T.V. Rajagopala Rao

vs

Additional Director, Central Government Health Scheme and Ors

Andhra High Court

4 April, 2003

Citations: 2003 (3) ALD 476, 2003 (3) ALT 632

Bench: B Nazki, G Yethirajulu

JUDGMENT

Bilal Nazki, J.

1. Heard the learned Counsel for the parties. Since there is no dispute on facts therefore the matter was heard at the admission stage with the consent of the learned Counsel for the parties.

2. The petitioner had worked in the judiciary in different capacities including as District and Sessions Judge. Thereafter, in 1980 he was appointed as Member of the income Tax Appellate Tribunal and was posted at Delhi. He worked at various places including Hyderabad and Chennai. He was elevated to the post of President, Income Tax Appellate Tribunal in 1993 and he retired from service on attaining the age of superannuation on 8-12-1999 while he was serving at Mumbai. He and his family, as a condition of service, had health cover under Central Government Health Scheme and this cover continues even after his retirement. On 4th January, 2000 he felt some pain in chest, reported to the Central Government Health Scheme (CGHS) Dispensary at Himayatnagar, Hyderabad. It was revealed to him that he had blockages in the arteries leading from the heart. He was advised to go to Yashoda Hospital. This hospital was a recognized referral hospital under Central Government Health Scheme. At Yashoda hospital he was instructed to go for bypass surgery. He was also informed that in bypass surgery there would be an element of risk. He consulted many Doctors at various hospitals and finally he consulted Dr. Bhattacharya at Bceech Candy Hospital at Mumbai. Dr. Bhattacharya advised him to undergo surgery as soon as possible. Dr. Bhattacharya was a consulting surgeon at Bombay hospital, which was covered under the Health scheme, but he advised him to get operated at Breech Candy hospital. Therefore he was left with no option but to go to Breech Candy hospital where surgery was performed on 10th March, 2000. After undergoing the treatment he made an application for reimbursement of the expenses incurred on his treatment. He also made a representation that if the entire expenditure was not reimbursed the rates allowable had he been admitted in referral hospital in Mumbai may at least be reimbursed to him. In response to his representation dated 22nd May, 2000 the 2nd respondent sent him a communication on 19-7-2000 asking him whether he had approached the CGHS dispensary before he reached Breech Candy hospital. He gave his explanation in August, 2000 and explained the circumstances under which he was forced to get treated as per directions of Dr. Bhattacharya at Breech Candy Hospital, Mumbai. Since there was no response from the respondents to his claim of reimbursement he approached the

Central Administrative Tribunal through O.A. No. 994 of 2001. The respondents contested the O.A and the Tribunal by order dated 26-12-2001 directed the respondents to dispose of his representation of August, 2000 within a period of two months. Since he did not receive any orders of reimbursement within two months of the order of the Tribunal therefore he issued a notice on 28-1-2002. In response to this notice, the 2nd respondent communicated the order dated 27th March, 2002. He was informed that since he had taken the treatment from a hospital of his choice and he had sufficient time to get treated from a recognized hospital under CGHS scheme therefore he was not entitled to any reimbursement. This order was challenged by the petitioner before the Central Administrative Tribunal in O.A. No. 834 of 2002. The Tribunal dismissed the O.A. Hence this Writ petition.

3. The Tribunal held that there was sufficient time at the disposal of the petitioner to get prior permission or at least inform the CGHS that he was going ahead with cardiac surgery at Breech Candy hospital, Mumbai, therefore he was not entitled to reimbursement. The Tribunal noted that, Yashoda Hospital at Hyderabad had advised surgery to the petitioner on 4th January, 2000 and the surgery was actually carried on 10th March, 2000, so the petitioner had more than two months to either seek permission from the CGHS to get treated at Breech Candy hospital or get himself treated in an approved hospital.

4. The facts mentioned hereinabove are not disputed. Now the only question is, whether under CGHS scheme the petitioner would be entitled to reimbursement if he had not got treated in an approved hospital without seeking permission from the concerned authorities.

5. The parties agreed that the case of settlement of medical claims of the petitioner was governed by CGHS and therefore it has to be seen as to whether the claim of the petitioner could be accepted under the said scheme. In Chapter-I of the Scheme 'referral' system has been recognized and it has been laid down that treatment in private hospital may be referred by Heads of Central Government Health Scheme in case of pensioners and by the Heads of offices/ department/ Ministry in case of serving employees on the recommendation of government specialists. Heads of department can give permission for indoor treatment in private hospitals recognised by CGHS. They can also reimburse cost of treatment at private hospital/ Nursing home/clinic in emergency cases. The methodology relating to settlement of claims is laid down under Chapter-12. The claims can be reimbursed in different situations in the following manner:

(i) For treatment in Government hospitals / Referral hospitals or Recognized private hospitals;

The reimbursement for treatment (surgery, test, accommodation charges etc.) should be verified from the approved lists of Govt. Hospitals/ Referral Hospital/ Recognized Hospitals and allowed at approved rates of any minor variation is found in the charges for tests done outside Delhi, the Head of Department concerned is empowered to allow those minor variations.

(ii) For treatment in unrecognised private hospitals:

(a) No reimbursement is made in normal course for treatment taken from private unrecognised hospitals.

(b) However, in cases of emergency, where treatment had to be taken in private unrecognised hospitals, the claims preferred may be referred to CGHS concerned. Such proposals should be recommended by the Head of Departments. CGHS concerned, after examining each case on merits, will recommend the admissible amount for payment to the beneficiaries. The payment will, however, be made by the Department concerned from 'Service Head'.

(iii) Treatment taken at private Nursing Home will not be reimbursed.

Then guidelines are also laid in the same Chapter which have to be kept in mind while settling the medical claims. In case of emergencies it lays down:

(xii) In case of emergency, where treatment has been taken from Government referral hospitals without prior permission from CGHS, the Head of the concerned office is empowered to accept the claim from the beneficiary, depending upon the circumstances of the case and allow admissible amount. In such cases, the bills for hospital stay would be calculated as per employee's entitlement.

6. Now, according to the learned Counsel appearing for the respondents the scheme does not permit treatment in a private hospital or an unrecognised hospital except in cases of emergency. He submits that the record itself amply shows that there was no emergency for the petitioner for undergoing treatment of heart surgery, therefore the petitioner, under the scheme, is not entitled to any reimbursement. On 4th January, 2000, according to the petitioner himself, he suffered pain and went to the CGHS dispensary at Himayatnagar, Hyderabad, then he went to referral hospital at Hyderabad. He was advised to undergo surgery but eventually he underwent surgery on 10th March, 2000 which was two months after the initial diagnosis and advise. The petitioner had at his disposal two months to go to the Government hospital or at least referral hospital recognized by the CGHS. Therefore, he will not be entitled to any benefits under the scheme. The learned Counsel for the petitioner, on the other hand, submits that it is the duty of the Government to provide medical aid under the scheme, subject to financial constraints, to every employee or a retired employee, therefore they cannot take a stand that the petitioner is not entitled to reimbursement of the amount spent by him on his treatment. He submits that, a liberal interpretation would have to be given to the provisions in the scheme in order to see that Article 21 of the Constitution of India is not violated. According to him, the law is settled by a catena of judgments of the Apex Court that the right to health and medical care is a fundamental right under Article 21 of the Constitution. The State is even otherwise duty bound to provide health care to all its citizens and in the present case the State was duty bound not only to provide medical care to the petitioner in terms of Article 21 but also in terms of the scheme framed extending the health care to Central Government employees and the retired employees. He submits that right to health and medical care being a fundamental right the choice of the Doctor should also be left to the patient. The learned Counsel submitted that, in matter of professional services it is always important that the patient should have faith in the person whose services he is seeking. It is the contention of the learned Counsel for the petitioner that there might be many efficient Doctors but a patient may not be convinced to get himself treated by all of them. The patients have their own notions and as a matter of fact whether a patient wants to be treated by a particular Doctor or not is always a matter of faith, the State cannot, according to the learned Counsel, decide as to which Doctor is going to treat a particular patient. The choice has to be left to the patient himself.

7. In the light of these arguments it will be worthwhile to note some of the judgments of the Supreme Court. The Supreme Court in Surjit Singh v. State of Punjab, , has gone in detail about the importance of preservation of one's own life in the light of Article 21 of the Constitution of India. The facts of this case need to be mentioned briefly. A Deputy Superintendent of Police of Punjab developed a heart ailment on 22-12-1987. He went on a short leave, extended it up to 10-1-1988. It was not clear before the Supreme Court that what steps he had taken to get himself treated but six months later he obtained leave for three months from 15-6-1988 to 8-9-1988. During this period he went to England to visit his son. According to him, he fell ill at England, was admitted in hospital at Birmingham where he was diagnosed and was suggested treatment at another hospital, then he got himself admitted at Humana Hospital, Wellington, London for a bypass surgery. He remained in that hospital from 25-7-1988 to 4-8-1988. A sum of Rs. 3 lakhs was spent for the treatment by his son. He made a claim on his return to India. The department did not agree to the payment of the claim. He moved the High Court of Punjab and Haryana through a Writ petition. During the hearing of the Writ petition the State of Punjab made a statement that the State was ready to pay to the claimant the expenses he had incurred for bypass surgery at the rates prevalent at All India Institute of Medical Sciences, New Delhi. Applying the rates of All India Institute of Medical Sciences he was paid an amount of Rs. 30,000/- on account of bypass surgery and a sum of Rs. 10,000/- for angeography. The High Court directed payment of Rs. 40,000/- within six weeks. This order of the High Court was challenged by the claimant before the Supreme Court. The argument putforth before the Supreme Court was that certain private hospitals in India were recognized by the Punjab Government under their scheme and they were referral hospitals, the rates at All India Institute of Medical Sciences were much lower than the private hospitals therefore he should have been at least paid at the rates which were prevalent in a private recognized referral hospital. In the case before the Supreme Court it was Escorts Heart Institute and Research Centre at Delhi. The policy which was prevalent in Punjab with regard to the settlement of the medical claims is almost similar to the Central Government Health Scheme. It lays down that, a person who was in need of medical treatment outside India or in any hospital other than Government Hospital had to make an application for getting treatment in those hospitals directly. This application had to be made two months in advance and the permission could be granted if the treatment of the disease was not available in the hospital of the Government of Punjab, but in case of emergency the application could be made 15 days in advance. The recognized hospitals outside Punjab for open heart surgery were mentioned in the policy dated 8-10-1991. Escorts Heart Institute, New Delhi was one of the three hospitals mentioned in the policy. The Supreme Court while examining the policy held that, the purport of the policy was that the Escorts stood recognized by the State for treatment of its employees for open heart surgery apart from the other two, institutions. Now, before the Supreme Court the State of Punjab took a plea that there was no emergency. The claimant had fell ill, then after six months he had gone to England to meet his son where he got himself operated for his heart ailment. The Supreme Court noted, "Except for the bare word of the appellant, no documentary evidence in support of such plea had been tendered by him before the High Court, or even before us, to show that his was a case of emergency requiring instant operation and treatment. The State of Punjab on the other hand has countered before the High Court, as also here, that the case of the appellant was not that of an emergency but a planned visit to England to have himself medically treated tinder the care of his son, without submitting himself as per policy, for examination before the Medical Board. This plea of the appellant may have been required to be examined in thorough detail had he stuck to his original claim for medical expenses incurred in England. Since he has now brought down his claim to the rates prevalent in the Escorts in place of that of AIIMS, further reference to emergency treatment etc., would not be

necessary. It would hypothetically have to be assumed that the appellant was in India, had not subjected himself to Medical Board examination, and had gone on his own to the Escorts and got himself operated upon for bypass surgery. The point to be considered is whether his claim is admissible under the policy keeping in view the string of judgments of the High Court in that regard, as well as on the factum that the State has already conceded reimbursement to the appellant on hypothetical basis as if treated in AIIMS." The Supreme Court allowed his claim and ordered reimbursement at the rates in Escorts Heart Institute a private hospital. The Supreme Court referred to various judgments of the High Court of Punjab and also of the Supreme Court. It also went to the question of preservation of one's own life in the light of Article 21 of the Constitution of India and held 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. " It also noted that "the importance and validity of the duty and right to self preservation has a species in the right of self-defence in criminal law" We may add further that the right is recognized by criminal law not only by providing a right of self-defence but also making 'attempt to suicide' an offence. The Supreme Court quoted from puranas and held that self-preservation was a concomitant of the right to life as enshrined under Article 21 of the Constitution of India.

8. Therefore, we are of the considered view that right to self-preservation being a concomitant of right to life also includes a duty and a right of the person to get himself treated for ailments. Since a citizen has a right to preserve his life and get treated by a Doctor in case of disease it follows that he has a right to go to a Doctor of his choice and a hospital of his choice. It is basically a matter of faith for a patient to trust his doctor. In the present case, the petitioner who lives in Hyderabad could get the assistance of some of the most eminent heart surgeons in the country of which a judicial notice can be taken of. Some of the best hospitals of heart disease are available in Hyderabad and some of the nationally known hospitals for cardiac problems are in Hyderabad, but still the petitioner preferred to go to Mumbai. There are so many inputs which each individual takes into account while deciding to go to a particular doctor. But, at the same time, while it can be said that a patient has a right to choose a doctor or hospital, it cannot be said that the State is bound to pay to its employees all the expenses incurred by a patient who makes the choice because State has its own financial constraints and commitments. Either the patient should go to the hospital of the choice of the employer and get himself relieved with the consequential expenses or make a choice of his Doctor and hospital and burden himself with some of the financial burden. The Supreme Court in the case referred to above allowed the reimbursement at the rates in private hospital which was recognized by the State Government. Following the same, we hold mat the petitioner would not be entitled to reimbursement of the amounts he incurred at Breech Candy hospital but would be entitled to such amounts which he would have incurred had he gone to a recognized referral hospital under the scheme in Mumbai. We are told that Bombay Hospital in Mumbai was also recognized referral hospital under the scheme, therefore the respondents should workout as to what expenses the petitioner would have incurred had he undergone Bypass surgery in Bombay Hospital. After working out the expenses those expenses should be reimbursed to the petitioner.

9. The writ petition is accordingly allowed. The order of the Tribunal is set aside. No costs.