

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

CWP-14070-2023 (O&M)

Date of decision: 06.09.2024

Arun Garg

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Abhishek Sethi, Advocate for the petitioner

Mr. Dushyant Saharan, AAG Haryana

AMAN CHAUDHARY, J.

1. The claim for medical reimbursement having been rejected, has brought the petitioner before this Court challenging the letter/order dated 24.04.2023 passed by respondent No.2.
2. The petitioner, who retired as Medical Officer on 31.07.2005 from the Health Department, was entitled to get medical reimbursement for himself as also his dependents, to which there is no dispute.
3. The surgery of his unmarried daughter Pooja Jain, born on 16.09.1997, having been performed at a non-empanelled hospital-Indraprastha Apollo Hospital, New Delhi on 18.10.2021, taken to be one of the two grounds to reject the claim, is untenable in view of the judgment of Hon'ble the Supreme Court in **Shiva Kant Jha vs. Union of India**¹, wherein it was held that taking treatment in a speciality hospital by itself would not deprive a person to claim reimbursement solely on the ground that the name of the hospital is not included in the government order. Once the treatment was

¹ (2018) 16 SCC 187

supported by medical bills, duly certified by doctors/hospitals, then the reimbursement of the same cannot be denied on technical grounds. It was observed that the real test was the factum of treatment, for which the 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. 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.

4. Insofar as the second premise is concerned, the same also holds no water, inasmuch the Division Bench in **Naunihal Singh vs. Union of India**², where the claim of the petitioner for reimbursement was rejected on a technicality of there being no emergency to get conducted a surgery from a private unrecognized hospital, set aside the same with the observations that, “Once the State is under obligation to look after the most fundamental of rights given to its citizens namely 'Right to Life' then could it fall back upon subterfuges or take shelter under technicalities to defeat right. The answer has to be in the negative.” In the same vein, in **Om Parkash vs. State of Haryana**³, wherein also the Civil Surgeon had not issued the ‘Emergency Certificate’ and surgery had taken place in a non-approved hospital, this Court allowed the petition directing respondents to make reimbursement to the medical bills as per PGIMER, Chandigarh rates, by holding that the nature of emergency should not always be viewed only from the angle of the Government but it should be viewed from the angle of the patient as well. Be that as it may, still in the present case, there was even a recommendation of the

² 2011(1) SCT 811.

³ CWP-251-2014, decided on 15.11.2016.

surgery to be as an 'emergency procedure' by Dr. Aloy Mukherjee, General Surgeon, who was the primary consultant of daughter of the petitioner, in the said hospital where it had to be performed, as was recorded in the discharge summary under the head of history of the patient, alongwith the fact of her having undergone right salpingo oophorectomy on 02.08.2021 for right ovarian carcinoma- Sertoli leydig cell carcinoma and that she had severe metabolic syndrome. A gainful reference can even be made to **V. Mohini vs. State of Haryana**⁴, against which the appeal filed by the State also stands dismissed on 12.08.2014, wherein as per the policy, the reimbursement at PGI rates was permissible in case of treatment from an unapproved hospital, subject to the condition that the same should be certified by the Civil Surgeon to have been taken in an emergency situation, held the claim to be acceptable by observing that if the surgery is not unjustified and, is otherwise medically required then the State should reimburse the same as per PGI/AIIMS rates, for which reliance was placed on a Division Bench judgment of this Court in **Mahipal Singh vs. State of Haryana and others**⁵, observing that the act committed in an emergency should not be weighed in terms of money, especially when human life is at stake. The provision of free medical treatment or reimbursement in lieu thereof being a beneficial act of the welfare State for its employees, the rules/instructions have to be construed liberally in favour of the employees, for granting them the relief. If such regulations are applied so strictly, it would result in a disastrous situation and the patient may die. The authorities are not supposed to adopt a wooden attitude and stick to technicalities while dealing with human problems. There can be no

⁴ CWP-7112-2011, decided on 26.09.2013

⁵ 2008(2) SCT 592.

mathematical precision while dealing with human beings. In a case where the life of a human being is at stake, it is too technical to require such a person to hunt for a list of the approved hospitals and then decide which hospital to go to in an emergency situation. Sometimes such hospitals may not be able to accommodate the patient and at that time the attendant is not expected to first look into the list of approved/recognized hospitals for medical reimbursement and then proceed for treatment. Such procedures should not be expected to be followed in an emergency by the attendant of the patient.

5. Hon'ble the Supreme Court in **State of Punjab vs. Ram Lubhaya Bagga**⁶, observed Article 21 of the Constitution to be one of the most sacred fundamental rights given to a citizen. Since right to life is protected under this Article, hence refusing to pay the amount spent to save one's life amounts to the curtailment of such right, hence violative of Article 21. The right to live does not mean mere survival or animal existence but includes the right to live with human dignity. Pith and substance of life is the health, which is the nucleus of all activities of life including that of an employee or other viz. the physical, social, spiritual or any conceivable human activities. If this is denied, it is said everything crumbles. In **Waryam Singh vs. State of Punjab**⁷, it was held that the State cannot backtrack and deny the benefit of the legislative measure or executive orders passed by it for giving effect to the contents of the Directive Principles of the State Policy, which form part of the right to life enshrined in Article 21 of the Constitution and further held that, "...It is the duty of the State to provide adequate assistance to the people in cases of sickness. Various finer aspects of life would be

⁶ (1998) 4 SCC 117.

⁷ CWP-16570-1995, decided on 12.04.1996

rendered meaningless if one cannot get adequate medical attention. In fact, providing of medical assistance to sick and disabled is an integral part of the obligations of the State to improve public health. Therefore, every provision made by the State legislature or executive for providing medical assistance will be deemed to have their source in Articles 21, 41 and 47 of the Constitution and in appropriate case the citizen will be entitled to enforce such provisions and it will be no answer to such a claim that the provisions of Article 41 and 47 are not enforceable by virtue of Article 37...”

6. The adoption of a mechanical and myopic approach in the present case by the authorities concerned, tends to defeat the very purpose of framing the reimbursement policy as a social welfare measure by the State. Preserving health and providing medical aid, as part of the right to life under Article 21 of the Constitution, is paramount. The well-being of all, including the dependents of retired employees, ought to be safeguarded, particularly in challenging situations involving their dependents.

7. On a conspectus evaluation of the peculiar facts of the case, the impugned order dated 24.04.2023 is hereby set aside. The respondents are directed to reimburse the claim of the petitioner as per the approved rates, within a period of two months.

8. Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

06.09.2024

M.Kamra

Whether speaking/reasoned : Yes

Whether reportable : Yes