

Milap Singh

vs

Union of India (UOI) and Anr

Delhi High Court

13 July 2004

Citations: 113 (2004) DLT 91, 2004 (76) DRJ 126

Bench: S K Kaul

JUDGMENT

Sanjay Kishan Kaul, J.

1. Rule.

2. With the consent of learned counsel for the parties, the petition is taken up for final disposal at this stage.

3. This is one more case of a retired Government servant who has been refused reimbursement of the full medical expenses incurred by him despite numerous judgments on this issue. The respondents chose to act in complete violation of the principles of law laid down by various judgments negating the Central Government Health Scheme (hereinafter to be referred to as, 'the CGHS'), which was propounded as a health facility scheme for 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, but the repeated cases which have come to the Court show every effort of the respondents to dilute the effect of the said Scheme. The respondents continue in their conduct, which is contemptuous in character, by continuing to deny such claims despite clear law enunciated on this point.

4. Now coming to the facts of the present case. The petitioner retired as a Government servant on 31.12.1980 as an Assistant Controller Stationery from the Ministry of Works and Housing and was getting a monthly pension of Rs.7,018/-. The petitioner is a member of the CGHS and is 79 years old. On 02.02.2001 while going for his morning walk, the petitioner felt pain in his chest and started perspiring. The petitioner was rushed back to home and members of the family of the petitioner requested for immediate help from the Escorts Heart Institute and Research Centre (hereinafter to be referred to as, 'the said Hospital') where the petitioner was shifted and it took five days to stabilize the condition of the petitioner. The petitioner was finally operated upon on 07.02.2001 for Coronary Artery By-pass Grafting (heart by-pass surgery). The petitioner was discharged from the said Hospital on 17.02.2001 and the total medical bill paid by the petitioner was for Rs.2,45,000/-.

5. The petitioner on 10.04.2001 requested the CGHS authorities, respondent No. 1, for reimbursement of the amount spent on the surgery, but was reimbursed only a sum of

Rs.1,40,000/- on 12.06.2001. Despite follow up of the matter, the balance amount has not been paid to the petitioner.

6. The only defense taken in the counter affidavit is that though the said Hospital, respondent No. 2 is recognized under CGHS vide Office Memorandum dated 18.09.1996. The hospitals recognised under CGHS are liable to charge only rates prescribed under the said Office Memorandum. The amount can be reimbursed only to the extent of the package deal as per the Office Memorandum dated 11.06.1997.

7. It is this very issue, which formed part of adjudication in the case of Prithvi Nath Chopra v. UOI & Anr., 2004 III AD (DELHI) 569 where pronouncements of the Supreme Court and this Court have been considered. The only difference is that in the said case, it was Indraprastha Apollo Hospital where the medical treatment had been availed of. The effect of the Office Memorandum dated 18.09.1996 was considered in the said judgment. It was observed in paras 14 and 15 as under :-

14. Learned counsel for the respondent has referred to the Office Memorandum of 18.9.1996 recognising private hospitals/diagnostic centres under CGHS, Delhi. The Indraprastha Apollo Hospital is one of the approved hospitals under the said Office Memorandum and the amount which can be charged is set out in terms of para 2 which is as under :

2. It has further been decided that the CGHS beneficiaries taking treatment in the above mentioned hospitals with the prior permission of the CGHS/Offices appointed by the Government will be entitled for reimbursement as per the package deal rates given in the Annexures-I and II. The rates for indoor treatment mentioned in Annexures I and II are for Semi Private Category. For Private Ward there will be an increase of 15% and for General Ward there will be a decrease of 10%."

15. At the relevant time, it is this Office Memorandum which was in operation. It is further stated that there was no provision for credit facility at that stage of time whereby the wife of the petitioner could have been operated and the amount directly claimed by the hospital from the CGHS. The amount used to be reimbursed. However, as per the present practice, the hospital has to directly bill the CGHS.

8. It was also noticed in the aforesaid judgment that by a subsequent Office Memorandum dated 07.09.2001, there had been increase in rates which were to be reimbursed. Even in the present case, this revision has taken place a couple of months after the operation.

9. The judgment in V.K. Gupta v. Union of India & Anr., is also of a patient treated in the said Hospital. Once again this Office Memorandum dated 18.09.1996 was considered and it was noticed that the rates given in the said Memorandum were to be followed for a period of two years. The Court found that the respondents have to be more responsive and cannot act in a mechanical manner to deprive the employees of their legitimate reimbursement, especially on account of their own failure in not revising the rates after expiry of the initial period. The petitioner was held entitled therein for reimbursement of the full amount.

10. In M.G. Mahindru v. Union of India & Anr., 1992 (2001) DLT 59, it has been held that full reimbursement of medical expenses to a speciality hospital, which is on an approved list of CGHS, cannot be denied to a retired Government servant.

11. It has to be appreciated that in cases of emergency like that in the present case, ex post facto sanction can always be granted for specialised treatment. In fact, there is no real dispute in this behalf and the only issue is to the extent of the reimbursement made by the CGHS.

12. In *State of Punjab & Ors. v. Mohan Lal Jindal*, , the stand of the Government in refusing to reimburse the in-patient charges for the treatment in the said Hospital was rejected and the Government was held to be under a constitutional obligation to reimburse the expenses since the right to health is an integral to the right to life.

13. The attention of this Court is also drawn to the judgment in CWP No. 6658/2002 titled as '*V.K. Abbi v. Director General of Health Services & Anr.*' decided on 04.04.2003 on the same issue. It may be noticed that this judgment has been affirmed in appeal by the Division Bench in LPA No. 480/2003 decided on 19.09.2003.

14. The undisputed position that emerges is that a patient is entitled to reimbursement of the full amount of medical expenses and not only at the rates specified in the circular of 1996 and in case respondent No. 2 has charged a higher rate, than could have been charged, it is for respondent No. 1 to settle the matter with respondent No. 2. The petitioner cannot be deprived of the reimbursement. The observations in para 26 of Prithvi Nath Chopra's case (supra) are useful in this behalf, which are as under :-

"26. It can also not be disputed that the Indraprastha Apollo Hospital has been made available land at token amount and it was for the respondents to have settled the amounts of reimbursement at the hospital. If the respondents have any grievance about the quantification of the amounts charged, it is for the respondents to take up the matter in issue with the Apollo Hospital. But that cannot deprive the petitioner of full reimbursement of the amount as charged by the recognised Indraprastha Apollo Hospital. In fact, the petitioner has been compelled to pay the charges first and thereafter reimbursement is taking place while the present policy is stated to be one where the respondents are directly billed by the approved hospitals which policy is salutary since the patient may not at a time have the funds available to first pay the amount and then claim the reimbursement.

15. A writ of mandamus is, thus, issued directing respondent No. 1 to reimburse the petitioner to the full extent of the bills raised by respondent No. 2 Hospital and the balance amount of Rs.1,05,000/- be remitted to the petitioner within a maximum period of one month from today.

16. In view of the conduct of respondent No. 1 in not following the judgments of this Court, I consider it appropriate to impose cost of Rs.20,000/-. It is further directed that in future it shall be ensured that the judgments passed by this Court are implemented in letter and spirit while processing such medical claims.