Ps Bist Vs. Uoi and ors

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Court : Delhi

Decided On : Oct-25-2013

Judge : V. K. Jain

Appellant : Ps Bist

Respondent : Uoi and ors

Advocate for Def. : Ms. Sapna Chauhan

Advocate for Pet/Ap. : Mr. R.K. Saini

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

25. 10.2013 W.P.(C) 2320/2011 PS BIST ..... Petitioner Through: Mr R.K. Saini, Adv. Versus UOI AND ORS ..... Respondents Through: Ms Sapna Chauhan, Adv CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT
V.K.JAIN, J.

(ORAL) The petitioner before this Court is a retired Government servant entitled to benefits of Central Government Health Scheme (CGHS). The case of the petitioner, as set out in the writ petition, is that on 08.03.2008, he along with his wife was going to Sarojini Nagar to meet his daughter, who was staying there and

on way to Sarojini Nagar when he reached near Saket, he felt uneasy, had severe pain in the head and was taken by his wife to the nearby Max Super Speciality Hospital, Saket, where he was admitted in emergency. An MRI Angiogram of the petitioner was done, which revealed MCA bifurcation aneurysm with mild tortuousity of the aortic rash. The petitioner was diagnosed as SAH due to ruptured Right MCA with right temporal hematoma. The petitioner was operated upon in the aforesaid hospital and was discharged on 13.03.2008. The petitioner paid a sum of Rs.2,10,638.98/to the aforesaid hospital for his treatment during the aforesaid period.

2. On discharge from the hospital, the petitioner submitted a bill to CGHS Dispensary at Sarojini Nagar, seeking reimbursement of the expenses incurred by him. The claim of the petitioner, however, was accepted only to the extent of Rs 61,145/-, which according to the respondent, was the CGHS rate approved for treatment taken by the petitioner. The petitioner made a representation to the Additional Director of CGHS against the limited reimbursement made to him. The said representation, however, yielded no result which constrained the petitioner to file this writ petition seeking the following relief:(a) A writ, order or direction in the nature of certiorari calling for the records of the case for perusal; (b) A writ, order or direction in the nature of certiorari quashing the action of the respondent in refusing to reimburse to the petitioner whole of the medical bill of Rs.2,10,638/- by way of medical reimbursement, being illegal, arbitrary, discriminatory and unjust and in violation of the Rules, Regulations and the principles of equity, justice and good conscience; (c) A writ, order or direction in the nature of a writ of mandamus directing the respondent to forthwith reimburse to the petitioner the remaining amount of the medical bill i.e. Rs.2,10,638/- minus Rs.61,145/-. (d) A writ, order or direction in the nature of a writ of mandamus directing the respondent to pay the cost of this petition to the petitioner.

3. In their counter-affidavit, the respondents have stated that the Ministry of Health and Family Welfare has approved the rate list vide OM dated 07.09.2001 to settle the medical claim in respect of CGHS beneficiaries. Such package rate is a lump sum cost of inpatient treatment or Diagnostic procedure for which a patient has been referred by Compete Authority or CGHS to Hospital or Diagnostic Centre and

includes all charges pertaining to a particular treatment/procedure including, accommodation charges, ICU/ICCI charges, monitoring charges, procedural charges/Surgeons fee, cost of disposable, surgical charges and cost of medicine used during hospitalization, related routine investigations, physiotherapy charges etc. It is further stated in the counter-affidavit that the petitioner chose to go to Max Super Speciality Hospital though he could have gone to AIIMS/Safdarjung Hospital, which was much closure. It would be pertinent to note that Max Super Speciality Hospital is not a hospital empanelled by CGHS.

4. A similar issue came up for consideration of this Court in W.P.(C) No.5576/2012 titled Jai Pal Aggarwal vs Union of India, decided on 30.08.2013 and the following view was taken:4. Clause 10 of MH & FW, OM No.S.11011/23/2009-CGHS D.H/Hospital, Cell (Part-I), dt. 17.8.2010 reads as under:

10. In case of treatment taken in emergency in any non-empanelled private hospitals, reimbursement shall be considered by competent authority at CGHS prescribed packages/ rates only. Vide OM of even number dated 13.9.2010, CGHS clarified as under:

2. After the issue of the above referred Office Memorandum of 17th August, 2010, CGHS has received requests for clarification as to whether they will be categorized as super-speciality hospitals and that they can charge rates fixed for Super-speciality hospital. It is clarified that the entitlement of hospitals to super-speciality rates will not be because they perceive themselves to be super-speciality hospitals, but subject to their fulfilling the eligibility conditions in the tender document for being classified as super-speciality hospitals. The qualifications as mentioned in the tender document, to be eligible for qualifying under different categories of hospitals, are stated below: xxx Super-speciality Hospitals with 300 or more beds with treatment facilities in at least three of following Super Specialities in addition to Cardiology & Cardio-thoratic Surgery and Specialized Orthopaedic Treatment facilities that include Joint Replacement surgery: Nephrology & Urology incl. Renal Transplantation Endocrinology Neurosurgery Gastro-enterology & Gl. Surgery incl. Liver Transplantation Oncology - (Surgery, Chemotherapy & Radiotherapy) xxx B. (i) (ii) Eligibility

Criteria The Hospitals must fulfill the requirements of one of the categories of hospitals indicated at (A) above. The hospitals that are not already empanelled by CGHS must be accredited by National Accreditation Board for Hospitals and Health Care providers (NABH) or its equivalent such as Joint Commission International (JCI) of USA, ACHS of Australia or by any other accreditation body approved by International Society for Quality in Health Care (ISQua). Or Must have obtained entry level pre-accreditation from NABH at the time of submission of bid. Such hospitals would however have to obtain final accreditation from NABH by 31st August, 2010 failing which they shall be removed from CGHS panel. XXX In my view, the only logical interpretation which can be given to clause 10 of the OM dated 17.8.2010 is that if a government servant or a government pensioner holding a CGHS card takes treatment in emergency in a non-empanelled private hospital, he is entitled to reimbursement at the rates prescribed by CGHS for hospitals which are at par with the hospitals in which the treatment is taken. In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition. Clause 10 of the OM dated 17.8.2010 deals only with the cases where a card holder on account of some emergent medical requirement has to go to a non-empanelled hospital. There is no logical reason for not reimbursing him as per package rates approved by CGHS for its empanelled hospitals if the treatment is taken in a hospital, which is qualified and eligible for being empanelled as a super-speciality hospital though they were not actually empanelled with CGHS. Any other interpretation would result in a situation where CGHS card holder, despite needing immediate medical treatment will either not be able to take treatment in a nearby hospital or he will have to bear the cost of such treatment from his own pocket though he may nor may not be in a position to afford that treatment.

5. The case of the petitioner is that he had to be taken to Max Super Speciality Hospital in an emergency condition while he was passing through Saket and the aforesaid hospital was the nearest hospital at the time he was taken sick. Though

the respondent has stated in its counteraffidavit that AIIMS and Safdarjung Hospitals were nearer to Sarojini Nagar, as compared to Max Super Speciality Hospital, that would be irrelevant since the petitioner fell sick when he was passing through Saket and not when he was passing through AIIMS/Safdarjung Hospital. In any case, the respondent has admitted that the petitioner had taken treatment in emergency condition and that is why it settled his claim by making a payment of Rs. 61,145/- to him. The emergency condition of the petitioner has been acknowledged in para 3 of the counter-affidavit filed by the respondent.

6. Once it is accepted that the petitioner had taken to Max Super Speciality Hospital in emergency condition, the respondent is required to reimburse him, for the treatment which he had taken at the aforesaid hospital, on the basis of the rate which it has fixed for approved hospitals, which are at par with Max Super Speciality Hospital in terms of the categories of the hospitals. The claim of the petitioner was accordingly required to be considered on the basis of the package rates fixed by CGHS for the treatment taken at a hospital of the category of Max Super Speciality Hospital.

7. In these circumstances, the writ petition is disposed of with a direction to the respondent to accept the claim of the petitioner to the extent of the rates fixed by it for an empanelled hospital which, in terms of the norms fixed by CGHS, is at par with Max Super Speciality Hospital. The further amount, if any, payable to the petitioner in terms of this order shall be worked out and paid to the petitioner within eight weeks from today. The writ petition stands disposed of. There shall be no order as to costs. V.K. JAIN, J OCTOBER25 2013 BG