



CWP-19105-2021 (O&M)

1

105+241

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-19105-2021 (O&M)
Date of Decision:08.07.2024**

Roshan Lal Garg

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manoj Kaushik, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Amit Jaiswal, Advocate for respondent-department.

JASGURPREET SINGH PURI J.(Oral)**CM-2675-CWP-2024**

Application is allowed as prayed for. The accompanying document as Annexure R-1 is taken on record subject to just all exceptions.

Main case

1. The present 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 release and reimburse the entire payment of the medical expenses incurred by the petitioner for a period from 06.12.2019 to 07.12.2019 due to emergency treatment of his son.

2. The facts of the present case are that the petitioner was working in the office of respondent-HUDA (now Haryana Shehri Vikas Pradhikaran)

**CWP-19105-2021 (O&M)****2**

and retired on 31.12.2016 as Sub Divisional Engineer after having rendered a continuous service of about 38 years. The son of the petitioner namely Abhinav Garg is stated to be a mentally challenged person with a disability of 50% regarding which a medical certificate of the competent authority is attached as Annexure P-1. On 06.12.2019 when son of the petitioner was suffering from abdominal pain, he was diagnosed with Acute Calculus Cholecystitis (stone in the Gall Bladder) and in this emergency condition he was taken to W-Ratiksha Hospital, Sector-56, Gurugram (Haryana). The medical history and discharge summary of the son of the petitioner is annexed as Annexure P-2 which shows that he was operated upon in this regard by the doctor of the aforesaid hospital. The date of admission and operation of son of the petitioner in the hospital was 06.12.2019 and he was discharged from the hospital on 07.12.2019. Thereafter, the petitioner raised a total bill amounting to Rs.75,036/- which he paid to the aforesaid hospital on account of aforesaid surgery and other charges. However, the respondent-department sanctioned and disbursed only an amount of Rs.12,988/- out of the aforesaid total bill raised by the petitioner. The claim of the petitioner is that he should be given the entire full medical reimbursement as per the bills which he has actually paid.

3. Learned counsel for the petitioner submitted that son of the petitioner is a mentally challenged person and his disability is to the extent of 50% as per the medical certificate vide Annexure P-1. The son of the petitioner suffered an acute abdominal pain and he was shifted to the aforesaid hospital on 06.12.2019 in an emergency condition and he was operated upon on the same day and was discharged on next day i.e. on

07.12.2019 regarding which the bills and the discharge summary have been

**CWP-19105-2021 (O&M)****3**

attached alongwith the present petition.

4. He further submitted that with regard to the fact that son of the petitioner was admitted in an emergency condition, the relevant emergency certificate issued by the aforesaid hospital has been attached alongwith the present petition as Annexure P-6. Apart from the above, even the aforesaid factum was got verified from the Civil Surgeon, Gurugram and vide Annexure P-7, the Civil Surgeon, Gurugram has also issued a letter to the Executive Engineer of respondent-department, that the son of the petitioner was treated in an emergency condition. He further asserted that, however, the aforesaid full amount has not been disbursed to the petitioner on the ground that there are some Government instructions to state that when an employee or his dependent is admitted in an unapproved hospital even in an emergency condition then the medical reimbursement is to be paid on the basis of the PGI, Chandigarh rates. He further submitted that the aforesaid hospital is an unapproved hospital and that is why he has been granted the medical reimbursement of the amount of Rs.12,988/- on the basis of calculations of PGI, Chandigarh rates. Learned counsel further submitted that when the son of the petitioner who is mentally challenged person suffered acute abdominal pain due to a stone in his gall bladder, the petitioner had no option but to take him to the hospital where such facility was available without even thinking that as to whether the aforesaid hospital was an approved hospital or not because the focus of the petitioner at that point of time in the state of emergency was only on saving the life of his son without even considering the consequences as to whether he will be given full medical reimbursement, partial reimbursement or even no reimbursement. Learned counsel further

submitted that the day on which the son of the petitioner was admitted i.e. on

**CWP-19105-2021 (O&M)****4**

06.12.2019 he was operated upon regarding which there is no denial by the respondent-department nor it has been denied that the son of the petitioner was not shifted to the hospital in an emergency condition particularly in view of the certificate given by the Civil Surgeon that son of the petitioner was admitted in an emergency condition. He further contended that his basic rights under Article 21 of the Constitution of India have been violated in view of the application of the aforesaid action of the respondents and therefore he is entitled to full reimbursement of the medical expenses incurred by him during the treatment of his son.

5. On the other hand, learned counsel for respondent-department submitted that the son of the petitioner was undoubtedly admitted in an unapproved hospital and was operated upon for Gall Bladder stone and it is not disputed by the respondents that the son of the petitioner was shifted to the hospital in an emergency condition in view of the certificate issued by the hospital and also by Civil Surgeon, Gurugram. He, however, submitted that the petitioner is not entitled for full medical reimbursement in view of the instructions issued by the Government of Haryana vide Annexure R-1 and while referring to the aforesaid Annexure R-1, it has been so clearly provided in Clause No.4 (a) that *'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 Administrative Department'* and since son of the petitioner was taken to the hospital in an emergency and to an unapproved hospital, the petitioner was entitled for reimbursement only to the limited extent of the aforesaid PGI rates instead of full medical reimbursement and therefore the amount which has been given to the

petitioner is in accordance with the policy of the Government.



6. I have heard learned counsels for the parties.

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 **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.”

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

**CWP-19105-2021 (O&M)****8**

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.

(JASGURPREET SINGH PURI)
JUDGE

08.07.2024*shweta*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No