

REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

Writ Petition(C).No.5228/2005

Date of Decision : February 28, 2007

SH. RAM NIWAS JAIN

..... Petitioner

Through: Mr. Ajay Jain, Advocate

Versus

CENTRAL GOVT. HEALTH SCHEME & ANR

..... Respondent

Through: Ms. Barkha Babbar , Advocate

CORAM:-

HON'BLE MS. JUSTICE REKHA SHARMA

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| 1. Whether reporters of Local paper may be allowed to see the judgment? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

REKHA SHARMA, J.

It was April 25, 2002. The petitioner, little knowing what was ordained for him, went to attend a function at a relative's house. While he was there he felt pain in his chest and became unconscious. This was unforeseen emergency and called for emergent action. He was rushed to Escorts Heart Institute and Research Centre (EHIRC) where he underwent bypass surgery and remained admitted as an indoor patient from April 25, 1992 till May 10, 2002. He escaped death alright but not what was to follow.

The petitioner had retired from the post of Upper Division

Clerk from the office of Central Public Works Department (CPWD) on March 31, 2002. A card No.058538 was issued to him on May 30, 2002 on the basis of which he and his wife became entitled to medical treatment in semi private wards of all the hospitals approved by the Central Government under the Central Government Health Scheme. It appears that under the said scheme, some Office Memorandums were issued by the Central Government from time to time. One such Memorandum is dated September 18, 1996. It recognised number of private hospitals/diagnostics centres mentioned therein for different specialties and provided that the CGHS beneficiaries taking treatment in those hospitals would become entitled for reimbursement as per package deal rates mentioned therein. The next relevant Memorandum is dated 7.9.2001. By this Memorandum, more private hospitals were recognised for the purpose of reimbursement and besides that the rates as contained in the Memorandum of September, 1996 were revised. It also provided that the recognised hospitals/diagnostic centres will not charge more than the package rate from the beneficiaries. This, it seems, was not acceptable to Escorts hospital. Therefore, its name did not figure in the list of recognised hospitals. However, the Director General, CGHS vide its letter dated 25.10.2001 allowed the CGHS beneficiaries to take treatment in six private hospitals mentioned therein including Escorts hospital but limited the reimbursement as per the old rates notified in Office Memorandum dated 18.9.96. It appears that later on Escorts hospital also agreed to the rates specified in the Office Memorandum dated 7.9.2001. Hence, another circular dated 26.8.2002 was issued

bringing Escorts hospital also within the ambit of circular dated 7.9.2002.

Coming back to the petitioner, he was billed for a sum of Rs.2,11,060/- by the Escorts hospital. He paid the bill and thereafter claimed reimbursement for the same from the respondents. He was reimbursed but only to the tune of Rs.1,14,420/-. As for the balance amounting to Rs.96,640/- he was told that he was not entitled as the scheme then in force did not cover his case for full reimbursement. He also incurred an expense of Rs.783/- on the medicines which too was not paid to him. It is the refusal to pay the sum of Rs.96,640/- and Rs.783/- which has brought the petitioner knocking the door of this Court.

What have the respondents to say? According to them, the case of the petitioner for reimbursement is to be regulated as per the rates notified vide Office Memorandum dated September 18, 1996 and not by the Office Memorandum dated September 7, 2001 because the same was made applicable to Escorts hospital only from August 26, 2002.

It is nobody's case that the Escorts hospital was not one of the recognised hospitals under the CGHS where a beneficiary covered by the scheme could take treatment. It was. The point at issue is whether the petitioner who took treatment in the Escort hospital between April 25, 2002 and May 10, 2002 during which period the said hospital had not agreed to the revised rates as contained in the Office Memorandum dated August 26, 2002 is to be governed by the prior Memorandum of September, 1996 or by the Memorandum of

August, 2002. What is of significance in this regard is that barely three months after the petitioner was discharged from the Escorts hospital, the said hospital agreed to the rates as notified in the Memorandum of September, 2001. Should the petitioner be deprived of the benefit of full reimbursement merely because Escorts hospital was dilly-dallying to agree to the rates notified in the circular dated 26.8.2002?

The respondents have resisted full reimbursement by taking refuge in a judgment of the Supreme Court in the case of **State of Punjab & Others Vs. Ram Lubhaya Bagga & Others reported in (1998) 4 SCC 117**. In the said judgment, the beneficiary of a health scheme was aggrieved by the change in the policy of the Government in regard to the reimbursement of medical expenses to its serving and retired employees. It appears from the judgment that previously there was a policy promulgated in 1991 whereby reimbursement of medical expenses charged by the designated hospitals were admissible but subsequently a new policy dated 30.2.95 was promulgated which provided that treatment could be taken from any hospital but the reimbursement of medical expenses was restricted. In the context of these facts the Apex Court held as under : -

“It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any Constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be

dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.”

Reliance by the respondents on the aforementioned judgment, in my view, is totally misconceived. We are not dealing with a case where there is any challenge to the policy of the Government. As a matter of fact, this is a case where the Government wanted to make full reimbursement. Its thinking and intention is evident from Office Memorandum dated 7.9.2001. It was only because of the vacillating attitude of the Escorts hospital that it took a little more time for the Government to bring the said hospital within the ambit of the Office Memorandum dated 7.9.2001. This is not a case where 'Barkes' was not willing. It was Peggotty [Escorts hospital in this case] who was playing difficult. It is thus not a case where there was no policy. It was already there. It was in full play. There is no challenge to the policy. The challenge is only to the effect of the Escorts hospital first resisting and then surrendering. It is this what distinguishes this case from the above cited judgment of the Supreme Court.

Why, in the circumstances noted above, should the petitioner suffer? Had the petitioner gone himself or had he been taken to a hospital which had accepted the ongoing rates, in that case, would the Government not have fully reimbursed him as per the Office Memorandum of September, 2001? If so, why deprive him of that benefit merely because, in an unconscious state, he was rushed to

another hospital which too figured in the approved list of hospitals but, at that point of time, though asked to, was not agreeing to come under the umbrella of Office Memorandum of 7.9.2001 but agreed shortly thereafter.

It was a welfare scheme by a welfare State. A welfare State needs to be benevolent and benevolence does not lie in escaping a welfare scheme by resorting to such technicalities as may take away the sheen from it.

For what has been noticed above, the writ petition is allowed. The petitioner is held entitled to full reimbursement of medical claim. Consequently, the respondents are directed to pay the balance amount of Escorts hospital amounting to Rs.96,640/- and also medical expenses of Rs.783/- within a period of one month failing which the petitioner shall be entitled to interest on the said amount at 12% per annum from the date he has submitted his bills for reimbursement till payment is actually made to him.

**REKHA SHARMA
(JUDGE)**

FEBRUARY 28, 2007
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