

Veena Sharma (Smt.)

vs

State Bank of India and Ors

Patna High Court

20 July 2001

Citations: 2001 (49) BLJR 1543, (2001) IILLJ 1333 Pat

Bench: S Jha

JUDGMENT

Sachchidanand Jha, J.

1. The dispute in this writ petition relates to reimbursement of the hospital expenses incurred by the deceased husband of the petitioner, D.N. Sharma, in connection with his treatment at the Apollo Hospital, New Delhi. The petitioner seeks direction not to deduct the amount paid to the said Hospital from the amount of Provident Fund payable to her husband, and to make full payment of the amount of Provident Fund, gratuity with interest.

2. Late D.N. Sharma was an Officer in MMG-III category under the State Bank of India. On or about March 19, 1997 he was afflicted with a disease called Herpes Zoster which led to blinding and hemorrhage in his right eye. He was initially treated at Tara Hospital, Patna. After his condition deteriorated, on the recommendation of the Bank's Doctor, he was admitted in the Apollo Hospital, New Delhi on March 23, 1997. On: tests conducted at the said Hospital he was found to be a HIV Positive i. e. suffering from AIDS. He was discharged from the said Hospital on May 23, 1997 when his condition started improving. However, after his return to Patna when his condition deteriorated, on the recommendations of the Bank's Doctor, he was again admitted to Apollo Hospital for specialised treatment on September 13, 1997. Being HIV Positive, he was kept in the isolation ward and treated for his ailments. In the night of October 17/18, 1997 he died. During this period the Bank had reimbursed the expenses incurred in course of treatment. After the death, bills for Rs. 2,85,849,15 and Rs. 2,40,897 respectively were submitted for reimbursement. The respondent-Bank however, held that amounts of Rs. 1,21,768 and Rs. 83,901 out of the said two bills was not admissible and accordingly deducted Rs. 2,05,689 from the Provident Fund deposits of the petitioner.

3. From Annexures-D and D/1 it appears that the major cut was under the head room rent. The reimbursement was claimed under that head in the said bills for amounts of Rs. 1,76,825 and Rs. 1,13,520, it was however allowed to the extent of Rs. 24,013 and Rs. 18,216 on the ground that being an Officer in the Middle Management Grade (MMG-III) he was entitled to reimbursement at not more than Rs. 950 per day. The Bank has enclosed copy of the Guidelines dated June 27, 1996 along with the counter affidavit, marked Annexures-B, communicating the standardisation of medical charges payable on account of reimbursement in terms of Rule 24 of the State Bank of India Officers (Terms and Conditions of Services) Rules (in short 'the Rules') by which reimbursement limits have been fixed for different

categories of Officers of the bank applicable to Mumbai 'and metro cities. For Officers of the MMG-III category and SMG-IV category the upper limit of the accommodation charge in the hospital has been fixed at Rs. 950/- and it is on that rate that part reimbursement has been allowed to the petitioner's husband. The point for consideration is whether the petitioner's husband was entitled to the reimbursement of the actual expenses or reimbursement of only admissible claim. It may be mentioned that so far as the bills in question are concerned, their correctness or genuineness is not disputed by the Bank.

4. The provisions relating to 'medical aid' are contained in Rule 24 which occurs in Chapter VI of the Rules titled 'Perquisites'. The relevant parts of the Rule are as follows:

"24(2) Medical Benefits.-Subject to the provisions contained herein, the amount of medical, surgical and hospital expenses as are actually and necessarily incurred by an officer in respect of the injury, disease or illness suffered by him shall be reimbursed in full by the Bank. The reimbursement of such expenses incurred in respect of his family shall be restricted to 75% of the expenses so incurred.

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26(6) Hospitalisation. -Except in emergent cases, and where prior conciliation with authorised doctor for any reason is not possible, an officer or his family may, with the prior approval of the authorised doctor, be admitted for treatment in a private hospital or nursing home. In the former case, the authorised doctor should be informed of the full particulars of the case as soon as possible after the patient has been admitted. Hospital and nursing home fees may be reimbursed to a reasonable extent depending on the status of the officer."

It would appear that under Rule 24(2) the amount of medical, surgical and hospital expenses "as are usually and necessarily incurred" by an Officer in respect of injury, disease or illness suffered by him is reimbursable in full by the Bank but under Rule 24(6) the Hospital and nursing-home fees may be reimbursed "to a reasonable extent depending on the status of the officer". However, though under Rule 24(2) the Hospital expenses, besides medical and surgical expenses are reimbursable in full, the entitlement is "subject to the provisions contained herein". It is thus arguable if any restriction can be put on the entitlement of the 1 officer for full reimbursement of the Hospital expenses otherwise guaranteed under Rule 24(2), by virtue of the provisions of Rule 24(6), but the questions which would then arise for consideration is whether it is permissible to fix I the limits and secondly, whether the status of the officer can be the basis of fixing such limit.

5. On behalf of the petitioner reliance has been placed on a decision of the Apex Court in State of Punjab v. Mahendra Singh Chawala, AIR 1987 SC 1225 : J.T. 1997 (1) SC 416. The decision, according to me, squarely caters the claim of the petitioner. By the said judgment the Supreme Court disposed of two cases. In the first case the facts were that the respondent, an officer of the Punjab Government, on permission being granted by the Director of Health Services and with the approval of the Medical Board, got treatment in the All India Institute of Medical Science (AIIMS), New" Delhi. He submitted medical bill for reimbursement. While other expenses actually incurred by him were reimbursed, the Government rejected the claim with respect to room rent as inadmissible. In the second case, likewise, the respondent who was suffering from coronary ailment, received treatment in the Escorts Heart Institute, New Delhi. He was allowed reimbursement of the amount less the rent paid by him for the room in the Hospital during the period of stay. The case of the Government was that in terms

of the policy decision contained in letter No. 2498 dated January 25, 1991 the reimbursement of the expenses on account of diet, stay of attendant, stay of patient in the hospital was not admissible. Upholding the judgment of the High Court by which the claim of the respondents had been allowed the Supreme Court observed that when specialized treatment was not available in the Hospital maintained by the State of Punjab, permission having been granted for treatment in the approved Hospital, expenses incurred towards room rent for stay in the hospital as an inpatient are integral part of the expenses incurred in course" of the treatment. The Court observed that the right to health is an integral to right to life and the Government has constitutional obligation to provide the health facilities to its servants or retired servants where the employee requiring specialized treatment in an approved Hospital receives such treatment, it is the duty of the Government to bear or reimburse the expense.

6. In the instant case, from the records it is evident that the petitioner's husband was recommended for treatment either in the AIIMS or in the Apollo Hospital. Though there is suggestion in the counter-affidavit of the Bank that he should have got himself treated in the AIIMS, having agreed to fact that the other expenses incurred in course of the treatment in the Apollo Hospital were reimbursed without any dispute, it is not open to the Bank to take that plea. The position might have been different if the Apollo Hospital had not been an approved Hospital or he had not been recommended by the Bank's doctor for treatment there. From the facts, briefly stated above about the nature of the ailment of the petitioner's husband which are borne out by documents enclosed, and indeed not disputed, it is clear that the illness of the husband of the petitioner was serious enough to justify specialised treatment of the kind not available in any Hospital at Patna.

7. I am, in fact, inclined to think that linking the limits of reimbursement with the status of the employees/officers is violative of Article 14 of the Constitution. Classification must have a reasonable nexus with the object sought to be achieved. The object in the instant case being to bear, or reimburse, the expenses already incurred by the employees/officers, it would be unfair to reimburse the expenses of inferior employees/officers on a lesser scale than their counterparts in the higher grades. While there is undoubted clear justification for payment of higher salary and allowances to the employees and officers on the basis of their qualification, nature of job etc., consequences of illness are equal to all irrespective of status or category. It cannot be said that a person suffering from the same illness requires lesser treatment or facilities and should be reimbursed at lesser rates because his status as an employee/officer is lower than others. In any view of the matter, fixing the limits of reimbursement on account of room charges 'cannot be said to be in accordance with law in view of the above mentioned decision of the Apex Court.

8. In case of Surjit Singh v. State of Punjab, AIR 1996 SC 1388 : 1996 (2) SCC 336, decided earlier, the appellant had undergone angiography and heart by-pass surgery in a Hospital at Barmingham in the United Kingdom where he had gone to visit his son. On return to India he submitted medical bill claiming reimbursement of the amount which he had spent in the said Hospital. The Government of Punjab agreed to pay the expenses incurred for by-pass surgery and angiography at the rate prevalent in the AIIMS and accordingly amount of Rs. 30,000/- on account of by-pass surgery and Rs. 10,000/- on account of angiography was paid to him. Not satisfied the appellant challenged the order of the High Court by which his writ petition was disposed of in the above terms in the Supreme Court. He however, reduced his claim to the amount which he would have hypothetically spent in the Escorts Heart Institute, New Delhi had he been treated there. Upholding his claim the Supreme Court observed, "the appellant in these circumstances cannot be said to be far too wrong in choosing Escorts

amongst the three recognised hospitals for open heart surgery available in the North, the AIIMS being the Governmental and the other two being private hospitals". The Supreme Court noticed different order of the Punjab High Court by which reimbursement of the claim at the rate prevalent in the Escorts had been allowed and quoted with approval the following observations in one such case:

"The respondents appear to have patently used excuses in refusing full reimbursement, when the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS, New Delhi. We cannot lose sight of factual situation in the AIIMS, New Delhi, i.e., with respect to the number of patients received there for heart problems. In such an urgency, one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved."

Upholding the claim of the appellant the Court stated that in the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts, like many others did, to save his life but instead he incurred considerable expenses in London. The doctor causing his operation there is presumed to have done so as being essential and timely. On that hypothesis, it was fair and just that the respondents pay to the appellant at the rate admissible in the Escorts. In this connection the Supreme Court quoted GARUDA PURAN and observed:

"It is otherwise important to bear in mind that self- preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it."

9. The claim of the petitioner in the instant case is squarely covered by the above noted decisions of the Apex Court. The horizon of the fundamental right under Articles 14 and 21 have been even expanding and it is too late for the Government or instrumentalities which are State-as employer to refuse to reimburse the medical claim of the employees, subject, of course, to any enquiry as to its genuineness and essentiality of treatment. To this extent Rule 24(6) and the Guidelines fixing the so called reasonable limits on the reimbursement of the expenses on account of stay in the hospital in course of treatment does not appear to be in accordance with Article 21 of the Constitution, and making it dependable on the status of the officer, does not appear to be in accordance with Article 14 of the Constitution. The Bank would do well to amend the relevant part of the Rules and Guidelines so as to be in conformity with the constitutional provisions.

10. The provisions regarding reimbursement of medical bill is a beneficial provision and it is well settled that beneficial provisions ought to be liberally construed.

11. In the result, this writ petition is allowed. The respondents are directed to pay the amount payable on account of room rent deducted from the Provident Fund dues payable to the petitioner's husband, within six weeks of receipt/production of a copy of this order. No order as to costs.