

# **Shri Prithvi Nath Chopra**

**vs**

## **Union Of India (Uoi) And Anr.**

Delhi High Court

15 April, 2004

Citations: 2004 (74) DRJ 175

Bench: S K Kaul

### **JUDGMENT**

Sanjay Kishan Kaul, J.

1.Rule. With the consent of learned counsel for the parties, the matter is taken up for final disposal.

2.A welfare State like India is bound to provide the basic requirements of its citizens. Health care facility is an integral part of the same and the Central Government Health Scheme (CGHS) has been propounded for the benefit of the Central Government employees who should not be left without medical care after retirement.

3.The petitioner was working as an Under Secretary in the Central Government when he took voluntary retirement on 5.2.1979 and is more than 80 years old. The petitioner and his wife Smt. Mohinder Chopra are covered by the CGHS scheme.

4.In July, 2001, on certain tests being conducted, Smt. Chopra was diagnosed as suffering from breast cancer and the Medical Officer in charge of the CGHS Dispensary, Faridabad referred her to the ordinary Surgeon in Dr. RML Hospital. It is stated that the junior attending Surgeon in the said hospital suggested 24.9.2001 as the date of operation instead of referring the patient to a cancer specialist and thus the petitioner again approached the Medical Officer in charge at Faridabad and requested for a reference to a cancer specialist.

5.Smt. Chopra was referred on 21.7.2001 to a Surgeon at the B.K. Hospital, Faridabad who was not available for two days. Due to the fast deteriorating condition of his wife, the petitioner in an emergency took her to the Indraprastha Apollo Hospital which is a registered hospital under the CGHS for treatment of cancer. The nature of urgency was such that the wife of the petitioner was operated the very next day on 23.7.2001 for removal of the left cancerous breast and she remained as an Indoor Patient up to 31.7.2001.

6.The petitioner paid the bills and vide letter dated 30.8.2001 submitted the bills of Rs.1,27,712/- for reimbursement in a prescribed form to the Director General, CGHS for grant of ex-post facto sanction. The petitioner also sought amounts for post operative treatment.

7.The petitioner vide letter dated 10.9.2001 informed the respondents that the Senior Consultant, Cancer Surgery had suggested chemotherapy and radiotherapy and further bill was submitted on 24.9.2001 of Rs.12,530/-. Some clarifications were sought by the respondents which were duly clarified by the petitioner.

8.On 23.12.2001, part payments without detail were made to the petitioner of Rs.23,589/- and Rs.7,924/-. The petitioner sought reimbursement of the balance amount and the details why deductions had been made. The petitioner submitted another bill of Rs.42,221/- with requisite documents along with letter dated 9.5.2002. In July and September, 2002, fresh bills of Rs.4845/- and Rs.30,348/- respectively were submitted. The bill dated 26.7.2002 was rejected on 28.11.2002 and the petitioner was not even paid the balance amount.

9.The petitioner has filed the present writ petition seeking quashing of the letter dated 28.11.2002 and for reimbursement of the remaining bills.

10.In the counter affidavit filed by the respondents as well as during the hearing in court, learned counsel for respondents relied upon a judgment of the Supreme Court in State of Punjab & Ors. v. Ram Lubhaya Bagga & Ors., . It was held therein that there was right to a healthy life under Articles 21, 41 and 47 of the Constitution of India but the government is justified in limiting the facilities to the extent permitted by its financial resources. It was observed in this respect as under:

"27. Coming back to test the claim of the respondents, the State can neither urge nor say that it has no obligations to provide medical facility. If that were so, it would be ex facie violative of Article

21. Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are:

"... to the level of expenditure as per rates fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less."

28. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by a Committee of technical experts.

" The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalise the rates of various treatment packages..."

29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

30. In Vincent v. Union of India, (SCC pp.173 & 174, para 16) )

"In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. ... In a series of pronouncements, during the recent years, this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant picture by the Constitution Fathers may become a reality."

11. It is further stated that the permission for treatment in a private recognised hospital is granted only for specific tests/treatment procedures and some of the bills of the petitioner were under process of payment.

12. Learned counsel for the respondent has further referred to the judgment of the Supreme Court in State of Punjab & Ors. v. Mohan Lal Jindal, . That was a case where the respondent

underwent bypass surgery of heart in a hospital other than AIIMS due to long queue for such bypass surgery in AIIMS and claimed the additional medical expenses incurred by him after being reimbursed at rates of AIIMS. The Supreme Court held that the respondent patient was entitled to medical reimbursement only at AIIMS rates but the respondent could make a representation on compassionate grounds in respect of reimbursement of additional amount to be considered by the authorities sympathetically.

13. Lastly, learned counsel for the respondent referred to the judgment of the Supreme Court in K.P. Singh v. Union of India & Ors., where it was observed in para 6 as under:

"6. The last grievance, and it is of some note, is that a beneficiary of the Scheme will receive reimbursement only at the rate approved by the CGHS, regardless of the fact that in his particular town or city there are only private hospitals and no government hospital; there is, therefore, no option for him but to enter a private hospital for such treatment. It is also submitted that the approved rates are not updated by the CGHS from time to time so that what the beneficiary receives by way of reimbursement can be substantially less than the cost that has actually been incurred upon his hospitalization. While there is, we think, merit in the submission, it is not for us to dictate what should be done. We direct that the Union of India shall immediately consider this aspect and give appropriate directions thereon. It would clearly be appropriate for it to update its approved rates on an annual or, at least, biennial basis."

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.

16. It may further be noticed that by subsequent Office Memorandum dated 7.9.2001, there has been increase in the rates which were to be reimbursed and this occurred soon after the operation was performed on the wife of the petitioner in July, 2001.

17. Learned counsel for the petitioner, on the other hand, has referred to the judgment of the learned single Judge of this court in *V.K. Gupta v. Union of India & Anr.*, . The petitioner therein was referred to the Escorts Heart after due permission since that was a speciality hospital and the treatment was not available at the CGHS or RML hospital. The petitioner was held entitled to the reimbursement. The Office Memorandum of 18.9.1996 formed subject matter of adjudication and it was noticed that the rates given in the Memorandum were followed for a period of two years while the operation on the petitioner took place in the year 2000 in the said case. It would be useful to reproduce the relevant paragraphs which are as under:

"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 Another*, decided on 18.12.2000, wherein the learned Single Bench relying on the decisions of *Surendra Pal Singh v. Union of India and Others*, , as well as *State of Punjab and Others 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 Others 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 the 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 and Family Welfare dated 7.9.2001. The said circular considered the question of recognition of private hospitals, diagnostic centres under CGHS scheme for specialized treatment as well as fixing of package ceiling etc. The salient term as per this Memorandum is that the recognized hospital is agreed not to charge more than the package rates from the beneficiary.

10. The only submission by learned Counsel for respondent Ms. 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 specialised treatment by the respondents after according permission. Escorts Heart Institute & Research Centre being a recognised 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/-."

18.Learned counsel also referred to the judgment of the learned Single Judge of this court in M.G. Mahindru v. Union of India & Anr., 92 (2001) DLT 59 where it was held that the full reimbursement of medical expenses to a speciality hospital which was on an approved list of CGHS, cannot be denied to a retired government servant.

19.In Narendra Pal Singh v. Union of India & Ors., , learned single Judge of this court held that the government was obliged to grant ex-post facto sanction in case an employee requires a speciality treatment and there is a nature of emergency involved.

20.Lastly, reference was made to a judgment of the Supreme Court in State of Punjab & Ors. v. Mohinder Singh Chawla etc., the stand of the government in refusing to

reimburse the in-patient charges for her treatment in Escorts Hospital was rejected and the government was held to be under a constitutional obligation to reimburse the expenses since right to health is integral to right to life.

21.It is in conspectus of the aforesaid judgments that the legal position has to be applied to the facts of the present case.

22.There is no dispute about the fact that the hospital in question was an approved hospital and approved for the treatment in question. The real controversy which arises, and in fact that is what has been pleaded by learned counsel for the respondent, is that the petitioner is entitled to reimbursement only at the rates specified in the circular of 1996 while the Indraprastha Apollo Hospital has charged a greater amount from the petitioner which is not entitled to be reimbursed.

23.There can be no doubt that the government has to provide the health care facility and reimburse the expenses. The observations of the Supreme Court relied upon by learned counsel for the respondents only set out that it may not be possible to make available unlimited resources for grant of such medical treatment. In fact, learned counsel for the respondents cannot even seriously dispute the proposition that such circulars are not strictly adhered to in all cases as in V.K. Gupta's case (supra) the stand of the learned counsel for the respondent was that reimbursement is made as per circular of 1996 and in other cases reimbursement has been done when ordered by the court. It was thus observed that this can

hardly be called a satisfactory state of affairs.

24. In V.K. Gupta's case (supra), it has further been noticed that the rates given as per 1996 Memorandum were to be enforced for a period of two years. The government ought to have periodically revised the rates. The revision took place only in September, 2001. Incidentally, this is soon after the wife of the petitioner was operated in July, 2001. Had the respondent complied with its obligation to periodically review these rates every two years, as observed in V.K. Gupta's case (supra), the occasion for the problem at hand would not have arisen.

25. In M.G. Mahindru's case (supra), it has already been held that where the hospital is on the approved list of CGHS, benefit of full medical reimbursement cannot be denied to a retired government servant. This is the position in the present case.

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.

27. I am thus of the considered view that the petitioner is entitled to be reimbursed the amounts as billed for by the Apollo Hospital.

28. It may also be noticed that the impugned order dated 28.11.2002 has been issued on the basis that the OPD treatment was without any advice and permission of CGHS. The petitioner has been writing to the authorities and submitting documents and in such cases of urgency where cancer treatment is called for, it cannot be expected that the patient must wait till such time as the respondent authorities decide to grant permission. These are fit cases where ex-post facto permission is liable to be granted. This impugned order can also thus not be sustained and is quashed.

29. It may be noticed that during the pendency of the writ petition, in terms of the order dated 28.11.2003, a direction was issued to the respondents to pay a sum of Rs.50,000/- to the petitioner as an ad hoc amount. This was so since stand of the respondents was that only a sum of Rs.23,589/- was payable to the petitioner as against the sum of Rs.1,27,712/- being claimed by the Apollo Hospital. The said order further notes that the Indraprastha Apollo Hospital is a joint venture hospital of the Delhi Government and the government had not only provided free land but even has equity to the extent of almost 49%. Thus, the petitioner is liable to be reimbursed the balance amount which has still not been paid.

30. A writ of mandamus is issued directing the respondents to reimburse the petitioner to the full extent of the bills raised by the Indraprastha Apollo Hospital and the balance amount be remitted to the petitioner within a maximum period of one month from today.

31. The impugned order dated 28.11.2002 is hereby quashed.

32.The writ petition is allowed in the aforesaid terms with costs of Rs.5000/-.