IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

251 CWP-12003-2018 (O&M)
Date of decision: 09.04.2024

Ram Singh ...Petitioner

Versus

State of Punjab and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Ms. Jasneet Kaur, Advocate for the petitioner

Mr. Swapan Shorey, DAG Punjab

Mr. Ankit Kumar, Advocate for respondent No.2

Mr. Ram Avtar, Advocate for respondent Nos.3 and 4

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AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present petition is for setting aside the order dated 13.11.2017 passed by respondent No.2, Annexure P-8, vide which reimbursement of Rs.6.77 lacs of medical expenses incurred by the petitioner for the treatment of his wife has been denied.

2. Learned counsel submits that the wife of the petitioner, who had retired from the post of Excise & Taxation Inspector, had to undergo Liver transplant and the said treatment was not available in the State of Punjab including PGIMER, Chandigarh, thus, she was referred to Medanta Hospital, Gurugram on 25.04.2016, Annexure P-5. It took place in the month of May, 2016, for which the medical expenses incurred were Rs.9,87,603/-, however only Rs.3,10,919/- have been reimbursed by respondent No.3 i.e. Oriental Insurance Company Ltd. A reference is made to para 6.A. of the Punjab Government Employees and Pensioners Health Insurance Scheme, Annexure P-2, to submit that in an event buffer sum insured of Rs.25 crores gets completely exhausted, the cashless

reimbursement of more than Rs.3 lacs will not be available to any employee/pensioner, as also the over and above expenses shall be met by the State Government. Chronic disease certificate is appended as Annexure P-4. Reliance is placed on the judgments passed in the case of **Hari Chand vs. State of Punjab and Others**, CWP-5714-2014, decided on 06.01.2016 **S. Marimuthu vs. Government of Tamil Nadu**, 2019 SCC OnLine Mad 1761, **Baljeet Singh vs. State of Punjab and Others**, CWP-14146-2018, decided on 18.03.2024 and **Shiva Kant Jha vs. Union of India**, (2018) 16 SCC 187.

3. This Court in **Hari Chand** (supra), had directed the State to pay the balance amount of half the medical reimbursement to the petitioner therein for operation undergone in a private hospital due to its unavailability in Government hospitals, relevant paras whereof read thus:

> "7. Claims for medical reimbursement are processed under the Punjab Services (Medical Attendance) Rules, 1940 (the "rules") which right is available to both Punjab Government employees and its pensioners. Treatment in hospitals other than in Government hospitals have been recognized by the rules. The rules clarify that treatment taken from a private hospital would be subject to the condition that an undertaking would be given by the employee/pensioner for reimbursement to be claimed as per rates fixed by the Director Health and Family Welfare, Punjab and as per the advise issued by the technical committee constituted by the Director Health to finalize the admissible rates. An ex post facto sanction of the amount paid is all that the Government can grant to the petitioner for treatment. This is the sum total of the defence in the counter-affidavit dated July 21, 2014.
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> 9. Dr. Bhagmal has not been able to lay his finger on any rule to the contrary which would oust the rights of the petitioner under the 1940 Rules, which are the governing law on medical reimbursement in the State of Punjab. Doubts, if any, have been dispelled by the Supreme Court in State of Punjab vs. Ram Lubhaya Bagga, (1998) 4 SCC 117. The Supreme Court considered the issue of medical reimbursement falling in Articles 21 & 47 of the

Constitution of India. The Supreme Court considered the Punjab policy dated February 13, 1995 and recognized the right of the State to change its policy from time to time under changing circumstances. The Court held that the policy was not open to challenge; the financial aspect is a relevant consideration, every fundamental right is to be construed within permissible reasonable restrictions; if certain expenses are excluded in the policy, then a claim would not lie for reimbursement of expenses incurred in private hospitals. The Supreme Court recognized the right of Bagga for full medical reimbursement incurred in undergoing heart surgery at Escorts Hospital, New Delhi at the rates prescribed by AIIMS but not the full expenditure incurred at Escorts. On point of fact, the treatment undergone by Bagga was available at AIIMS, New Delhi but the patient could not be taken to AIIMS as there was a strike and hospital facilities were not available. That is how Bagga took the emergency treatment at Escorts to save his life. The relevant passage which is of moment in the present case is in para.33 of the judgment. Para.33 reads as follows:-

> "33. So far as the appeal arising out of SLP(C) No. 11968/97 is concerned, we find that the respondent had the heart attack on 9th February, 1995 and was advised to go to Delhi on 18th February, 1995 but on account of long strike in the All India Institute of Medical Sciences (AIIMS) he was admitted in the Escorts. On those facts we are not inclined to interfere. The respondent has been paid at the admissible are the in AIIMS but claims the difference between what is paid and what is admissible rate at Escorts. Looking to the facts and circumstances of this case, we hold that the respondent in SLP (C) No. 11968/97 is entitled to be paid the difference amount of what is paid and what is the rate admissible in Escorts then. The same should be paid within one month from today. We make it clear reimbursement to the respondents as approved by us be not treated as precedent but has been given on the facts and circumstances of these cases."
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11. The question presently arising is that Live Liver Transplant facility was not available at AIIMS, New Delhi when the treatment was taken. If it is not available at AIIMS, New Delhi then the policy dated February 13, 1995 has to be read clearly in favour of the petitioner to bring his entire

> balance claim to his pocket since there is no fixed point of assessment incurred towards medical expenses. Therefore, the treatment at Indraprastha Apollo Hospital, New Delhi was in the nature of a medical emergency and the expense package in the final bill lies no matter what in the province of life and death. In other words, the situation arising was do or die, take it or leave it. The choice between the two poles can be easily imagined and needs no forensic reasoning. There is also no bar contained in the 1940 Rules or in the instructions issued from time to time, including the one under consideration, which could result in disallowing the claim altogether. It is, therefore, not open to the State to penny-pinch and decline the request for the remaining half of the expenses incurred in the treatment which was not available in Punjab or at premier medical institute at AIIMS, New Delhi. This was a Hobson's choice.
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> 12. I would, therefore, allow the petition and partly set aside the order dated April 26, 2013 and direct the State to pay the balance amount to the petitioner within three months from the date of receipt of certified copy of this order. The request for interest on delayed payment is declined in view of the law in Om Prakash Gargi v. State of Punjab, (1996) 11 SCC 399 since the grant of which has been held by the Supreme Court on amounts of medical reimburesement to be neither expedient nor proper exercise of jurisdiction."

4. Hon'ble the Supreme Court emphasized in **S. Marimuthu** (supra) that despite the contractual arrangement between the government and the insurance company, the obligation to provide medical assistance to employees and pensioners remains paramount. Even if the insurance company disclaims liability based on contract terms, the government cannot evade responsibility, as has been reiterated in numerous judicial precedents. The relevant paras of the judgment read thus:

> "41. In all those decisions, the Courts have taken a consistent view that, though there has been a contract between the Government and the Insurance Company, it is a bilateral contract or if at all any third party administrator is introduced, it is tripartite contract, wherein the employee or pensioner is not a party. The Government while introducing the scheme has made it compulsory that, every employee or pensioner shall join in the scheme by paying the subscription. Initially the

> subscription was Rs. 150/- or Rs. 180/- and now it has been raised to Rs. 350/- per month. However the maximum claimable medical assistance is only Rs. 4 lakhs for the whole block period of four years, except in few specified cases where it is Rs. 7.5 lakhs.
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> 42. If at all the Insurance Company is not liable to reimburse the claim made by the employees or pensioners by citing the reason that, as per the agreed terms or terms of contract between the Government and the Insurance Company, these claims cannot be entertained or accepted for reimbursement by the Insurance Company, even then, the liability of the Government cannot be washed away as this has been repeatedly held by number of decisions of various Division Benches of this Court as well as the Hon'ble Supreme Court in the decision in Shiva Kant Jha v. Union of India reported in (2018) 5 MLJ 317 (SC).
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> 44. Therefore, the Government stand is that, if at all any treatment is taken in non network hospital, they are not entitled to claim reimbursement under the Health Insurance Scheme but they can claim it under Medical Attendance Rules. Also it is the stand of the State Government that, if treatment is taken in non network hospital, where there is no emergency, the pensioner or employee is not entitled for reimbursement either under the Health Insurance Scheme or under the Medical Attendance Rules.

5. There is no denying the fact that the treatment undergone by wife of the petitioner was in an emergent situation and not available in State Government Hospitals, in view of which, a reference can be made to **Shiva Kant Jha** (supra), wherein Hon’ble the Supreme Court upheld the right of government employees to medical benefits, underscoring the responsibility of CGHS towards the healthcare needs of the employees, while emphasizing the primacy of treatment decisions by qualified doctors. It directed the CGHS to pay the balance amount to the petitioner, recognizing the necessity of emergency treatment despite non-empanelled hospital use and criticized the denial of reimbursement solely based on hospital inclusion, stressing the importance of actual treatment. The relevant paras thereof read thus:

"17. It is a settled legal position that the government employee during his lifetime 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 specialised 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 CGHS have denied the grant of medical reimbursement in full to the petitioner foreing 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 abovesaid 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 CGHS rates and that too after following a proper procedure given in the circulars issued on time to time by the Ministry concerned, 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.
> 19. In the present view of the matter, we are of the considered opinion that CGHS is responsible for taking care of healthcare needs and well-being of the Central Government employees and pensioners. In the facts and circumstances of the case, we are of the opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent State to pay the balance amount of Rs 4,99,555 to the writ petitioner. We also make it clear that the said decision is confined to this case only."

6. Learned counsel for the respondents despite their best efforts were unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

7. In view of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Hari Chand, S. Marimuthu** and **Shiva Kant Jha** (supra).

(AMAN CHAUDHARY)
JUDGE

09.04.2024
M.Kamra

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