

K.S. Mathew

vs

Union Of India (UOI) and Anr

28 July, 2005

Delhi High Court

Citations: 2005 (83) DRJ 714

Bench: G Mittal

JUDGMENT

Gita Mittal, J.

1. By way of the present writ petition, the petitioner is seeking the following prayers:-

"(a) Pass an order directing the respondents to re-imburse to the Petitioner, the balance amount of Rs. 113119/- towards medical expenses incurred by him at EHIRC."

2. The undisputed facts giving rise to the present petition are to the effect that the petitioner, who is a pensioner, put in 38 years in the Central Secretariat. The petitioner retired on the 1st February, 1980 while he was holding the post of Deputy Secretary in the Ministry of Civil Supplies. As a government servant, the petitioner was entitled to free medical aid under the Central Services Medical Attendance Rules through the Central Government Health Scheme (CGHS). It is pointed out that the petitioner holds CGHS identity card No. 44355 (Ec). Even after retirement, the petitioner is entitled to the benefit of free medical aid under the afore-stated scheme.

3. Unfortunately, on 10th October, 2001, the petitioner suffered a severe heart attack when he had to be rushed in a critical condition to the Escort Heart Institute and Research Centre (hereinafter referred to 'EHIRC' for brevity) for emergency treatment. The EHIRC is a recognised cardiac institute giving facilities for cardiac treatment by the Central Government Health Scheme. The emergency treatment was provided to the petitioner who had to undergo various tests as Echocardiogram, 2D Echo with Colour Doppler, Angiography etc. and was advised emergency by-pass surgery. This surgery was performed on the petitioner on 12th October, 2001.

4. In his treatment, the petitioner is stated to have incurred an expense of Rs. 2,30,000/- in the hospital as per the bill raised by the Escort Heart Institute & Research Centre. Additional expense of Rs. 21,369/- was incurred in purchase of essential medicines which were not available in the hospital, bringing the total expenses of the petitioner to Rs. 2,51,369/-. Upon discharge, the petitioner submitted the bills and made a claim for reimbursement for the afore-stated amount to the Director, CGHS on 12th November, 2001 duly supported by bills and cash memo verified and certified by the medical superintendence of the hospital.

5. No deficiency or inadequacy of the claim was pointed out at any point of time. No clarification was sought from the petitioner on the 26th April, 2002. After five and a half months of raising the bill, the petitioner was paid a sum of Rs. 1,38,250/- only towards his claim. The payment was without disclosure of any details in terms of the items or amounts or basis thereof.

6. Under these circumstances, the petitioner made a representation to the Director, CGHS and the Ministry of Health & Family Welfare on 30th April, 2002 stating that the entire bill claimed by him was admissible for payment in accordance with the new ceiling rates notified by the Ministry of Health and Family Welfare in their O.M. No. REC 24/2001/JD(M)/CGHS/Delhi/CGHS(P) dated 7th September, 2001 (Ex) and requested the respondents to furnish the reasons for disallowing the claim of the petitioner.

7. The petitioner contends that there was an earlier schedule of charges which notified outdated package rates announced in the year 1996. These rates obviously would stand superseded by the later rates. All representations of the petitioner fell on deaf ears and as such, the petitioner has been constrained to file the present writ petition. The petitioner submits that a package rate for reimbursement of the treatment had been fixed in the Office Memorandum

S-11011/16/94-CGHS-Dark II/CMO(D)/CGHS P dated 18th September, 1996 which was valid for a period of two years only. It is stated that the cost of the medical treatment has been steadily rising but the package rates were never revised.

8. On 7th September, 2001, the Ministry of Health & Family Planning notified revised ceiling rates for various procedures, tests, surgeries etc. but only 55 approved hospitals and diagnostic centres were recognised vide OM dated 7th September, 2001. However, for unknown reasons, these rates were not made applicable to EHRS despite its having a well established name for cardiac surgery and treatment. The benefit of the Office Memorandum dated 7th September, 2001 was extended to six more hospitals vide the Office Memorandum dated 25th October, 2001, but it was mentioned that reimbursement to beneficiaries who have taken treatment in these hospitals would be restricted to 1996 rates.

9. It has been pointed out by the petitioner that the revised rates for specialised procedures, investigations given in the office memorandum dated 7th September, 2001 are higher than the amount which the petitioner had been charged by the EHRC for the same treatment. Bare perusal of these rates shows that the reimbursement amount of Rs. 1,38,250 was not sufficient to cover the same tests which the petitioner had undergone or the expense of the by-pass surgery.

10. The respondents have filed a counter affidavit and have made oral submissions in support of their defense. It has been contended that the reimbursement under the Central Government Health Scheme is done as per the package charges approved by the CGHS. It was further submitted that the package charges included all expenditure except investigation which are reimbursed as per the approved rate in addition to the package rates. The respondents have placed reliance on the pronouncement of the Apex Court entitled *State of Punjab v. Ram Lubhaya Bagga* to contend that the Government could fix its own rates as it does not have unlimited fund at its disposal.

11. I have been taken through the records of the case and the judgment relied upon by the parties. I find that there is no explanation at all given by the respondents as to why these hospitals who were considered in the OM dated 25th October, 2001 are being treated differently so far as the package rates are concerned. My attention has been drawn to a pronouncement of this court reported at 2002 III AD (Delhi) 1054 entitled V.K. Gupta v. Union of India wherein reliance was placed on the same office memorandum as in the instant case. In V.K. Gupta's case also the petitioner was compelled to seek relief from this court in similar circumstances. The court held that the cost of medical treatment has been rising over a period of time and the respondents cannot deny the actual reimbursement from a hospital recognised by them for treatment on the basis of applying the rates as per previous memorandum which was intended only for a period of two years and subject to revision. Reliance was placed on the pronouncements of this court in Civil Writ No. 5317/1999 titled M.G. Mahendru v. Union of India and Anr. decided on 18th December, 2000, the judgment reported at entitled Narendra Pal v. Union of India and Ors.,

(DB) entitled P.K. Jain, Distt. & Session Judge,

Delhi v. Govt. of NCT of Delhi and Ors. and the authoritative pronouncement of the Apex Court entitled

State of Punjab and Anr. v. Mohinder Singh Chawla. It was held by the Apex Court that the right to health is a right of life and the State has a Constitutional obligation to provide health facilities).

12. In V.K. Gupta's case also, the respondents placed reliance in the Office Memorandums. The court considered the office memorandum dated 7th September, 2001. The respondents contended that they have effected reimbursement to the petitioner as per rates notified in the circulated of 1996. The court held that the respondents are required to be more responsible and cannot in a mechanical manner deprive of its employees with legitimate reimbursement especially on account of their own failure in revising the rates.

Despite the restrictive and ceiling limits being fixed by the OM to reimbursement of medical expenses, this court directed reimbursement of the full expenses incurred by the petitioner on the treatment.

13. In these circumstances, the petitioner was found entitled to full reimbursement for the expenses incurred at the Escorts Heart Institute & Research Centre where he was referred for otherwise treatment and the respondents were directed to reimburse the actual expenses incurred by the petitioner.

14. Perusal of the counter affidavit shows that there is no dispute with the notified package rates fixed vide Office Memorandum dated 18th September, 1996 and that rates were valid only for a period of two years and that these hospitals who were included by way of OM dated 25th October 2001 were not included in the earlier memorandum as they had not agreed to the terms and conditions which were offered by the Government. The Escort Heart Institute & Research Centre is stated to have signed the memorandum of understanding with the Central Government Health Services on the 26th August, 2002.

15. Other than Mr. V.K. Gupta's case, I find that a similar petition was necessitated on behalf of a retired Judicial Officer in Delhi. The judgment rendered in this case was reported at 2002

Vol. VII AD (Delhi) 368 entitled Shri T.S. Oberoi v. UOI and Anr.. In this petition also, an officer, after retirement was seeking reimbursement for the full amount which had been incurred on emergency surgery performed at the Escorts Heart Institute & Research Centre which was undergone by the petitioner on 31st January, 1995. The court held that the petitioner was entitled to reimbursement of the entire amount of his expenditure and had issued a writ of mandamus to the respondent no. 1 to reimburse the balance amount which was payable to the petitioner within a period of eight weeks from the date of the judgment.

16. I find that the facts of the instant case are similar to those of Shri V.K. Gupta's case (supra) and Shri T.S. Oberoi's case (Supra). The denial of the full reimbursement to the petitioner is wholly unwarranted more so when the petitioner was rushed to the hospital in a critical condition and underwent emergency surgery. Furthermore, the petitioner relies on the memorandum of 7th September, 2001 whereby various rates were notified in respect of different hospitals. There can possibly be no dispute with regard to the facilities available in the Escorts Heart Institute & Research Centre where the treatment of the petitioner was administered as he had no option being faced with an emergency in life threatening circumstances.

17. In these circumstances, it is held that the petitioner is entitled to the reimbursement of the entire expenses incurred by him in his treatment for which he has made a claim of Rs. 2,51,369/- and submitted the bills to the respondents. The petitioner is in receipt of a sum of Rs. 1,38,250/- from the respondents. It is, therefore, directed that the respondents shall pay the balance amount of Rs. 1,13,190/- to the petitioner within a period of four weeks from today.

The petition is allowed in the above terms.

The petitioner shall be entitled to costs of the petition which are assessed at Rs. 5,000/-.