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

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**CWP-3524-2016**
**Date of Decision:- 22.07.2024**

Jagan Nath

….Petitioner

Versus

State of Haryana and others

…Respondents.

**CORAM:- HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. Ajit Singh, Advocate with
Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

**NAMIT KUMAR, J. (Oral)**

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking a writ of certiorari, for quashing the action of the respondents, whereby the claim of medical reimbursement of the petitioner has been rejected. Further, writ of mandamus has been sought directing the respondents to release the medical reimbursement to the tune of Rs.3,25,114/- along with interest @ of 12% per annum.

2. Brief facts as stated in the writ petition are that the petitioner is a retired employee and was working as Superintendent with the respondent-department and had superannuated on 30.04.2000. Thereafter, he developed a heart disease and due to that, he got medical treatment from ‘Sir Ganga Ram Hospital, New Delhi’ and remained admitted there from 27.12.2014 to 31.12.2014 and spent an amount of Rs.3,25,114/-. It is further the case of the petitioner that a sum of

Rs.1,25,464/- has been released to the petitioner against the said amount and the remaining amount has not been paid.

3. On issuance of notice of motion, detailed written statement on behalf of respondents No.1 to 3-State has been filed wherein it has been stated that Sir Ganga Ram Hospital, New Delhi was not empanelled hospital with the Haryana Government, where the petitioner has taken treatment, and medical reimbursement bill amounting to Rs.1,25,464/- was paid to the petitioner as per P.G.I., Chandigarh rates, as per the Instructions/Policy and the said Instructions/Policy has been annexed as Annexure R-1. Clause 4 of the said Policy reads as under:-

> *"4. Un-approved 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."*

4. The case was heard by a Coordinate Bench of this Court on 15.10.2019 and the following order was passed :-

> *"Counsel for the petitioner argues that petitioner was entitled for the reimbursement of his medical bills in pursuance to the policy dated 08.07.2005 (Annexure R-1), according to which, if in an emergency case, an employee has got treatment from unapproved hospital, still the reimbursement has to be done equal to the PGI, Chandigarh rates.*
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> *Counsel for the petitioner further argues that only a sum of Rs.1,25,464/- has been reimbursed to the petitioner without giving any details as to how the same has been calculated. Counsel for the petitioner argues that even as per the PGI rates the petitioner will be entitled for more amount than the amount, which has been reimbursed.*
>
> *Learned counsel for the respondents seeks time to file an affidavit giving the details as to how the amount of*

*Rs.1,25,464/- has been calculated before making the reimbursement to the petitioner.*

*Adjourned to 22.03.2020."*

5. In pursuance to the aforesaid order, affidavit of Tilak Raj Gupta, Executive Engineer, Provincial Division No.2 (NH), PWD B&R Br., Jind, on behalf of respondents No.1 to 3, has been filed in the Court along with calculation, which is taken on record. Copy thereof has been supplied to learned counsel for the petitioner. In the affidavit dated 13.03.2024 filed on behalf of the respondents No.1 to 3, it has been stated as under:-

*"xx xx xx xx xx*

*3. That it is admitted fact that the petitioner has taken treatment in emergency from 27.12.2014 to 31.12.2014 at Sir Ganga Ram Hospital, New Delhi. During this period, Sir Ganga Ram Hospital, New Delhi was not empanelled Hospital of the Haryana Government. The reimbursement of the medical claim has been calculated in terms of the Government Policy dated 06.05.2005 (Annexure R-1) wherein under para 4, it has been clearly mentioned that the reimbursement for the treatment taken in emergency in an unapproved hospital will be allowed equal to PGI Chandigarh rates with the approval of the Finance Department.*

*4. That the petitioner has been reimbursed equal to PGI Chandigarh rates to the tune of Rs.1,25,464/- by considering the Sir Ganga Ram Hospital, New Delhi as an unapproved Hospital as on 27/12/2014 to 31/12/2014. The calculation sheet of the amount reimbursed to the petitioner is attached herewith as Annexure R-5".*

6. Since the hospital where petitioner has taken the treatment was not empanelled hospital with the Haryana Government, therefore, in terms of Clause 4 of the Instruction/Policy, the petitioner has rightly been paid the medical reimbursement to the tune of Rs.1,25,464/-.

7. The Hon'ble Apex Court in case of ***State of Punjab and others Vs. Ram Lubhaya Bagga and others : 1998 (4) SCC 117,***

while considering the similar policy of the State of Punjab, has held as under:-

> *"xx xx xx xx xx*
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> *18. The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be. Let us now examine this new policy. Learned senior counsel for the appellants submits that the new policy is more liberal inasmuch as it gives freedom of choice to every employee to undertake treatment in any private hospital of his own choice anywhere in the country. The only clog is that the reimbursement would be to the level of expenditure as per rates which are fixed by the Director, Health and Family Welfare, Punjab for a similar package treatment or actual expenditure whichever is less. Such rate for a particular treatment will be included in the advice issued by the District/State Medical Board for fixing this. Under the said policy a Committee of Technical Experts is constituted by the Director to finalise the rates of various treatment packages and such rate list shall be made available to the offices of the Civil Surgeons of the State. Under this new policy, it is clear that none has to wait in a queue. One can avail and go to any private hospital anywhere in India. Hence the objection that, even under the new policy in emergency one has to wait in a queue as argued in Surjit Singh case (supra) does not hold good.*
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> *19. In this regard Mr. Sodhi appearing for the State of Punjab has specifically stated that as per the Director's decision under the new policy, the present rate admissible to any employee is the same as prevalent in AIIMS. It is also submitted, under the new policy in case of emergency if prior approval for treatment in the private hospital is not obtained, the ex-post-facto sanction can be obtained later from the concerned Board or authority for such medical reimbursement. After due consideration we find these to be reasonable.*
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> *20. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned, in our view it is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or*

*equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.*

*21. When we speak about a right, it correlates to a duty upon another, individual, employer, Government or authority. In other words, the right of one is an obligation of another. Hence theright of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47; it is for the State to secure health to its citizen as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep, maintenance and cleanliness has to be beyond aspersion. To employ best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical medicoethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform this obligation with top priority including by way allocation of sufficient funds. This in turn will not only secure the right of its citizens to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right, finances are an inherent requirement. Harnessing such resources needs top priority.*

*Coming back to test the claim of respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of Article 21. Under the new policy, medical*

*facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are;*

> *".... to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less."*

*22. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by Committee of technical experts.*

> *"The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalise the roles of various treatment packages."*

*23. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.*

*24. In* ***Vincent v. Union of India, AIR 1987 Supreme Court 990****:*

> *"In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.... In a serious of pronouncements, during the recent years this court has culled out from the provisions of Part-IV of the Constitution, the several obligations of the State and called upon it to effectuate them in order that the resultant picture by the Constitution fathers may become a reality."*

*26. Any State endeavour for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subjects requires finances. Article 41 of the Constitution gives recognition to this aspect. 'Article 41 : Right to work, to educate and to public assistance in certain cases : The*

> *State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want.'*
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> *31. In the Civil Appeals arising out of SLP(C) Nos. 13167/97 and 12418/97, the surgery at Escorts was after the introduction of the new policy and therefore the extent of medical reimbursement can be only according to the rates prescribed by AIIMS. However, the respondents therein are not entitled to the full expenditure that was incurred at Escorts. We, therefore, allow the appeals in part and direct that the respondents are entitled to reimburse only at AIIMS rate. The appellant will therefore reimburse the respondents to the extent within one month from today."*

8. In view of the above, the petitioner is held not entitled for the remaining amount. Consequently, the present writ petition is dismissed.

**22.07.2024** **(NAMIT KUMAR)**
*sd/kothiyal* **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No