

SURJIT SINGH

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v.

STATE OF PUNJAB AND ORS.

JANUARY 31, 1996

[MADAN MOHAN PUNCHHI AND K. VENKATASWAMI, JJ.]

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*Constitution of India, 1950 : Article 21*

*Right to life—Held self preservation is necessary concomitant of right to life.*

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*Service Law :*

*Medical reimbursement—State of Punjab—Reimbursement policy—Recognition of private identified hospitals for treatment—Employee—Visit to England on leave—Heart problem—Undergoing bye-pass surgery to save himself without submitting himself for medical examination as per policy—Claim for reimbursement—State making payment as per rates prevalent in All India Institute of Medical Sciences—Employee's hypothetical claim for reimbursement on the basis of rates prevalent in Escorts—Held permissible as right to self preservation is part of right to life.*

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*The State of Punjab in its policy regarding reimbursement of medical expenses to its employees recognised certain identified private hospitals including Escorts Heart Institute, New Delhi for treatment of certain diseases including open heart surgery. The appellant, a Deputy Superintendent of Police in Punjab, during his visit to England, while on leave, fell ill due to his heart problem and to save himself is said to have undergone a bye-pass surgery in Humana Hospital, Wellington London. On his return to India he claimed reimbursement for Rs. 3 lacs spent on his medical treatment which was refused as the Department was of the opinion that his case was not that of an emergency but a planned visit to England to have himself medically treated without submitting himself for medical examination as required under the policy. The appellant filed a writ petition before the Punjab and Haryana High Court. No documentary evidence was tendered to show that his was a case of emergency requiring instant operation and treatment. However, the State paid to the appellant the expenses incurred by him on the rates prevalent in the all India*

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A Institute of Medical Science (AIIMS) i.e. Rs. 30,000 for bye-pass surgery and Rs. 10,000 for Angiography. The High Court disposed the petition accordingly.

B The appellant preferred appeal before this Court claiming payment on the basis of rates prevalent in the Escorts Heart Institute in place of that of AIIMS contending that he may be considered to have been treated in the Escorts, more so, when he is being treated to have been operated upon in AIIMS without actually having been so and had a choice to go either to the AIIMS or Escorts or Christian Medical College, Ludhiana or Appollo Hospital, Madras.

C On the question whether the hypothetical claim of the appellant for medical reimbursement was valid :

Allowing the appeal, this Court

D HELD : 1. hypothetical claim of the appellant for medical reimbursement is valid. In the circumstances of the case he cannot be said to be far too wrong in choosing Escorts amongst the three recognised hospitals for open heart surgery. As he has brought down his claim to the rates prevalent in the Escorts in place of that of AIIMS further reference to emergency treatment etc. would not be necessary. It would hypothetically E have to be assumed that the appellant was in India, had not subjected himself to Medical Board Examination, and had gone on his own to Escorts and got himself operated upon for bye-pass surgery.

F 2. Self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law, Centuries ago thinkers of this Great Land conceived of such right and recognised it.

G *Garuda Purana Chapter 16, Verses 17, 18, 20 and 22, referred to.*

H 3. The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate

hospital as per policy. When the State itself has brought Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he had done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts within two months subject to adjustment of Rs. 40,000 already paid to him.

*Sadhu R. Pell v. State of Punjab through Secretary Health and Family Welfare, Punjab, Civil Secretariat, Chandigarh and Ors.*, C.W.P. No. 13493 of 1992 decided by Punjab & Haryana High Court on 6.10.1993; approved.

*K.L. Kohli v. State of Punjab & Ors.*, C.W.P. No. 18562 of 1992 decided on 10.5.1995; *Mohan Duggal v. State of Punjab & Ors.*, C.W.P. No. 260 of 1995 decided on 30.5.1995; *Prem Singh Gill v. State of Punjab and Ors.*, C.W.P. No. 5669/94 decided on 4.9.1994 by Punjab and Haryana High Court; *Terlok Chandra v. The State of Punjab etc.*, (1995) III Punjab Law Reporter 529 and *Mrs. Surya Pandit v. State of Punjab and Ors.*, (1995) III Punjab Law Reporter 682, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2489 of 1996.

From the Judgment and Order dated 18.4.95 of the Punjab & Haryana High Court in W.P. No. 6703 of 1994.

P.N. Puri for the Appellant.

G.K. Bansal for the Respondents.

The Judgment of the Court was delivered by :

**PUNCHHI, J.** Leave granted.

Is the hypothetical claim of the appellant for medical reimbursement valid in the facts and circumstances of this case is the straight question which falls for determination in this appeal.

A The appellant, Surjit Singh (now retired) while posted as a Deputy Superintendent Police, Anandpur Sahib, Distt. Ropar, Punjab developed a heart-condition on 22-12-1987 and that very day went on a short leave extending it upto 10-1-1988, on medical grounds. It remains unclarified on the record of this case as to what steps the appellant took thereafter to meet his ailment. However, six months later he obtained leave from his superiors from 15-6-1988 to 8-9-1988 and went to England to visit his son.

B It is the case of the appellant that while in England, he fell ill due to his heart problem and as an emergency case, was admitted in Dudley Road, Hospital Birmingham. After diagnosis he was suggested treatment at a named alternate place. Thus to save himself the appellant, got himself admitted and operated upon in Humana Hospital, Wellington, London for a Bye-Pass Surgery. He claims to have been hospitalised from 25-7-88 to 4-8-88. A sum of Rs. 3 lacs allegedly on his treatment at London, borne by his son.

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D On return to India, the appellant on 6-11-1988 submitted a Bill for medical reimbursement claiming that very sum, in the office of the Senior Superintendent of Police, Ropar which was forwarded to the Director General of Police, Punjab, Chandigarh and the Home Department of the State of Punjab. Some correspondence took place between the appellant and the department. As per office requirements some more certificates

E were sent by the appellant in support of his case. Vide letter dated 21-1-93, the Department however expressed its inability to sanction the bill for medical reimbursement. This led to the appellant moving the High Court of Punjab and Haryana at Chandigarh in writ jurisdiction. As required by the High Court, the State responded by filing its counter affidavit. At the

F time of hearing the Assistant Advocate General for the State of Punjab made a statement to the effect that the State was ready to pay to the appellant the expenses incurred for Bye-Pass Surgery and Angiography on the rates prevalent in the All India Institute of Medical Sciences, New Delhi (for short 'AIIMS'). Applying that yardstick, as suggested, a sum of Rs. 30, 000 on account of Bye-Pass Surgery and a sum of Rs. 10,000 for Angiography was thus ordered by the High Court to be paid to the appellant within six weeks. The writ petition on 18-4-1995 was disposed of on such terms. The said sum, as claimed by the State stands paid to the appellant.

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H The appellant challenging the orders of the High Court disposing of

the writ petition in such manner now pitches before us his claim to payment on the basis of rates prevalent in the Escorts Heart Institute and Research Centre (for short 'Escorts'), reducing his high claim to the expenses incurred for medical treatment in London. There is an inkling to that effect in the appellant's rejoinder affidavit in the High Court but it appears that this aspect of the matter was not dilated upon. The claim for such adoption of rates is now made in reiteration.

The parties counsel agree that there is a policy regarding reimbursement of medical expenses framed by the State on 25-1- 1991, which has duly been circulated in all the wings/officers of the State. It's operative portion, so far relevant, is reproduced below :

"Subject : Re-imbursement of medical expenses-Policy regarding

Sir/Madam,

In supersession of Punjab Government letter No. 77/85-3HBV/13855 dated 27-5-1987, the President of India is placed to lay down the following policy for reimbursement of medical expenses incurred on medical treatment taken abroad and in hospitals other than the hospitals of the Govt. of Punjab (Both outside and in the State of Punjab) :

(i) All categories of employees whether retired or serving of All India Service/State Govt. Judges of Punjab and Haryana High Court/M.L.As/Ex M.L.As will be governed by this policy.

(ii) The person who is in need of medical treatment outside India or in any hospital other than the Govt. of Punjab (both outside and in the State of Punjab) as the case may be may make an application for getting treatment in these hospitals direct to the Director, Health and Family welfare 2 months advance, duly recommended by the C.M.O/Medical Supdt. indicating that the treatment for the disease mentioned is not available in the Hospital of the Govt. of Punjab. In case of emergency duly authenticated by C.M.O/Medical Supdt. the application can be made 15 days in advance.

(iii) Director, Health and Family Welfare, Punjab will place the application of the concerned employee before the Medical Board

within 15 days on the receipt of application. In case of emergency, if immediate meeting of Medical Board, cannot be convened, such application may be circulated to all the members of the Medical Board and decision taken thereof.

(iv) The Medical Board shall consist of the following officers :

- (i) Director, Health and Family Welfare, Punjab - Chairman
- (ii) Director, Research and Medical Education, Punjab - member
- (iii) Specialist of the desired line of treatment from PGI Chandigarh or AIIMS, New Delhi - Member
- (iv) Senior most specialist from Medical Colleges, Patiala, Amritsar and Faridkot - Member
- (v) Dy. Director/Asstt. Director, I/c of the P.M.H. Branches office of the director Health and Family Welfare - Member Secy"
- (vi) xxxx
- (vii) xxxx
- (viii) xxxx
- (ix) xxxx
- (x) xxxx
- (xi) xxxx
- (xii) The Health Dep'tt. in consultation with Director Research & Medical Education will prepare a list of diseases for which specialised treatment is not available in Punjab Govt. Hospitals and indicate the Institutions/Hospitals/Clinics of repute where necessary treatment is available. This list will, however be subject to variation in future.

On 8-10-1991, the above policy has further been explained in so far the choice of the hospitals is concerned :

"Policy for reimbursement of medical expenses incurred on medi-

cal treatment taken abroad and in hospitals other than those of the Government of Punjab, both within and outside the State was laid down. However, as per the 12th item of these instructions, a list of those diseases for which specialised treatment was not available in the Government hospitals was to be prepared in addition to identifying medical institutions/hospitals/clinics of repute where such specialised treatment was available. A  
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The Government has now prepared a list of those diseases for which the specialised treatment is not available in Punjab Government hospitals but is available in certain identified private hospitals, both within and outside the State. It has, therefore, been decided to recognise these hospitals for the treatment of the disease mentioned against them in the enclosed list for Punjab Government employees/pensioners and their dependents. The terms and conditions contained in letter under reference will remain applicable, Government can, however, revise the list, in future. C  
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Therefore it has been decided to recognise those hospitals for the treatment of diseases mentioned against them in the enclosed list issued with the concurrence of the Finance Department dated 11-9-1991 which is as under : E

*Open Heart Surgery:* Escorts Heart Institute, New Delhi ; Christian Medical College, Ludhiana ; Appollo Hospital, Madras.

The purport of the above policy is that the Escorts stands duly recognised by the State for treatment of its employees for open heart surgery, apart from the other two institutions i.e. Christian Medical College, Ludhiana and Appollo Hospital, Madras. The Finance Deptt's concurrence signifies its willingness to entertain reimbursement bills in variables depending on where treatment is received. F

There has been a factual dispute as to whether the appellant went to the Dudley Road Hospital, Brimingham as an emergency case and whether he was operated upon in Human Hospital, Wellington, London in that condition. Except for the bare word of the appellant, no documentary evidence in support of such plea had been tendered by him before the High Court, or even before us, to show that his was a case of emergency G  
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- A requiring instant operation and treatment. The State of Punjab on the other hand has countered before the High Court, as also here, that the case of the appellant was no that of an emergency but a planned visit to England to have himself medically treated under the care of his son, without submitting himself as per policy, for examination before the Medical Board.
- B This plea or the appellant may have been required to be examined in thorough detail had he stuck to his original claim for medical expenses incurred in England. Since he has now brought down his claim to the rates prevalent in the Escorts in place of that of AIIMS, further reference to emergency treatment etc. would not be necessary. It would hypothetically have to be assumed that the appellant was in India, had not subjected
- C himself to Medical Board examination, and had gone on his own to the Escorts and got himself operated upon for Bye-Pass Surgery. The point to be considered is whether his claim is admissible under the policy keeping in view the string of judgments of the High Court in that regard, as well as on the Factum that the State has already conceded re-imbursement to the
- D appellant on hypothetical basis as if treated in AIIMS.

- The policy, providing recognition for treatment of open heart surgery in the Escorts, specifically came to be examined by a division bench of the Punjab and Haryana High Court at Chandigarh in C.W.P. No. 13493 of 1992 titled as *Sadhu R. Pall vs. State of Punjab through Secretary Health and Family Welfare Punjab, Civil Secretariat, Chandigarh and others* decided on 6-10-1993, wherein the claim of the then writ petitioner to medical reimbursement was accepted when in order to save his life he had got himself operated upon in the Escorts, and the plea of the State that he could be paid rates as prevalent in the AIIMS was rejected. Special Leave Petition No. 22024 of 1995 against the said decision was dismissed by this Court on 2-2-1994. The other judgments of the High Court following the decision in *Sadhu R. Pall's case* are :

- (1) C.W.P. No. 18562 of 1992 decided on 10-5-95 titled *K.L. Kohli v. State of Punjab and others* (DB);
- (2) C.W.P. No. 260 of 1995, decided on 30-5-1995 titled *avi Mohan Duggal v. State of Punjab and Others* (DB);
- (3) C.W.P. No. 5669 of 1994 decided on 4-9-94 titled *Prem Singh Gill v. State of Punjab and Others*;

(4) 1995 (III) Punjab Law Reporter 529 titled *Tarlok Chander v. The State of Punjab etc.* (SB); and A

(5) 1995 (III), Punjab Law Reporter 682 titled *Mrs. Surya Pandit v. State of Punjab and others* (SB)

All the aforementioned judgments of the High Court have a common factual basis, i.e. each recipient of the relief from the High Court had in fact been treated in the Escorts and had borne expenses. The other common factor is that the High Court believed each writ petitioner pleading emergency to go to Escorts in the given fact situation. But this factor by itself is not the core of the views of the High Court. Hypothetically, the appellant says, he too may be considered to have been treated in the Escorts, more so, when he is being treated to have been operated upon in AIIMS without actually having been so, and had a choice to go either to the AIIMS or Escorts or Christian Medical College, Ludhiana or Appollo Hospital, Madras. The appellant in these circumstances cannot be said to be far too wrong in choosing the Escorts amongst the three recognised hospitals for open heart surgery available in the North, the AIIMS being governmental and the other two being private hospitals. The division bench in *Sadhu R. Pall's case* observed as follow :

"The respondents appear to have patently used excuses in refusing full reimbursement, when the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS New Delhi. We cannot loose sight of factual situation in the AIIMS New Delhi, i.e. with respect to the number of patients received there for heart problems. In such an urgency one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved."

We share the views afore-expressed.

It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, H

A precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to versus 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine :

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17. Vinaa dehena kasyaapi can-  
purushaartho na vidyate las-  
maaddeham dhanam  
rakshetpunyakarmaani saad-  
hayat

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

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18. Rakshayetsarvadaatmaanamaa  
tmaa sarvasya bhaajanam Rak-  
shane yatnamatishthejj  
vanbhaadraani pashyati

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

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20. Sharirarakshanopaaayaah  
kriyante sarvadaa budhaih Nec-  
chanti cha punastyaagamapi  
kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body

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22. Aatmaiva yadi naat-  
maanamahitebhyo nivaarayet  
Konsyo hitakarastasmaadaat-  
maanam taarayishati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

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The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be

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allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

T.N.A.

Appeal allowed.