

R.D. Gupta

v.

DDA and Ors.

High Court of Delhi

11 January 2005

Writ Petition (Civil) 5887 of 2003

Citation: 116(2005)DLT666; 2005(79)DRJ730

Bench: Manmohan Sarin, J.

Judgment

Manmohan Sarin, J :

1. Petitioner, Mr. R.D. Gupta, employed as Junior Engineer with respondent/DDA, by this writ petition, seeks a direction to the respondent/DDA to reimburse the balance medical claim of Rs. 58,740/- together with interest @ 36% compounded quarterly on account of delay in reimbursing the aforesaid amount. Petitioner, being a Junior Engineer with DDA is covered under the Delhi Development Authorities Medical Scheme, 1988.

2. Petitioner was hospitalised on 11.11.2002, for treatment of Umbilical Hernia at Apollo Hospital. Surgery was done at the Apollo Hospital, which is a duly empanelled hospital with DDA. The Hospital raised its bill No.ICS 2002013591 for Rs. 66,625/- for treatment, medicines, consumables and the surgery charges. This is beside the consultancy charges of Rs. 800/- and charges for investigations, amounting to Rs. 2,630/- i.e. in all Rs. 70,055/-. The application for reimbursement was accompanied by Essentiality Certificate, issued by the attending Doctor at the Apollo Hospital, certifying that the treatment and medicines prescribed were essential for the recovery, prevention of serious deterioration in the condition of the patient. Investigations carried were also certified as necessary. Respondent/DDA reimbursed the amount of Rs. 18,260/-, leaving balance amount of Rs. 58,740/- unpaid.

3. Learned counsel for the petitioner submits that the empanelled Doctor of DDA had duly recommended the bill for payment. Petitioner claims that the AO (Medical) of his own, ignoring the recommendation of the attending Doctors at Apollo Hospital and the panel doctor of the respondent restricted the reimbursement to Rs. 18,060/-. He proceeded on the basis that petitioner was eligible for reimbursement only at the rates applicable at St.Stephen Hospital. Besides the petitioner was held not entitled to reimbursement of costly consumables, namely, "Staplers" used in the surgery amounting to Rs. 31,444/-.

4. Show cause notice was issued. Respondent/DDA filed its counter affidavit of Director (Finance) dated 6.1.2004. Respondent/DDA in the counter affidavit claimed that the entitlement for reimbursement under the Medical Scheme was to be on the basis of rates prevalent at St.Stephen Hospital, even if the treatment was taken at another empanelled hospital, namely, Apollo. With regard to non-reimbursement of the cost of consumables, namely, staplers, the relevant extract may be reproduced:-

"In the present case, it was seen that two staplers had been used in the operation in place of ordinary suture used for stitching of the wounds. The cost of the ordinary suture of different sizes is approximately Rs. 50/- to Rs. 150/-while the staplers used in the present case costs Rs. 31,444.60 which was not allowed by the Competent Authority i.e., the Chief Accounts Officer. The case was submitted to the Competent Authority with complete details/facts of the case by the Accounts Officer (Med.Cell) and the said decision was taken by the Competent Authority as per the Government Rules, which provide for the minimum facilities essential for the treatment. Therefore the claim of Rs. 70,055/- made by the petitioner was not allowed as there were costly staplers used in the treatment of the petitioner, which was not desired or called for."

5. It was further averred that Government Rules provide for minimum facilities essential for a particular treatment. Since staplers costing Rs. 31,444/- were used in surgery in place of ordinary sutures, which are normally used in stitching of wounds, the payment claimed by the petitioner was restricted. In an additional affidavit dated 4.5.2004, filed by the Director (Finance), it was also explained that as per the DDA Medical Scheme employees could take treatment from any of the hospital registered with the Directorate of Health Services, Government of NCT of Delhi or recognised by the Government/CGHS for being eligible for reimbursement. The said reimbursement was to be made at the rates of St.Stephen Hospital. It is also averred that under the DDA Medical Scheme and the rates of St.Stephen Hospital are reviewed, revised and upgraded every year. Copy of the rates for 2001-2001, was enclosed with the petition. Here again, in the additional affidavit, it is pleaded that two staplers in place of ordinary sutures had

been used for stitching the wounds. The latter cost much less than the said staplers. Hence the payment of staplers was declined. Another additional affidavit dated 4.11.2004, was filed by the respondent placing on record copy of order dated 1.5.2002, which restricts the reimbursement for treatment as per the rates of St.Stephen Hospital. It was claimed that the said order was part of the DDA Medical Scheme. Further, that the said order had been circulated to the heads of the concerned departments, which fact is mentioned in the order itself. It is also claimed that the said order and the scheme were displayed on the notice Board in all departments at the relevant time. Hence DDA employees have the knowledge of the same. It is also averred in this affidavit that based on the clarification sought from the CGHS, the treatment of diseases like that of the petitioner is on a package rate for specialised procedure/investigation of hospital/diagnostic centres recognised under CGHS, Delhi. Item Code Nos.7.15 and 7.17 are as under:-

7.15 Laproscopic Umbilicale hernia repair Rs. 28000.00

7.17 Laproscopic hernia repair Rs. 25100.00

6. The averment in this affidavit is again to the effect that claim of Rs. 70,055/- made by the petitioner was not allowed as there were costly staplers used in the treatment of the petitioner, which were not required or called for.

7. I have heard learned counsel for the petitioner in support of the writ petition as also Mr.Anil Sapra in opposition. Mr.Sapra apart from reiterating the contents of the affidavit and the additional affidavits filed, submits that petitioner and other employees were well aware that while they may take treatment at any of the empanelled hospitals or CGHS recognised hospital but their eligiblility or entitlement for reimbursement would be based on the rates, as specified for St.Stephen Hospital. To avoid anomalies or hardship, he urged that DDA periodically revised the rates to bring them in consonance with the prevailing rates. He submits that the system followed by DDA gives flexibility to the petitioner to choose any of the empanelled hospitals, subject to the condition that reimbursement would be at the rates of St.Stephen Hospital.

8. Let us first consider whether petitioner is entitled to the reimbursement of the cost of staplers, as consumables. There was approval for the treatment to be carried out at the empanelled Hospital. The crux of the controversy is whether the decision to use staplers instead of sutures can be evaluated by the respondent/DDA? The answer to this certainly has to be in the negative. The approach and perspective in which this question needs to be considered is that the patient was requiring specialised treatment. He, therefore, went to a reputed hospital, which is duly empanelled by DDA for specialised treatment. Petitioner was to be operated for right umbilical

hernia. Petitioner has no say whatsoever with regard to the nature of consumables to be used during surgery. This is a matter, which lies exclusively within the domain of the Surgeon and the Doctors. It is entirely for the Surgeon or the medical practitioner to decide as to which process is to be adopted or a particular consumable is required that would be beneficial for the treatment and recovery of the patient. It does not lie in the province of the respondent to say that instead of staplers, sutures could have been used. Besides, use of staplers also has a distinct advantage. In case the procedure adopted is through laparoscopy, then the use of staplers is required in view of the limitation of operating space. Staplers are stated to be more effective, reducing the chance of infection. Besides, it reduces the healing and surgical time. Moreover, staplers, which are of titanium material are less reactive. In these circumstances, in case the Surgeon decided that staplers were the appropriate consumable to be used, it is not for the respondent to state that they "were not desired or called for." This was a decision, which vested with the Surgeon and the patient obviously had no say in determination of whether staplers should be used or sutures. Accordingly, it is held that petitioner is entitled to be reimbursed the cost of consumables, including the staplers, which were used in the surgery. Moreover laproscopic surgery is distinct from open surgery as staplers are usually used in laproscopic surgery as discussed hereinbefore.

9. It is noticed that respondents had also written to the Medical Superintendent , St.Stephens Hospital, New Delhi regarding the rates of staplers used in the surgery seeking the following information:-

" One of our employees was operated for Umblical Hernia at Indraprastha Apollo Hospital. Two staplers costing Rs. 31,444.60 were used during the operation. The consumables are very costly. It is felt the same could have been used in place of ordinary suture which is comparatively very cheaper. In DDA, we reimburse the claim at the rates of your hospital. It is therefore, requested that the following information/clarification may please be given to enable this office settle the claim.

i) Rates of Stapler.

ii) Rates of suture &

iii) Whether there is any cheaper alternative to stapler used in this operation i.e EMS ENDOPATH ETHICON-20.

A copy of the claim is enclosed for reference. An early reply is requested please.

10. The response to the same was as under:-

Reference your letter No.F.3(6)02-03/MC Pt.I/DDA/3 regarding the specific clarifications you have sought, I am sending the rates:

i) Cost of stapler EMS ENDOPATH (ETHICON) Rs. 11,500/- per stapler usually only 1 stapler would be required for this surgery

ii) Rate of sutures-they have used:

a) MONOCRYL - 3326 - Cost Rs121/- per foil

b) PROLENE-8820 - Cost Rs. 104/- per foil

c) VICRYL-2826 - Cost Rs. 140/-per foil

There may be some variation in above costs depending on the discounts being offered to the hospital by the company- in this case M/S ETHICON.

iii) There is no cheaper stapler available. However, the procedure would cost less if done as open repair and not as a laproscopic repair.

11. It would be seen that the cost of two staplers as indicated by St.Stephens Hospital is Rs. 23000/-. Hospital has also stated that there could be variation in above costs depending upon on the discounts being offered to the hospital by the company. It is further certified that there is no cheaper stapler available. However, the procedure would cost less if done as open repair and not as a laproscopic repair.

12. From the foregoing, it would be seen that there is no cheaper stapler used than the one used. It is also recognised that price given may vary with discounts. It could also vary according to the market price prevailing at the relevant time. Be that as it may, in case the empanelled hospital namely Apollo Hospital is over charging for the cost of staplers, the responsibility lies with respondent-DDA to take up the same with Apollo Hospital and seek refund from them or take such suitable action regarding continuance of empanelment as they deem fit.

13. Coming to the second objection by the respondent that petitioner was entitled to reimbursement only at the rates, as applicable to St.Stephen Hospital under the terms of the scheme. It may be noted that the order dated 1.5.1992(sic) on which reliance is placed by the

respondent to restrict the reimbursement to the rates of St.Stephen Hospital, was not part of the medical scheme or issued as an amendment thereto. The DDA Medical Scheme did not contain any provision restricting the reimbursement to the rates as given in St.Stephen Hospital. The Scheme permits treatment at empanelled hospital and CGHS Government approved hospital. It was only a subsequent order dated 1.5.1992(sic), which was issued. Petitioner contends that the said order was not brought to his knowledge, while the respondent has filed an affidavit saying that the order itself shows that it was to be circulated to the Heads of the Department for necessary action. It is further claimed that it had been put on the Notice Board at the relevant time but no date of the same is specified. Leaving this issue apart, it may be noted that even as per the CGHS rates the package rate for treatment for Laproscopic Umbilical Hernia repair is Rs. 28,000/- and for Laproscopic Hernia repair is Rs. 25,100/-. In these circumstances, when the treatment can be taken at any of the empanelled hospital or CGHS Government approved Hospital, there would be no justification for confining the reimbursement to the rates of St.Stephen Hospital when even the CGHS rates are higher. The onus lies on the respondent like DDA, which has a large work force that before it empanels the Hospital to get the benefit of negotiated rates from the empanelled hospitals, which are in consonance with the rates approved by it such as that of St.Stephen Hospital. This Bench in *T.S.Oberoi v. Union of India and Anr.* reported at [2002 VII AD (Delhi) 368] had while allowing the claim beyond the package rates for the Escorts Hospital observed as under:-

"In my view, it is high time that the Central Government/CGHS authorities, while conferring the status of recognised Government specialty hospital should re-negotiate the package rates for various procedures and treatments. The private hospitals receive several benefits from the State in terms of allotment of land at concessional rates, exemption or benefits of concessional custom duties in import of surgical, diagnostic, medical and other equipments and consumables. More often than not the stipulations and directive to the private Hospitals for providing a certain % of free rooms or treatment for economically weaker sections are not implemented. A large number of Government and public sector employees are referred to private specialty hospital for treatment. These constitute substantial business for any hospital. It is for the CGHS Authorities to negotiate with the private hospitals from a position of strength, so that discounted package rates and advantageous terms are offered to employees for different procedures irrespective of some individual variation in treatment. The authorities can also endeavor to have a modified package for cases entailing extra position to cater to the requirements and meet the ever increasing demand with adequate facilities not being available. An earnest endeavor is required on the part of the Central Government to arrive at better negotiated terms for itself and its employees."

The Division Bench of this Court has struck a similar note while dealing with the case of *Sqn.Commander Randeep Kumar Rana v. Union of India* WP(C).No.2464/2003.

14. The Supreme Court had duly noted in *State of Punjab and Ors. v. Mahinder 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 specialised approved Hospital and on reference whereto the Government Servant had undergone such treatment, 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."

15. It is noticed that reimbursement made to the petitioner is even less than package rate as admissible for CGHS i.e Rs. 28,000/- for similar surgery. The onus was on DDA to circulate the rates of various empanelled hospitals so that the employees are well aware as to the additional burden which they would have to bear in case they choose to go to an empanelled hospital which has rates which are higher. Be that as it may, this variation based on the choice of an empanelled hospital should at best apply to the rates for room charges and the surgeon's fee. As regards consumables are concerned, respondent-DDA should ensure uniformity and standardization in their rates in empanelled hospitals with those prevailing at St.Stephens Hospital. It would be for the DDA to take up the matter with the empanelled hospital if price charged for consumables is excessive.

16. In the light of the foregoing discussion, a writ of mandamus shall issue to the respondents to reimburse to the petitioner the cost of staplers as charged by Apollo Hospital as also all other consumables including medicines. The reimbursement for room charges and charges of Surgeon's fee may be limited to the charges as applicable for St.Stephens Hospital or CSHS whichever is higher.

17. Respondent/DDA would be well advised in the interest of its employees to take up the issue of standardization of its rates for procedures and treatment of various diseases and consumables as approved by it for St.Stephen Hospital for acceptance with or without modification by the empanelled hospitals. Endeavor should be to attain parity in the rates so that its employees can have the benefit of treatment at empanelled hospitals at reasonable rates without any controversy. The rates for empanelled hospitals as also St.Stephens Hospital be made part to the medical scheme so that they are available to the employees before they take up treatment.

Writ petition is allowed in the above terms.