

**State of Rajasthan and ors. Vs. Surendra Kumar Kalra**

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**Court :** Rajasthan

**Decided On :** Jan-17-2008

**Reported in :** RLW2008(3)Raj1953

**Judge :** R.M. Lodha and; Guman Singh, JJ.

**Appellant :** State of Rajasthan and ors.

**Respondent :** Surendra Kumar Kalra

**Disposition :** Appeal dismissed

**Judgement :**

**R.M. Lodha, J.**

1. The State Government and its functionaries have taken exception to the order dated 1st December, 2005 passed by the Single Judge whereby he allowed the writ petition and directed the present appellants (respondents therein) to reimburse all the medical bills submitted by the petitioner (present respondent).
2. The controversy arises from the facts which may be briefly noticed by us immediately hereinafter.
3. The present respondent (writ petitioner) was at the relevant time working as T.A. to Technical Member, R.W.S.S.M.B. and Superintending Engineer, PHED, Jaipur. On 11th December, 2001, on his way to the office, he suffered pain in the

chest and approached his nephew (Dr. Sushil Kalra) working as a Cardiologist in the Tongiya Heart and General Hospital, Jaipur. The petitioner was immediately taken to Intensive Care Unit ('ICU') for ECG, where variance were found and he was advised complete rest and admitted in the hospital for treatment. He was kept in ICU ward under the observation of the doctors for two days i.e. on 11th and 12th December, 2001 and then on 13th December, an angiography was done which showed blockage to the extent of 99%. An angioplasty was advised to remove the blockage in the arteries and looking to the exigency of situation, angioplasty was done immediately. He applied for leave which was sanctioned. The petitioner, then, made an application for reimbursement of the medical bill of the treatment undertaken by him in the Tongiya Heart and General Hospital, Jaipur which was ultimately rejected by the government on 27th May, 2002. After giving a notice for demand to justice, the petitioner approached this Court under Article 226 of the Constitution of India inter-alia seeking direction to the respondents (present appellants) to reimburse the medical expenses/treatment bill lodged by the petitioner.

4. The present appellants (respondents therein) contested the writ petition and inter-alia set-up the case that the petitioner was not entitled to reimbursement of the medical expenses/treatment bill under the Rajasthan Civil Services (Medical Attendance) Rules, 1970 as the Tongia Hospital was not a government hospital as defined in the rules entitled Rajasthan Civil Services (Medical Attendance) Rules, 1970. For the sake of convenience, we shall refer to these rules as 'Rajasthan Medical Attendance Rules.'

5. In Rule 2(3)(viii) of the Rajasthan Medical Attendance Rules, the 'government hospital' is defined that means inter-alia a medical hospital or institution maintained by the government for purpose of medical treatment. It also includes a dispensary or a hospital maintained by a local authority or a hospital within the State or outside the State with which arrangements have been made by the government for the treatment of government servants. List of dispensaries/hospitals with which arrangements have been made by the government for treatment of government servants is given in Appendix-2.

6. Rule 3 of the Rajasthan Medical Attendance Rules provides thus:

3. Free Medical Attendance and Treatment to Government Servants-(1) A Government servant shall be entitled to medical attendance and treatment free of charge in accordance with provisions of these rules.

(2) (i) The expenses incurred by a Government Servant on account of medical attendance and treatment shall on production of essentiality certificate from the authorised medical attendant in the prescribed form, be reimbursed to him to the extent and in manner provided in these rules.

(ii) The following charges paid by the Government servants for treatment are reimbursable:

(a) Cost (including sales tax paid by the Government Servant on medicines purchased) of allopathic drugs, medicines, vaccines, sera or other therapeutic substances not ordinarily available in Govt. Hospitals. List of allopathic drugs, medicines which are not reimbursable is given in Appendix III.

(b) Cost (including Sales Tax paid by the Government Servant on medicines purchased) of Ayurvedic and Unani drugs of approved preparation only not ordinarily available in Government hospital. List of drugs which are reimbursable is given in Appendix IV.

(c) Ambulance charges incurred to convey the patient from residence to a Government hospital vice versa or from one Government hospital to another for treatment or examination, if the ambulance belongs to Government or the Government hospital, where patient is admitted.

(d) Blood transfusion charges.

(e) Cost wholly or partly of hearing aid or artificial limb (including cost of replacing a limb) or callipers.

If a hearing aid equipment is required to be purchased again on the opinion of the competent authorised medical attendance and that the earlier equipment is beyond repairs, the reimbursement of cost would be limited to 50% only. ,

(f) Consultation fee charged by the authorised medical attendant from the Government servant for treatment of Government servant at his residence to the extent and on scale laid down in the schedule given in Appendix 'X' of Rajasthan Service Rules, Vol. II.

(g) Fee paid to Compounder/Nurse per visit for administering injection at the residence of Government servant to the extent and on the scale laid down in the schedule given in Appendix 'X' of Rajasthan Service Rules, Volume II.

(h) X-Ray charges paid by the Government Servant in a Government Hospital/Dispensary/Clinic.

(i) Cost (including Sales Tax paid by the Government servant on medicines purchased) of Homeopathic drugs of approved preparation only, not ordinarily available in the Government Hospitals. List of Pharmacists as well as list of medicines which are reimbursable is given in Appendix 12.

(j) Consultation fee charged by the authorised medical attendant and fee paid to Compounder/Nurse for administering injections in case of Homeopathic treatment at the residence of the Government servant will not be reimbursable.

(k) The charges paid by the Government servants in a Government Hospital under Auto Finance Scheme for pathological bacteriological and radiological tests, X-Ray, Dialysis and investigations etc. which are considered necessary by the authorised medical attendant.

(l) Actual cost of Intra-Ocular Lens implantation and the treatment thereto, if undertaken in Government hospital.

(m) Cost of Subcutaneous Infusion Pump - an instrument for use of blood transfusion.

(n) The charges paid by the Government servants to the Rajasthan Medicare Relief Societies established in accordance with the Government instructions for pathological, bacteriological and radiological tests, X-Ray, Dialysis and investigations etc. which are considered necessary by the authorised medical

attendant.

7. It will be, thus, seen that a government servant is entitled to medical attendance and treatment free of charge in accordance with these rules. It provides reimbursement of the expenses incurred by a government servant on account of medical attendance and treatment to the government servant to the extent and in the manner provided in these rules.

8. Rule 8 provides for procedure for claiming reimbursement.

9. Rule 12 is a savings rule. Inter-alia, it provides that nothing in these rules shall be deemed to prevent the government from granting to a government servant any concession relating to the medical treatment which is not authorised by the rules.

10. In view of the savings provision contained in Rule 12 empowering the government from granting to a government servant any concession relating to a medical treatment which is not authorised by these rules would show that the rules can be relaxed in a given fact situation. In other words, the provision contained in Rule 3 is relaxable.

11. The Rajasthan Medical Attendance Rules came up for consideration before the Division Bench of this Court in the case of Anil Kumar Surolia v. State of Rajasthan Ors. (2005 (3) WLC (Raj.) 396.

12. The facts in the case of Anil Kumar Surolia are succinctly set out in paragraph 4 of the report and we reproduce these facts as it is:

4. The bare minimum facts that need a necessary mention reveal that the petitioner was referred on 13.7.2000 to the SMS Hospital, Jaipur when he suffered heart attack at Deedwana. He was admitted in I.C.U. and was discharged on 5.8.2000. The petitioner had to go to Ahmedabad to meet his brother Anupam Surolia in August 2000 where he suffered another heart attack and was taken to Rajasthan Hospital at Ahmedabad where due to non-availability of heart surgeon, he was taken to Krishna Heart Institute where his Angiography and Angioplasty was done. Krishna Heart Institute charged a sum of Rs. 78,000/- towards Angiography and Angioplasty and other medical expenses. The petitioner

submitted his representation for reimbursement of his mediclaim which was referred to the Registrar General of this Court by the Distt. Judge on 28.10.2000. Registrar General vide letter dated 23.11.2000 referred the case of the petitioner to the Secretary to Govt. Law and Legal Affairs. Principal, SMS Medical College however refused to sanction reimbursement of mediclaim of the petitioner on 11.12.2000. Constrained, the petitioner moved yet another representation to the Principal, SMS Medical College on 1.2.2001. His case was referred to the Registrar General of this Court who once again referred the case of the petitioner to the Secretary to Govt. Law and Legal Affairs on 1.2.2001. Principal, SMS Medical College once again refused to grant sanction for reimbursement of mediclaim on the ground that Krishna Heart Institute was not an approved institute of the Government of Rajasthan. Dy. Secretary to Govt. Law Department also refused the mediclaim of the petitioner on the ground that he was not referred out of the State for treatment and Krishan Heart Institute was not approved hospital under the Rajasthan Civil Services (Medical Attendant) Rules. This order was passed on 9.4.2001. Before invoking jurisdiction of this Court under Article 226 of the Constitution of India for the desired relief, the petitioner issued a notice for demand of justice on 2.7.2003 which was obviously not responded to by the respondents.

13. In the aforesaid factual backdrop, the Division Bench held that the petitioner was entitled to the medical treatment in a hospital which was not a government hospital necessitated on account of circumstances beyond his control. This is what Division Bench said in paragraphs 6 and 7 of the report:

6. In the factual background as detailed above, we are of the firm view that even if the required treatment was available in SMS Hospital at Jaipur or other approved hospitals in the State of Rajasthan, the petitioner was indeed entitled to medical reimbursement if he had got the treatment elsewhere necessitated on account of circumstances beyond his control. Self preservance is the first instinct in every human being. Person having suffered heart attack is not expected to await treatment at a far off distance as time is the essence in saving valuable life in such matters. There is every risk of a person breathing his last if he has to await treatment of heart attack. In the circumstances, even if such medical treatment as

obtained by a government employee be available in the State itself, he shall be still entitled to medical reimbursement for the treatment obtained elsewhere if the same is necessitated on account of circumstances beyond his control. In emergent situation thus it is not incumbent for a patient to obtain medical treatment only in approved hospitals of the Government. We would have discussed the matter in further details as per provisions of the Rajasthan Civil Services (Medical Attendant) Rules but it is conceded during the course of arguments that if the petitioner was to obtain medical treatment at SMS Hospital at Jaipur or other government approved hospitals in the State of Rajasthan, he would have been paid the same amount for the treatment he ultimately got from Krishna Heart Institute. If that be a fact, and which as mentioned above, is concerned, we are of the view that the stand taken by the State Government is obdurate and wholly uncalled for. We could imagine if perhaps the petitioner had spent far more and was claiming the same while getting treatment in a non-approved hospital. Government in any case had to pay the same amount spent by the petitioner at Krishna Heart Institute even if the petitioner was to get treatment in SMS Hospital or other approved hospital in the State of Rajasthan. This Court cannot but deprecate the attitude of the Government in rejecting justified claims in teeth of the recommendations made by this Court. Registrar General of this Court indeed supported the cause of the petitioner but the favourable recommendation made by this Court have been turned down on wholly untenable grounds.

7. Before we may part with this order, we would like to mention that the government cannot insist upon an employee to get himself treated at recognised government institution. All that the government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognised government institutions. Reference in this connection may be made to the judgment of the Supreme Court in *Surjit Singh v. State of Punjab and Ors.* : [1996]1SCR1095 (and *State of Punjab and Ors. v. Mohan Lal Jindal* : (2001)9SCC217 ).

14. This Court in the case of *Anil Kumar Surolia* has, thus, ruled that in an emergent situation, the government cannot insist upon a government servant to get himself treated at government recognised institution. In our considered view a

government servant having suffered a severe cardiac problem or heart attack cannot wait for being taken to a government hospital as for him every second is precious and delay of few minutes in the treatment may be fatal. We\* find ourselves in agreement with the view of the Division Bench that in the situation like this where a government servant is required to be treated in a emergency, the government cannot insist upon its employee to get himself treated at the government hospital. As has been laid down in the case of Anil Kumar Surolia, the government must reimburse the concerned employee at the rates that may be applicable in the recognised/approved government institutions/hospitals. We concur with this view.

15. In the case of Suman Rakheja v. State of Haryana and Anr. (2004) 13 Supreme Court Cases 562), the government servant's wife had to undergo treatment in a private hospital which was not recognised/approved at that time. The rejection of the application for reimbursement led to the litigation that ultimately traversed to the Supreme Court. The Supreme Court held that patient was admitted in an emergent condition in the hospital and accordingly, she would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto. The Supreme Court held thus:

4. Counsel for the appellant submitted that in similar case (Annexure P-4) i.e. by the order of the High Court of Punjab and Haryana in Sant Prakash v. State of Haryana wherein in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the appellant's husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in an emergency condition in the hospital. In the present case the discharge certificate also shows that the case was an emergency one. In Sant Prakash case the Division Bench held that the petitioner therein would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto.

16. That the present respondent was admitted in the Tongiya Hospital in an emergency condition does not seem to be in doubt in view of the undisputed facts.

in the circumstances, the State Government ought to have exercised its power under Rule 12 by allowing to the respondent the reimbursement of the medical treatment bill at the rate of approved/recognised government hospital. By not doing so, the government acted unreasonably and unfairly.

17. That the respondent (writ petitioner) is entitled to the reimbursement at the rates applicable in the government recognised hospital is clearly established. However, we find that the Single Judge has directed the reimbursement to the respondent (writ petitioner) as per the bills submitted by him. This direction heeds clarification. If the medical bills submitted by the writ petitioner exceeds the rates of the recognised/approved government institutions/hospitals, needless to say that his claim shall be restricted to such rates. On the other hand, if medical bills submitted by the writ petitioner are less than the rates that are applicable to the treatment at the recognised/approved government institutions/hospitals, obviously, the writ petitioner shall be reimbursed all the medical bills as submitted by him.

With the aforesaid clarification, the special appeal is dismissed.

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