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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment reserved on: 02.07.2024**Judgment pronounced on: 08.07.2024***+ W.P.(C) 15460/2023****SMT JAGIR KAUR****..... Petitioner**

Through: Mr. Sanjeev Goyal, Mr. Rajesh Gupta, Ms. Ritu Gupta, Ms. Komal Sharma, Ms. Rekha Goswami and Ms. Raghni Srivastava, Advocates

versus**UNION OF INDIA & ANR.****.... Respondents**

Through: Ms. Ritu Reniwal, Senior Panel Counsel with Mr. Mahendra Kumawat, Advocate and Ms. Deepa Malik, GP

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:**

1. By way of this writ petition brought under Articles 226 and 227 of the Constitution of India, the petitioner has assailed order dated 05.07.2023 passed by the learned Principal Bench, Central Administrative Tribunal in OA No. 592/2022 and has sought directions to the respondents to reimburse the amount of Rs.4,80,879.15 *paise* towards balance amount against medical bill dated 07.07.2020.

1A. On issuance of notice, respondents entered appearance through counsel. We heard learned counsel for both sides.



2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 Late Sh. Pritam Singh, husband of the petitioner, was Central Government employee and retired on 31.03.1989 as Superintendent from CPWD. Being an employee of the Central Government, Sh. Pritam Singh was beneficiary of Central Government Health Scheme (CGHS).

2.2 On 06.06.2020, Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency and was diagnosed with Covid-19. On 10.06.2020, following an episode of desaturation, he had to be shifted to the Intensive Care Unit (ICU) where his health was managed with supplement of oxygen and nebulisation. On 11.06.2020, he was shifted back to the ward but on 18.06.2020 he had to be again shifted to ICU as his condition deteriorated. On 05.07.2020, his condition further deteriorated so he had to be electively intubated and was shifted to ventilator. On the morning of 07.07.2020, he passed away in the hospital itself.

2.3 Towards cost of Covid treatment of Sh. Pritam Singh, the hospital raised bills dated 07.07.2020 for a sum of Rs.10,06,730.15 *paise*, which was entirely paid by the petitioner from her and other family members' savings.

2.4 Since, during his lifetime, Sh. Pritam Singh was a CGHS beneficiary, the petitioner submitted those medical bills of Rs. 10,06,730.15 *paise* for reimbursement, but by way of Sanction Order dated 27.01.2021, the



respondent no.2 directed only part reimbursement to the tune of Rs.5,25,854/-. As such, son of petitioner made a representation through email dated 02.09.2020 for reimbursement of the entire medical claim, but the respondents failed to respond, so the petitioner preferred the Original Application before the learned Tribunal.

2.5 Before the learned Tribunal, the respondents filed a counter-affidavit, pleading that claim of the petitioner had to be rejected on the basis of Circular dated 10.07.2020, issued by the Director, CGHS on the basis of directions dated 20.06.2020 issued by the Disaster Management Authorities to the hospitals in general *qua* capping of the expenses to certain fixed rates. However, according to the petitioner, the said circular was applicable prospectively, so not applicable to the claim of the petitioner as her husband had passed away prior to issuance of the same. By way of the impugned order, the learned Tribunal dismissed the Original Application of the petitioner, mainly on the ground that if the law laid down in the judicial precedents flowing from this court was applied pertaining to the medical treatment taken from non empanelled private hospitals, it would create a burden on the exchequer. Hence, the present petition.

3. During arguments, learned counsel for petitioner submitted that since late Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency, even though the said hospital is not on the panel of CGHS, the petitioner cannot be denied full reimbursement of the money paid by her towards his medical bills. In support of his arguments, learned counsel for petitioner placed reliance on the judgments in the cases titled ***Shiva Kant***



Jha vs Union of India, (2018) 16 SCC 187; ***Union of India & Anr. vs Joginder Singh***, 2023 SCC OnLine Del 2707 and ***Dinesh Kumar vs Government of National Capital Territory of Delhi***, 2022 SCC OnLine Del 3937.

3A. On the other hand, learned counsel for respondents supported the impugned order and contended that the writ petition is devoid of merits. Learned counsel for respondents argued that since the Indraprastha Apollo Hospital is admittedly not on the panel of CGHS, the petitioner could be allowed reimbursement only to the limited extent of rates specified for empanelled hospitals.

4. In the impugned order, the learned Tribunal took a view that the judicial precedents quoted above were “*judgments in person and not judgments in rem*” and if ratio of those judgments is applied to all cases, thereby directing full reimbursement of medical bills raised by non empanelled private hospitals, it would create a situation where significant amount of money from government exchequer would be claimed by the private hospitals by over-invoicing. The learned Tribunal also took a view that the Technical Standing Committee had recommended reimbursement of medical bills as per the limitations contained in OM dated 20.06.2020 of the Ministry of Health and Family Welfare and that the earlier OM dated 06.06.2018 cannot be completely ignored, especially because the latter was issued in compliance with the directions of the Supreme Court in the case of ***Shiva Kant Jha*** (supra).



5. Having examined the said OM dated 20.06.2020 (*pdf page no.213 of the paperbook*), we are of the considered view that the same cannot be a ground to deny relief to the petitioner. For, the said OM dated 20.06.2020 was directed towards the hospitals; and there is nothing on record to show that the petitioner was aware of the same, so as to give her an opportunity of informed choice of the hospital, which in any case was not possible during those grave circumstances across the world. If the respondents suspect that the subject medical bills raised by the Indraprastha Apollo Hospital are inflated ones, nothing prevents them from initiating appropriate legal proceedings against the hospital, instead of depriving the petitioner a full reimbursement, especially it not being their case that the petitioner colluded with the hospital to obtain an inflated bill.

6. The provision under Article 21 of the Constitution of India ensures health and timely medical treatment being necessary components of the fundamental right to life, and the same cannot be negated or even diluted on the basis of bald suspicion of the State that the non empanelled hospitals would unjustly enrich themselves even in such dire situations of the pandemic. Right to health being an integral part of right to life, it was the bounden duty of the State to ensure best possible medical treatment, at least for survival of its Subjects through government medical facilities. And that having collapsed, now the State cannot turn around to reject the medical claims on the ground that the medical treatment was availed from a non empanelled hospital.

7. One cannot dispute the peculiar circumstances that were created



during Covid pandemic worldwide, in which on account of extreme scarcity of medical beds and collapse of infrastructure, number of lives were lost. During Covid, the unprecedented calamity across the world, hospitals and clinics were inundated with patients, far exceeding their capacity with extensive strain on the intensive care units and emergency rooms. There was acute shortage of medical oxygen, so the demand skyrocketed. The pandemic exacerbated economic inequalities, whereby the economically disadvantaged met with extreme difficulty to access the necessary medical care. That crisis underscored the need for comprehensive reforms in the healthcare sector across the world and especially in our country writhing under severe resource crunch. In such frantic and forlorn scenario the priority above financial implications was to save lives of kith and kin, so one could not be expected to wait for a bed and/or oxygen etc. in CGHS panelled hospital. The Covid patients were being shifted wherever the medical beds, oxygen, ICU and ventilators were available across the country. Priority, as aforesaid was to save life.

8. The only test in such extraordinary situations must be as to whether the medical treatment was actually availed of. Once the answer is in affirmative, the reimbursement must be full while dealing with such cases pertaining to Covid pandemic. In the present case, it is not at all in dispute that late Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency, where he was diagnosed with Covid and in the course of medical treatment, shuttling between the Ward and the ICU, he passed away while being on ventilator support. That should be a close of the chapter so far as reimbursement claim of petitioner is concerned.



9. We find the guiding light extended by the Hon'ble Supreme Court in the case of **Shiva Kant Jha** (supra) as follows:

*“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 forcing 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 ”

(emphasis supplied)

10. In view of the above discussion, we are unable to uphold the impugned order, so the same is set aside and consequently the present petition is allowed, thereby directing the respondents to reimburse to the petitioner the entire remaining amount of Rs.4,80,879.15 *paise* with interest thereon at the rate of 4.5% per annum for the period from the due date till payment of the same within a period of four weeks from date of this order.

GIRISH KATHPALIA
(JUDGE)

SURESH KUMAR KAIT
(JUDGE)

JULY 08, 2024/ry