



2024:DHC:4119-DE



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:-20.05.2024.

+ W.P.(C) 10565/2017
NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms. Namrata Mukim, SC for MCD.
Versus
SUDHA SHARMA Respondent
Through: Mr. Ankur Chhibber, Mr. Yogesh
Kumar Mahur, Mr. Harkesh Parashar, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J(ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 17.07.2017 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 850/2017. Vide the impugned order, the learned Tribunal has allowed the Original Application (O.A.) filed by the respondent and directed the petitioner to process the claim of the respondent for reimbursement of expenses incurred by her husband in undergoing bariatric surgery at Shri Balaji Action Medical Institute A4, Paschim Vihar, New Delhi-110063 (hereinafter referred to as "Balaji Hospital").
2. The brief factual matrix as necessary for adjudication of the present petition may be noted at the outset.
3. The respondent, who is working as a staff nurse with the petitioner, on 14.01.2016 approached the OPD clinic being run by the erstwhile



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North Delhi Municipal Corporation for treatment of her husband Sh. Krishan Kant Bhardwaj. Upon being examined by the doctors at the said clinic, it was found that he was suffering from severe obesity with difficulty in walking and severe backache for the last two weeks. Consequently, he was, on 14.01.2016 referred to HRH Hospital/MCD Panel Hospital for further treatment. Based on this referral, the respondent's husband on 15.01.2016 approached Balaji Hospital, a MCD panel Hospital, where he was advised certain medicines and tests.

4. It appears that since the respondent's husband was still suffering from severe difficulty in breathing, he again approached the Balaji Hospital, where he was on 18.01.2016 advised to go bariatric surgery, for which purpose he was admitted in the Hospital on the very same day. After successfully undergoing bariatric surgery, he was discharged on 21.01.2016, and was issued an essentiality certificate clearly setting out that the bariatric surgery which he underwent was necessary in view of his medical condition. It is the respondent's case that her husband incurred a sum of Rs.2,55,521/- towards the cost of the bariatric surgery and other essential medicines. Her claim for reimbursement was, however, rejected by the petitioner primarily on the ground that no prior approval had been taken by the respondent's husband before undergoing bariatric surgery.
5. Being aggrieved, the respondent approached the Tribunal, which has allowed the O.A. by way of the impugned order. It is in these circumstances, that the present petition has been filed.
6. Before us, learned counsel for the petitioner has besides reiterating the



submissions made before the Tribunal, urged that as per the OM dated 06.04.2013, issued by the Ministry of Health and Family Welfare, since bariatric surgery is not an emergency procedure but a planned/elective procedure, prior permission had to be obtained by the respondent's husband before undergoing the said surgery. No such prior permission having been taken, the respondent's claim was rightly rejected. She, therefore, prays that the impugned order be set aside.

7. On the other hand, learned counsel for the respondent supports the impugned order and submits that when the MCD panel hospital itself advised the respondent's husband to undergo the said surgery, which surgery he admittedly underwent at the MCD panel hospital itself, the Tribunal was justified in allowing the respondent's claim for reimbursement.
8. Having considered the rival submissions of the parties, we may at this stage note the relevant extract of the impugned order. The same reads as under-

"9. Government of India, Ministry of Health & Family Welfare, issued the above referred Office Memorandum dated 06.11.2013, containing the Guidelines and ceiling rates for permission/reimbursement for Bariatric surgery procedures under CGHS/CS (MA) Rules, 1944, the relevant paragraphs of the same read as under:

"É. Permission for Bariatric surgery:-.

Bariatric surgery procedures are planned/elective procedures and hence, not regarded as emergency procedures. Prior' permission has to be obtained from the competent authority on the basis of



recommendation given by a Government Specialist before the surgery is undertaken. No ex-post facto approval for reimbursement shall be given. For those Bariatric surgery procedures that falls within Para 2(C)(lv), requests for prior permission in such case's shall be examined by an Expert Committee on a case to case basis and in consultation with IFD."

10. As per the above Guidelines, it is true that an employee should obtain prior permission before undergoing Bariatric surgery to him or to his dependent family members. But it is to be seen that the Government framed the policy of reimbursement of medical expenses to its employees for their benefit. The guidelines are meant to ensure that no fraudulent claims for medical reimbursement are paid. In the Instant case, the documents filed along with OA reveal that the applicant's husband was examined by the Government Medical Officer and keeping in view the condition of the husband of the applicant and after assessing the urgency, the Doctor in an approved panel hospital performed the Bariatric surgery procedures. It is also not the case of the respondents that the Experts Committee, which required to assess and examine the condition of the patient neither held that there is no necessity to the husband of the applicant to undergo the Bariatric surgery procedures nor he was treated In violation of the aforesaid guidelines. It is also not the case of the respondents that the applicant has not incurred the expenditure claimed by her nor the claim is fake. Hence, denying to consider to reimburse the medical claim of the applicant is against to the concept of Scheme Itself.

11. In the peculiar circumstances of the case and for the aforesaid reasons, the OA Is allowed and the respondents are directed to process the claim of the applicant for medical reimbursement of the expenses



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incurred, if otherwise entitled as per rules. This exercise shall be completed within 60 days from the date of receipt of a copy of this order. No costs."

9. From a perusal of the aforesaid, what transpires is that the learned Tribunal was of the view that even though as per the aforesaid OM, prior permission for bariatric surgery was needed, taking into account that the respondent's husband had undergone the said surgery at the MCD panel hospital to which he was referred, his claim deserves to be allowed. The Tribunal also noted that there was no denial by the petitioners herein regarding the genuineness of the claim. It is in these circumstance that the Tribunal allowed the respondent's claim for the entire sum of Rs. Rs.2,55,521/-.
- 10.As noted herein above, even before us, there is no denial to either the fact that the respondent's husband was, as per procedure, referred to the MCD panel hospital for treatment of his medical condition as also to the fact that Balaji Hospital is a MCD panel hospital. No doubt, the respondent did not take prior permission for undergoing bariatric surgery, however what needs to be noted is that he had approached the Balaji Hospital as per the reference made by the petitioner itself, where he was found to be suffering from difficulty in breathing. It is as per the advice of the doctors at Balaji Hospital that the respondent underwent bariatric surgery and that too within two days of his approaching the said hospital in terms of the referral.
- 11.In these circumstances, even if bariatric surgery is generally not treated as an emergency procedure, in the case of the respondent's



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husband it was akin to an emergency, where within two days of his being examined by the doctors at Balaji Hospital, he had to undergo the said surgery. The fact that the respondent's husband underwent bariatric surgery at Balaji Hospital, and that too at lesser cost of Rs. Rs.2,25,000/- as against the approved rate of Rs. 3,00,000/- of bariatric surgery, we are of the view that the learned Tribunal was justified in allowing the respondent's claim.

12. For the aforesaid reasons, we find no infirmity with the impugned order. The writ petition being meritless is, accordingly, dismissed.
13. Further, taking into account that the petitioner has already deposited a sum of Rs.1,27,000/- on 15.12.2017 with the Registrar General of this Court, we direct that the said amount alongwith accrued interest be released in favour of the respondent.
14. As prayed for, the petitioner is granted further 8 weeks time to pay the balance claim amount, after adjusting the sum of Rs. 1,27,000/- which was already deposited with this Court and is being directed to be released in favour of the respondent. Needless to state, besides the sum of Rs. 2,25,000/- charged by the Balaji Hospital for bariatric surgery, the balance claim of the respondent will be processed after due verification.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 20, 2024/al