

**Shri V.K. Gupta**

vs

**Union of India (UOI) and Anr.**

Delhi High Court

5 April 2002

Citations: 2002 IIIAD Delhi 1054, 97 (2002) DLT 337

Bench: M Sarin

**JUDGMENT**

Manmohan Sarin, J.

1. The petitioner is employed with Delhi High Court and is covered by the Central Government Health Scheme known as CGHS. Petitioner by this writ petition seeks a direction to the respondents, namely, Union of India, through Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi and the Registrar, Delhi High Court, New Delhi, to reimburse the full amount paid to the Escorts Heat Institute and Research Centre Ltd. (for short EHIRC), for the open heart surgery operation, undergone by him. Petitioner also prays for costs to be awarded.

2. Petitioner was suffering from cardiac disease, which was diagnosed as a case of residual VSD closure and was referred to EHIRC for treatment. The Registrar of Delhi High Court duly permitted the petitioner to undergo treatment and open heart surgery at EHIRC. A communication dated 24.5.2000, was addressed to the Medical Supdt. EHIRC, permitting the petitioner to have treatment at the Centre as per his entitlement and for admission to the private ward. The said communication was also endorsed to the Medical Officer in charge, CGHS Dispensary, with whom the petitioner is duly registered.

3. Petitioner was admitted to EHIRC on 6.9.2000, and was discharged on 28.9.2000 after a successful surgery. The total expenses incurred was Rs. 2,27,276.35 (Rupees two lakhs twenty seven thousand two hundred seventy six and paise thirty five only) on treatment and paid to EHIRC. Petitioner had received an advance of Rs. 1,02,465/- and was also reimbursed a total sum of Rs. 44,695.50 thus leaving a balance of Rs. 70,115.85 as outstanding.

4. There is no controversy with regard to the amount incurred and spent by the petitioner. The only contention raised by the respondents is that the amount as per approved package rate has been reimbursed to the petitioner and nothing further is payable. The respondents claim that the petitioner is governed by the office memorandum dated 18.9.1996 and he has been paid as per the package rates approved.

5. Learned counsel for the petitioner Mr. J.P. Sengh has relied on the Central Services (Medical Attendant) Rules, in particular Rules 3(1) and 3(2). Reliance is also placed on Rule 6(1) in terms of which a Government servant is entitled to treatment free of charge at a Government Hospital or at the place where he falls ill, as can in the opinion of the authorized

medical attendant provide the necessary and suitable treatment. Rule 6(1)(A) and (B) and 6(2) are reproduced hereunder for the sake of convenience:

"6(1)A Government servant shall be entitled, free of charge, to treatment-(a) in such government hospital at or near the place where he falls ill as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in Sub-clause (a) in such hospital other than a government hospital at or near the place as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment.

6(2) where a Government servant is entitled under Sub-rule (1), free of charge, to treatment in hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government....."

6. It is not in dispute that EHIRC is a recognised hospital for specialized treatment of cardiac disease and open heart surgery. In fact, it is one of the approved Hospitals as per the office memorandum dated 18.9.1996. Respondents claim that they have made the payment in terms of office memorandum No. S-11011/16/94-CGHS Desk-II/CMO(D)/CGHS P dated 18.9.1996, as per which the package rates given in Annexures I and II to the said memorandum are to be reimbursed. Petitioner has failed to produce Annexures I and II. However, the same need not detain us. The rates given in the said memorandum were valid for a period of two years. In the instant case, the surgery of the petitioner has taken place on 6.9.2000 and he was discharged on 28.9.2000, while the memorandum is dated 18.9.1996.

7. The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognised by them for treatment on the basis of applying the rates as per the previous Memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Coordinate Bench of this Court in Civil Writ No. 5317/1999 titled M.G. Mahindru v. Union of India and Anr. decided on 18.12.2000 wherein the learned Single Bench relying on the decisions of Narendra Pal Singh v. Union of India and Ors. well as State of Punjab and Ors. v. Mohinder Singh Chawla etc. directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at CGHS or RML Hospital and the petitioner was referred after due permission to a speciality hospital duly recognised by the respondents. The respondents cannot, therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.

8. The Supreme Court had duly noted in State of Punjab and Ors. v. Mohinder Singh Chawla etc. (supra) that "the right to health is integral to right of life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee."

9. Reference may also be usefully invited to the last Office Memorandum bearing F. No.

Rec-24/2001/JD(M)/CGHS/DELHI/CGHS(P), Government of India, Ministry of Health & Family Welfare dated 7.9.2001. The said circular reconsidered the question of recognition of private hospitals, diagnostic centres under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient term as per this Memorandum is that the recognised hospital is obliged not to charge more than the package rates from the beneficiary.

10. The only submission by learned counsel for respondent Mr. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute & Research Centre, New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute & Research Centre being a recognised hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs. 70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs. 1,500/-.

11. Writ petition is allowed in the above terms.