



2024:DHC:958



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 6834/2023**

NISHU JAIN

..... Petitioner

Through: Mr. Sunil Dalal, Sr. Advocate with
Mr. Harsh Khanna, Mr. Vivek Jain,
Mr. Mahabir Singh, Mr. Nikhil
Beniwal, Ms. Manisha Saroha, Ms.
Aastha Tiwari, Ms. Tulasi Mukhi and
Mr. Navish Bhati, Advs.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for a direction to the Respondents to release the compensation for which the Petitioner is entitled to under the Mukhyamantri Covid-19 Pariwar Aarthik Sahayata Yojana (*in short* 'MCPASY').
2. Material on record discloses that the husband of the Petitioner, Vikash Jain, contracted fever on 19.04.2021. It is stated that he tested negative in the RT PCR test. However, since there was no improvement in his fever, he underwent a CT scan of the chest on 22.04.2021 and his CTSS was 10/25.
3. It is stated that since the husband of the Petitioner had breathing difficulty, on 25.04.2021 he was admitted in the Sardar Patel COVID Care Centre (SPCC) at Radha Soami Satsang Beas, Chhatarpur, Delhi and was



discharged at midnight on 26.04.2021. On 27.04.2021, he was admitted to the Pulse Hospital, Kotputli and was then taken to Eternal Hospital, Jaipur on 28.04.2021. It is stated that he tested positive for COVID-19 on 28.04.2021. He also underwent a second CT Scan of the chest and his CTSS was 25/25. It is stated that the husband of the Petitioner was admitted to Eternal Hospital, Jaipur on 28.04.2021 and he never recovered completely and passed away in the hospital on 19.06.2021.

4. It is stated that the Petitioner herein applied for grant of compensation under MCPASY scheme. The scheme provides for *ex-gratia* payment of Rs.50,000/- to the family of the deceased. Since the case of the Petitioner was not considered, the Petitioner has approached this Court by filing the instant writ petition.

5. A counter affidavit has been filed by Respondent No.3/SDM. The counter affidavit indicates that as per the death summary of the husband of the Petitioner, the cause of death was cardiac arrest. It is stated that as per the notification for grant of ex-gratia payment under the MCPASY Scheme, either the deceased's name should be in the list of COVID-19 death cases (MHA) or the death should be within one month of an RT PCR positive report which is to be certified by the Health Department.

6. It is stated that since the husband of the Petitioner was found positive on 28.04.2021 and his date of death 19.06.2021, *i.e.*, beyond a period of one month, the Petitioner would not be entitled to the benefit of the MCPASY Scheme. The husband of the Petitioner was first tested negative on 19.04.2021 and then positive on 28.04.2021 and then finally negative on 06.05.2021, and, therefore, the Petitioner is not entitled to the scheme.

7. Mr. Sunil Dalal, learned Senior Counsel for the Petitioner, draws the attention to the death summary report issued by the Eternal Hospital and



states that the husband of the Petitioner was admitted to hospital 25.04.2021 and he was never discharged from the hospital as he was suffering from the after effects of the COVID-19 and passed away in the hospital itself and the cause of death in the death summary has been shown as a consequence of COVID-19 because the husband of the Petitioner had contracted COVID-19 virus.

8. Learned Senior Counsel for the Petitioner also draws the attention of this Court to a Circular dated 25.09.2021 issued by the Ministry of Home Affairs. Further, he draws the attention of this Court to the guidelines issued by the Government of India, Ministry of Health & Family Welfare and Indian Council of Medical Research which states, that in a COVID-19 case while admitting in the hospital (in patient facility), a patient who continued beyond 30 days and dies subsequently shall be treated as a COVID-19 death. He further points out to a Judgment dated 04.10.2021 passed by the Apex Court in Misc. Application No. 1120/2021 in **W.P.(C) 539/2021**, Gaurav Kumar Bansal v. Union of India & Ors., wherein the Apex Court had directed that, in a COVID-19 case, when admitted in hospital (in patient facility) and who continued for 30 days would be treated as a COVID-19 death.

9. *Per contra*, Mr. Satyakam, learned Counsel for GNCTD, states that the cause of death is cardiac arrest. He also states that the husband of the Petitioner passed away on 19.06.2021, *i.e.*, beyond a period of one month from positive RT PCR report. He also states that the name of her husband does not figure in the list of deaths occurred due to COVID-19 as submitted and, therefore, the Petitioner herein is not entitled to the ex-gratia payment.

10. Heard learned Counsel for the parties and perused the material on record.



11. A perusal of the death summary issued by the Eternal Hospital discloses that the husband of the Petitioner had contracted COVID-19 and was admitted into the hospital and remained admitted till his death, i.e., 19.06.2021. The death summary categorically points out that the Petitioner had contracted COVID-19, and suffered after effects of COVID-19, never improved and ultimately passed away on 19.06.2021. Just because the ultimate cause of death is shown to be cardiac arrest does not mean that the husband of the Petitioner did not pass away due to the complications arising out of COVID-19.

12. The Apex Court while issuing directions regarding grant of ex-gratia assistance to the kith and kin of the persons who passed away due to COVID-19 in its Judgment dated 04.10.2021 in Misc. Application No. 1120/2021 in **W.P.(C) 539/2021, Gaurav Kumar Bansal v. Union of India & Ors.**, has observed as under:-

"11. Now so far as the directions contained in para 16(2) of our earlier order dated 30.06.2021 for issuance of the death certificates/official document stating the exact cause of death, i.e., "died due to Covid-19" to the family members of the deceased who died due to Covid-19 is concerned, considering the additional affidavit filed on behalf of the Union of India dated 8.9.2021 and the subsequent clarification in the additional affidavit dated 22.09.2021 and the guidelines dated 3.9.2021, in furtherance of our earlier order dated 30.06.2021, it is further directed as under:

i) Covid-19 cases, for the purpose of considering the deaths of the deceased due to Covid-19, are those which are diagnosed through a positive RT-PCR/Molecular Tests/RAT or clinically determined through investigations in a hospital/in-patient facility by a treating physician, while admitted in the hospital/in-patient facility;



ii) that the deaths occurring within 30 days from the date of testing or from the date of being clinically determined as a Covid-19 case shall be treated as "Deaths due to Covid-19", even if the death takes place outside the hospital/in-patient facility;

iii) also, the Covid-19 case while admitted in the hospital/in-patient facility and who continued to be admitted beyond 30 days and died subsequently shall also be treated as a Covid-19 death;

iv) Covid-19 cases which are not resolved and have died either in the hospital settings or at home, and where a Medical Certificate of Cause of Death (MCCD) in Form 4 & 4A has been issued to the registering authority, as required under Section 10 of the Registration of Birth & Death (RBD) Act, 1969, shall also be treated as Covid-19 death. However, it is observed and made clear that irrespective of the cause of death mentioned in the death certificate, if a family member satisfies the eligibility criteria mentioned in paragraphs 11(i) to 11 (iv) as above shall also be entitled to the ex-gratia payment of Rs. 50,000/- on production of requisite documents as observed hereinabove, and no State shall deny the ex-gratia payment of Rs. 50,000/- on the ground that in the death certificate the cause of death is not mentioned as "Died due to Covid-19";

v) all concerned hospitals where the patient was admitted and given treatment shall provide all the necessary documents of treatment etc. to the family member of the deceased, as and when demanded, and if any hospital and/or the place where the deceased had taken treatment refuses to furnish such documents, it will be open for the Grievance Redressal Committee to call for such information and the concerned hospital/institution where the deceased was admitted shall have to furnish such particulars as required for



the purpose of establishing that the death was due to Covid-19;

vi) a family member of the deceased who committed suicide within 30 days from being diagnosed as Covid-19 positive shall also be entitled to avail the financial help/ex-gratia assistance of Rs. 50,000/- as granted under the SDRF in accordance with the guidelines dated 11.09.2021 issued by the NOMA under Section 12(iii) of DMA, 2005, as directed hereinabove;

vii) if any family member/kin of the deceased died due to Covid-19 has any grievance with respect to non-receipt of the ex-gratia payment of Rs. 50,000/-, it will be open for the aggrieved claimant to approach the Grievance Redressal Committee constituted as observed hereinabove, and the Grievance Redressal Committee shall examine the contemporaneous medical record of the deceased patient, and take a decision within a period of 30 days from approaching the said Grievance Redressal Committee and as observed hereinabove such Grievance Redressal Committee shall have powers to call for the details/documents from the concerned hospital/hospitals from where the deceased took the treatment;

viii) all endeavours shall be made by the District-Disaster Management Authority/District Administration and even the Grievance Redressal Committee to avoid any technicalities and all concerned authority shall act as a helping hand, so as to wipe off the tears of those who have suffered due to loss of a family member died due to Covid-19;

ix) it is further directed that in cases of the death certifications already issued and any family member of the deceased is aggrieved by the cause of death mentioned in the death certificate already issued, it will be open for the aggrieved person to move the



appropriate authority who issued the death certificate and/or registering authority and on production of the necessary documents as observed hereinabove, including production of documents, such as, positive RT-PCR/ Molecular Tests/ RAT OR clinically determined through investigations in a hospital/ in-patient' facility by a treating physician, while admitted in the hospital/ in-patient facility, the concerned authority shall modify/amend such death certificates. If the person is still aggrieved, it will be open for the aggrieved person to approach the Grievance Redressal Committee constituted as hereinabove and the concerned registering authority shall ratify/amend the death certificate as directed by the Grievance Redressal Committee." (emphasis supplied)

13. The Government of India through Ministry of Health & Family Welfare and Indian Council of Medical Research has also issued guidelines as an official document for COVID-19 death in compliance of the Judgment dated 30.06.2021 passed by the Apex Court in **W.P.(C) No.539/2021, Gaurav Kumar Bansal v. Union of India & Ors.** Paragraph 3 of the said guidelines reads as under:-

"3. Scenario based approach and Interventions

i. COVID-19 cases which are not resolved and have died either in hospital settings or at home, and where a Medical Certificate of Cause of Death (MCCD) in form 4 & 4 A has been issued to the registering authority, as required under Section 10 of the Registration of Birth and Death (RBD) Act, 1969, will be treated as a COVID-19 death. Registrar General of India (RGI) will issue necessary guidelines to Chief Registrars of all States/UTs.

ii. As per the study by Indian Council of Medical



Research (ICMR), 95% deaths take place within 25 days of being tested Covid positive. To make the scope broader and more inclusive, deaths occurring within 30 days from the date of testing or from the date of being clinically determined as a COVID-19 case, will be treated as 'deaths due to COVID-19', even if the death takes place outside the hospital/ in-patient facility.

iii. However, a COVID-19 case, while admitted in the hospital/in-patient facility, and who continued as the same admission beyond 30 days, and died subsequently, shall be treated as a COVID-19 death.

iv. In cases where the MCCD is not available or the next of kin of the deceased is not satisfied with the cause of death given in MCCD (Form 4/4A), and which are not covered by the aforesaid scenarios, the States/ UTs shall notify a Committee at district level consisting of Additional District Collector, Chief Medical Officer of Health (CMOH), Additional CMOH/ Principal or HOD Medicine of a Medical College (if one exists in the district) and a subject expert, for issuance of the Official Document for COVID-19 Death. The Committee will follow the procedure outlined below:

a. The next of kin of the deceased shall submit a petition to the District Collector for issuance of the appropriate Official Document for COVID-19 Death.

b. The Official Document for COVID-19 Death will be issued In the format annexed to these Guidelines by the aforesaid district-level Committee after due examination and verification of all facts.

c. The Official Document for COVID-19 Death shall also be communicated to Chief Registrars of States/UTs and Registrar of Birth and Death, who issued the death certificate.



d. The Committee shall also examine the grievances of the next of kin of the deceased, and propose necessary remedial measures, including issuance of amended Official Document for COVID-19 Death after verifying facts in accordance with these guidelines.

e. The applications for Issuance of Official .Document for COVID-19 Death and for redressal of grievances shall be disposed off within 30 days of submission of the application/grievance. " (emphasis supplied)

14. The facts of the present case clearly show that the husband of the Petitioner herein had contracted COVID-19 and was admitted in the hospital on 25.04.2021 and his health condition did not improve thereafter and he passed away after two months in the hospital itself only due to COVID-19 complications, a fact which is evident from the medical certificate of the cause of death issued by the hospital.

15. Resultantly, Respondent No.3 is directed to release the sum of ex-gratia payment under the MCPASY Scheme to the Petitioner herein forthwith within a period of two weeks from today.

16. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2024

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