital because the follow up/OPD treatment is always a composite treatment of surgery and no chance could have been taken by the petitioner which might have affected the life of his wife. He submitted that however so far as the period of follow up/OPD treatment i.e. from 13.10.2014 till 03.12.2014 a bill of Rs.2,63,961/- was raised but the same has not been paid to the petitioner at all on the ground that the aforesaid hospital was not an approved hospital and she was not taken to that hospital in emergency condition. He further submitted that such kind of action of the respondent was bad in law and also submitted that the impugned order dated 28.08.2015 (Annexure P-7) was required to be set aside.

6. Learned counsel for the petitioner has referred to the judgment

passed by the Hon'ble Supreme Court passed in "*Shiva Kant Jha Vs. Union of India*", (2018)16 SCC 182, a Division Bench judgment of this Court passed in "*Sunita Rani Vs. Union of India*", 2008(3) RSJ 562, another judgment of a Division Bench of this Court in "*Kundan Lal Vs. Haryana Vidyut Parsaran Nigam Ltd. and another*", 2009(3) RSJ 727 and a judgment of Single Bench of this Court in "*Krishna Kumari (dead) through LRs. Vs. State of Haryana*" 1999(4) RSJ 386 to contend that when an employee or dependent is taken to hospital in an emergency condition, then the benefit of full reimbursement cannot be denied only on the ground that the same was not an approved hospital and also when the follow up/OPD treatment is taken from a different hospital which is not an approved hospital, the same cannot be isolated and segregated because the follow up treatment is always a composite treatment even if it is taken in the OPD.

7. On the other hand, Mr. Ashish Yadav, learned counsel for respondent Nos. 2 to 5 submitted that it is a case where with regard to the first period of treatment in the Indraprastha Apollo Hospital i.e. from 02.10.2014 till 07.10.2014 wherein the wife of the petitioner had undergone surgery out of the total bill of Rs.3,89,931/- the respondent-Board has already paid Rs.52,837/- and this was an amount which was arrived at on the basis of the calculation made at the PGI, Chandigarh rates and which was in accordance with the Policy (Annexures P-1 & P-10) and the Board was under an obligation to have paid only that amount which was in consonance with the Policy and as per the Policy if the treatment is taken from an unapproved hospital in an emergency condition, then in that situation the reimbursement can be made only to the extent of PGI, Chandigarh rates

which has been done for which the petitioner should not have any grievance. He submitted that so far as the second period i.e. from 13.10.2014 till 03.12.2014 is concerned, the same was taken as a follow up treatment in the OPD from the same hospital which was not an approved hospital and for that purpose since it was not taken in an emergency condition because it was only an OPD treatment, no amount was to be reimbursed to the petitioner in this regard as per the aforesaid Policy because as per the aforesaid Policy in case an employee or his dependent is treated at an unapproved hospital, then reimbursement can be done only when he or she is taken in an emergency condition and that too only at the PGI, Chandigarh rates. He also submitted that even for that matter when the treatment is to be taken from the OPD/follow up treatment at an unapproved hospital, a sanction has to be obtained from the Government in this regard. He further submitted that now when the reply has been filed by the State also, they have so stated that the second period of treatment of OPD/follow up treatment cannot be declared as an emergent treatment and therefore, reimbursement cannot be made for the same.

8. Mr. Gaurav Jindal, learned Addl. A.G., Haryana, who has appeared on behalf of the respondent/State, has also referred to the reply filed by the State wherein it has been so stated that with regard to the first period of treatment when surgery was conducted an opinion was obtained as to whether it was an emergent condition or not to which it was so opined and declared that the first period i.e. from 02.10.2014 till 07.10.2014 was an emergent period and for that reimbursement was made at PGI, Chandigarh rates. He submitted that so far as the second period is concerned, an opinion

was found that it was not an emergent condition and therefore, reimbursement cannot be made. However, there is nothing in the reply to state that at any point of time the consent or sanction was declined by the Government.

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

10. It is a case where the wife of the petitioner who was dependent upon the petitioner when became unconscious was immediately shifted to the Indraprastha Apollo Hospital, New Delhi which was an empanelled hospital by virtue of Appendix B-2 (Annexure P-1) which is a Policy of the Government as applicable to the respondent-Board. There was a change of the empanelment of the hospital by virtue of Annexure P-10 in the year 2013. However, the aforesaid change in the list of hospitals did not find any mention in the Policy. The wife of the petitioner was admitted in the aforesaid hospital on 02.10.2014 which according to the learned counsel for the parties at that point of time, was not an empanelled hospital. However, there is nothing on the record to suggest as to whether the employees were put to notice with regard to the same or not since the policy is framed by the Government of Haryana and is made applicable to the respondent-Board.

11. The medical reimbursement bills of the wife of the petitioner can be segregated into two parts. The first is of the period from 02.10.2014 till 07.10.2014 when the wife of the petitioner was admitted and was diagnosed with Brain Tumor and she was operated on 03.10.2014 and discharged on 07.10.2014, regarding which, a bill of Rs.3,89,931/- was raised but only Rs.52,837/- was reimbursed because of the fact that as per the opinion of the State Government it was an emergent condition and the hospital was an

unapproved hospital and therefore, by virtue of Clause-4, the PGI, Chandigarh rates were applicable. The relevant provision of Clause-4 which is so there in Annexue P-1 is reproduced as under:-

“4. Unapproved Hospitals:

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

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

12. So far as the second period i.e. from 13.10.2014 till 03.12.2014 is concerned, the wife of the petitioner had to again go to the same hospital only for the purpose of follow up treatment in the OPD for which medicines must have been given to her. However, unfortunately after her discharge, she died within a period of one week as per the learned counsel for the petitioner. The bill of the follow up treatment to the tune of Rs.2,63,961/- was raised but nothing has been paid with regard to the aforesaid amount on the ground that the follow up treatment was not in an emergency condition and as per the reply filed by the State, it was declared to be of non-emergent nature and therefore, even as per the Policy the aforesaid amount could not have been reimbursed at all.

13. An important aspect which is to be seen in the present case is that when the wife of the petitioner (who is an employee of the respondent-Board) got unconscious and admittedly she was in state of an emergency was admitted in a hospital which at that point of time was not an empanelled hospital, then the question which arises would be as to whether it was

incumbent and necessary for an employee to have first spotted and found as to which are the approved hospital of the Government or should have immediately acted to save the life of his wife. Obviously the later part of the aforesaid would be preferred because whenever an emergency situation arises, the only focus of any human being is on saving the life and not on finding an empanelled hospital. The same thing has been done in the present case. However, at the time for reimbursement, reliance was placed upon Clause-4 of the Policy (Annexure P-1) as reproduced above that only PGI, Chandigarh rates will be given. Thereafter, when for the follow up treatment she had gone to the same hospital where the surgery of Brain Tumor has taken place, the plea of the petitioner has been rejected on the ground that she had not gone there in an emergent situation and therefore, even at the PGI, Chandigarh rates also, nothing can be reimbursed to the petitioner. The second question that would arise for consideration in this case would be as to whether when a person has got surgery done especially of a serious nature i.e. Brain Tumor from a particular hospital then can follow up treatment be taken from any other hospital and will it not prejudicially affect the Right to Life by going to some other place except for that where the surgery had taken place.

14. The point for consideration in the present case would be as to whether the action of the respondents would be violative of Article 21 of the Constitution of India or not. Getting a treatment from a hospital where a patient deems it fit would certainly be the prerogative of an employee. The mechanism and the policies devised by the Government are beneficial in nature and the purpose is to grant benefit but at the same time it cannot be

said that for the purpose of getting the benefit of reimbursement the employee has to sacrifice the Right to Life guaranteed under Article 21 of the Constitution of India and to go to a hospital which is an empanelled hospital and the bill of the same can probably be reimbursed later on. Looking at this way that an employee has to go to an empanelled hospital even when in a grave emergency will not be in accordance with law at all.

15. The law in this regard is no longer *res integra*. Hon'ble Supreme Court in "**Shiva Kant Jha Vs. Union of India**", 2018(16) SCC 187 observed as under:-

"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.

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.”

16. In view of the above, the present petition is allowed. The respondents are directed to pay full medical reimbursement of Rs.6,53,892/- to the petitioner after deducting the amount already paid to him along with interest @ 6% per annum within a period of four months from today.

17. However, there shall be no order as to costs.

02.04.2024

Bhumika

**(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |