

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-14146-2018
Date of decision : 18.03.2024

Baljeet Singh ...Petitioner

Versus

State of Punjab and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. H.K. Aurora, Advocate for the petitioner.

Mr. Arun Gupta, D.A.G. Punjab

AMAN CHAUDHARY, J.

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India, is for directing the respondents to sanction and make full medical reimbursement of the expenses incurred by the petitioner for his liver transplant.

2. Learned counsel would submit that the petitioner was in a life and death situation when he was admitted to Medanta Medicity Hospital, Gurugram on 08.10.2017 for the treatment of Cryptogenic Chronic Liver Disease, a type of Cancer, as he had to undergo liver transplant. The petitioner was discharged from hospital on 23.10.2017 and a total sum of Rs.21,17,513/- was incurred towards treatment. This treatment was neither available in AIIMS, Delhi nor in any Government Hospital in the State of Punjab. All documents including copy of Essentiality Certificate dated 25.10.2017 (Annexure P-2 and P-3) were submitted by him to the respondent-Department. He places reliance on a judgment of this

Court passed in CWP-5714-2016 titled as **Hari Chand vs. State of Punjab and**

others, decided on 06.01.2016 (Annexure P-8) on similar facts and circumstances as that of the present case, which was subsequently followed in CWP-20662-2016 titled as **Jagwant Kumar Sharma vs. State of Punjab and others**, decided on 20.12.2017, Annexure P-7. The relevant para of **Hari Chand** (supra) 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 rate 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.

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 reimbursement to be

neither expedient nor proper exercise of jurisdiction.”

3. Learned State counsel was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
4. In view of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Hari Chand** (supra).

(AMAN CHAUDHARY)
JUDGE

18.03.2024
G Arora

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No