
Before J.S. Narang & S.K. Mittal, JJ

SHAKUNTLA,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 423 OF 2002

21st August, 2003

Constitution of India. 1950—Art. 226—Punjab Service (Medical Attendant) Rules, 1940 (as applicable to State of Haryana)—Government notifying a list of approved hospitals for treatment of employees—Petitioners taking treatment from hospitals not in the approved list—Expenditure incurred in private hospitals far more than what is prescribed in Govt. approved hospitals—Claim to medical reimbursement—Rejection of—Challenge thereto—Govt. approved hospitals unable to entertain the emergency patients—Emergency medical procedure when required to be performed should not be weighed in terms of money—Procedures prescribed by the Govt. should not be expected to be followed in an emergency by the attendant of the patient—Petitions allowed while quashing orders rejecting the claims of the petitioners.

Held, that in the case of saving a human life at a given point of time, it is not expected of an attendant to look into the list and then hunt for the hospital which is contained therein. Such procedures should not be expected to be followed in an emergency by the attendant of the patient. If such regulations are applied so strictly, the end result may be disastrous and in that situation the patient may die. If the death occurs, in that eventuality the responsibility of the State cannot be washed out. No doubt, in normal circumstances the procedures prescribed should be followed but the procedures should not be made so cumbersome that one may get frustrated in adhering to such procedures. Emergency knows no law and no procedures. The emergency act when required to be committed should not be weighed in terms of money especially when human life is at stake.

(Para 10)

Further held, that the employer is expected to look after his employees though as per the terms and conditions spelt out in the terms of employment or the rules framed in respect thereof. Wherever the rules prescribe the reimbursement to be made to the employees, the unnecessary delays should be avoided. The facts spelt out in all these cases relate to such kind of delays and thereby the petitioners have faced the unnecessary harassments. We are of the view that the impugned orders,—*vide* which the claims of the petitioners have been rejected are not sustainable under law, as the plea set up is that the hospitals are not recognised or are not contained in the list approved by the Government, which does not stand the test of law. Thus, the cases of all the petitioners deserve to be scrutinised in accordance with the rules and so also the Judge made law.

(Para 13)

S.K. Hooda, Advocate, for the petitioner.

Surya Kant Sharma, A.G. Haryana, with Raghbir Chaudhary. Sr. D.A.G. Haryana and Rajbir Sehrawat, DAG Haryana, for the State.

JUDGEMENT

J.S. Narang, J.

(1) This judgment would disposed of CWP Nos. 423, 1061, 1757, 2103, 4351, 11862, 11906, 12014, 14070, 14230, 18135, 18148, 3783, 4126, 4136, 4151, 4424, 6104, 6311, 7420, 8285, 10882, 10886, 11622, 11744, 12964, 14351, 14584, 15730, 16110, 16409, 18665, 18692, 18838, 19204, 19245, 20293 all of 2002, 414, 1253, 1328, 1528, 1809, 2155, 2170, 2191, 3100, 3238, 3540, 4511 and 13135 all of 2003.

(2) The facts are being taken collectively and individually wherever required.

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(3) Ram Kumar husband of the petitioner suffered kidney failure problem and that after having been medically examined by Post Graduate Institute of Medical Sciences (hereinafter referred to as "PGIMS") Rohtak in the year 1977, was referred to All India Institute of Medical Sciences New Delhi (hereinafter referred to as "AIIMS"). He was examined by Dr. S.C. Dash, Professor and Head

of Department of Nephrology, AIIMS, New Delhi. He advised that the patient required early transplantation and the same be got done from some other hospital as the waiting list for surgery at AIIMS was about six months. A copy of the letter dated 24th December, 1997, as aforesaid, has been appended as Annexure P1. Resultantly, the patient got himself admitted on December 26, 1997 at Sir Ganga Ram Hospital, Delhi. He was put on dialysis several times and that all the relevant tests had been carried out and a donor of the kidney was also identified. Later on, he was admitted on February 19, 1998, for the operation along with the donor of the kidney and that the operation was carried out on February 25, 1998 and the result was successful. He was discharged from the hospital on March 6, 1998 but was required to visit the hospital for post operative check-up and care. He was given fitness certificate in July, 1998. A claim of Rs. 3,85,912 has been lodged, which was recommended by the Block Education Officer, Rohtak, to District Primary Education Officer, Rohtak. The Director, Primary Education, Haryana, raised an objection on August 23, 1999, that the patient had been operated at Sir Ganga Ram Hospital Delhi, which is not recognised hospital, consequently, the bill was returned on September, 10, 1999. The case was again recommended on September 22, 1999, with the clarification that the AIIMS recommended the surgery from outside on account of long waiting list for a period of six months at AIIMS. However, another medical claim of Rs. 10,3,639.68, was submitted on June 1, 2000 for the period with effect from May 15, 1998 to September 14, 1999, but the same was also returned in original along with the earlier bill. It is alleged that the medical bills had to be paid after selling the jewellery of his wife.

(4) The State has contested the petition on the premises that the case of the petitioner has not been rejected by the competent authority but the petitioner has been advised,—*vide* communication dated October 6, 2000, to bifurcate his claim. It is further alleged that an amount of Rs. 1,12,500 has already been paid to the patient for the treatment at Sir Ganga Ram Hospital, New Delhi. It has also been averred that after removal of objections/compliance of the observations made by the Director, Primary Education, the case of the husband of the petitioner has been received by the concerned quarters to be dealt with accordingly. As such, the petition is pre-mature and the same deserves to be dismissed. Apart from the above, no other plea has been taken by the Government for contesting the claim of the husband of the petitioner.

(5) Upon attaining the age of superannuation, the petitioner retired as Inspector from the Cooperative Department, Haryana. He along with his wife had gone to Delhi for some domestic obligations on November, 14, 2000. It was in the market that his wife fell unconscious and had to be hospitalised in the nearest hospital known as NIMHANS, a unit of Dr. Vidyasagar Kaushalya Devi Memorial Health Centre, No. 1, Institutional Area, Nehru Nagar, New Delhi. It had been diagnosed that she was having large SAH (Sub Arachnoid Haemorrhage) with basilar artery aneurysm. She was also patient of erratic hypertension. A brief summary of the patient was written down by the Doctor and the findings were returned on the basis of angiography and other tests which had been carried out on November 15, 2000, at Malhotra Heart Institute, a copy of the summary has been appended as Annexure Pl. The patient was required to pay at all these institutes and that the receipts obtained have been appended as annexures to the petition. She had to be hospitalised from November 14, 2000 to November 19, 2000. Subsequently, she was advised to consult the concerned Doctor at Apollo Hospital, Delhi. She was taken to the said hospital on the same date and was admitted accordingly. She was subjected to the treatment and was finally discharged on November 27, 2000. The discharge summary prepared by the Doctors at Apollo Hospital, Delhi, has been appended as Annexure P5. She was again required to make the payments accordingly. The payment was made and the receipts were issued accordingly which have also been appended as annexures to the petition. The petitioner presented the aforesaid bills along with the receipts for claiming reimbursement from the government. The request was turned down and the claim has been rejected,—*vide* order dated September 12, 2001, which has been made subject matter of challenge before this Court. A writ of mandamus has been sought to be issued directing the government to make the aforesaid payment.

(6) The petition has been contested by the Government and a preliminary objection has been taken that the government is justified in rejecting the case of the petitioner regarding medical reimbursement, in view of the fact that the list of approved hospitals has been notified but the wife has taken the treatment from the hospitals which do not fall in the said approved list. Reliance has been placed upon some of the judgments of this Court and so also the apex Court to the effect that the patient is not required to wait for going to the hospital which has been approved by the government. In case of emergency, the

patient is to see which is the hospital, the services of which are available and is the best. List of approved hospitals would be irrelevant, if such hospital is not approachable in case of emergency. It has been brought to our notice that the Government of Haryana,—*vide* a separate notification/instructions issued on October 31, 2002, has included “Inderprastha Apollo Hospital” and “Sir Ganga Ram Hospital” New Delhi in the list of recognised hospitals.

(7) The citations referred to are as under :—

- (1) **Ram Saran Bhatia** *versus* State of Haryana, (1)
- (2) **Som Nath Kapoor** *versus* State of Haryana (2) and
- (3) **Lajpat Rai Judeja** *versus* State of Haryana, CWP No. 1275 of 2000 decided on 10th May, 2000.

(8) The facts are being taken from CWP No. 11744 of 2002.

(9) The petitioner is an employee of Government of Haryana and is working as JBT Teacher in Government Primary School, Nagli Godha. She delivered a male child at her residence on July 31, 2000, and that after the delivery, the child was required to be hospitalised immediately. Thus, the child was taken to Saxena Nursing Home, Rewari. The Doctor advised operation of the child immediately and that the operation so opined could not be undertaken at that Nursing Home. Therefore, the child had to be taken to Sir Ganga Ram Hospital, New Delhi and was admitted in the said hospital on August 1, 2000 at 11.00 a.m. The operation was performed at 12 mid night. The emergency was apparent and except for the operation there was no other method to save the life of the child. The child was saved but the petitioner had to spend about Rs. 1, 20,000 upon the treatment and operation. She submitted the bills to the concerned quarters but for one reason or the other the same was ordered to be presented to some other authority and finally the same was put up before the Director, Primary Education, Haryana, Chandigarh. The reimbursement has been rejected on the premises that Sir Ganga Ram Hospital is not a recognised Hospital by the Government of Haryana for medical treatment to be taken by the employees of the Government of Haryana. Copy of the impugned order has been appended as Annexure P2.

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- (1) 2000 (1) S.C.T. 520
 - (2) 1996 (4) R.S.J. 646

(10) The petitioner is an employee of Government of Haryana and that the child is her dependent, as such, for the treatment of the child, she is entitled to reimbursement of the medical expenditure in pursuant to the Punjab Service (Medical Attendant) Rules, 1940, which are applicable to the State of Haryana. So far as the availability of the medical facilities at the institutes like AIIMS, New Delhi, normally the operation waiting period is so much that the emergency patients most of the times cannot be entertained and they are referred to other hospitals. It may be noticed that it is only in dire emergency that a person reaches the hospital where immediate treatment can be given. In a case where the life of a human being is at stake, it is too technical to require such a person to hunt for a list of the approved hospitals and then decide which hospital to go to. Sometimes the said hospital may not be able to accommodate the patient. Such situation has been dealt with by the apex Court in **Surjit Singh versus State of Punjab (3)**. It may be noticed that Government of Haryana has already included Sir Ganga Ram Hospital in the list of approved hospitals and that the said notification/instructions have been issued on October 31, 2002. Dehors of this, in the case of saving a human life at a given point of time, it is not expected of an attendant to look into the list and then hunt for the hospital which is contained therein. Such procedures should not be expected to be followed in an emergency by the attendant of the patient. If such regulations are applied so strictly, the end result may be disastrous and in that situation the patient may die. If the death occurs, in that eventuality the responsibility of the State cannot be washed out. No doubt, in normal circumstances the procedures prescribed should be followed but the procedures should not be made so cumbersome that one may get frustrated in adhering to such procedures. Emergency knows no law and no procedures. The emergency act when required to be committed should not be weighed in terms of money especially when human life is at stake.

(11) The authorities prescribed under the rules have also to apply their mind in a conscious and cautious manner in dealing with such kind of situations. Saving the life of near and dear, a person may have to commit any act which includes the selling of one's jewellery, borrowing money at exorbitant rate of interest or subject himself/herself

to every and any condition. No hospital, private or government would entertain the patient without the amount having been deposited, it is at that juncture, circumstances and situations, the attendant of the patient becomes so vulnerable that except for saving the life of near and dear nothing seems to be more important. Thus, gravity of the situation has to be understood by the government in a far more positive manner than applying the normal mathematics. The situations may arise and generally do arise when the attendant of the patient may not have or be possessed with the money or the jewellery for saving the life of near and dear. Can we not think of better solutions for providing facilities to the patient in such a given situation? This needs to be examined by the concerned quarters who are not only meant for ruling but for serving the society. For rendering service to the society the necessary expenditures are not to be curbed but at the same time the action should be such that it may not open a possible wasteful tap in the State exchequer. Thus, the answer has to be provided by the persons who have been sitting at the helms of affairs of the State and have been facing such situations. According to us, the situation should be dealt with by the person as if he or she is involved in the situation himself or herself. We never know that the situation which is being dealt with may fall upon that person as well.

(12) In the given case, saving the life of the child was paramount for the mother i.e. the petitioner and she had no option but to get the child in the first instance admitted in the Saxena Nursing Home, Rewari but upon their advice, for performing the operation, she had to weigh as to which institution is better equipped for saving the life of the child and as per her statement, she had been advised to take the child to Sir Ganga Ram Hospital, New Delhi. Fortunately, the child survived with efforts of the Doctor and, of course, the credit went to the institution. No doubt, the expenditure incurred may be far more than what is prescribed in the Government Hospital or in a recognised hospital. The government has recognised some of the hospitals and so far as rates are concerned, for administering medical help they, vary from one institution to the other. The only measuring law is that in case of grave emergency which hospital comes to the mind of the attendant and which hospital is considered best for saving the life of the patient. These decisions sometimes become crucial for saving the life of an individual.

(13) The cumulative effect while considering the claims of all the petitioners is that the individual cases of all the petitioners need to be dealt with expeditiously because at the time of meeting out the medical expenditures in the hospitals, the payment is raised by taking loans upon interest, by sale of jewellery or liquidating their movable or immovable assets including the Fixed Deposits, if any. Such acts sometimes involve the life time saving of an employee. Thus, the question of dealing with such kind of payments does leave a healthy impression with an employee. Generally speaking the employer is expected to look after his employees though as per the terms and conditions spelt out in the terms of employment or the rules framed in respect thereof. Wherever the rules prescribe the reimbursement to be made to the employees, the unnecessary delays should be avoided. The facts spelt out in all these cases relate to such kind of delays and thereby the petitioners have faced the unnecessary harassments. We are of the view that the impugned orders,—*vide* which the claims of the petitioners have been rejected are not sustainable under law, as the plea set up is that the hospitals are not recognised or are not contained in the list approved by the government, which does not stand the test of law. Thus, the cases of all the petitioners deserve to be scrutinised in accordance with the rules and so also the Judge made law. Therefore, we grant a writ of certiorari and quash the impugned orders of rejection in respect of the claims of each of the petitioners which have been impugned before us and we also command the government by issuing a writ of mandamus that the cases of all the petitioners be dealt with in accordance with the rules and the Judge made law within a period of three months. It is clarified that the petitioners may substantiate their claims, if so required, within 15 days from the date of receipt of a certified copy of this judgment and that the aforestated period of three months shall be in addition to 15 days and wherever the additional pleas or the additional documents are not required to be submitted, the aforestated period of 15 days shall not be available to either side. It is further directed that upon deciding the cases of the petitioners within the aforestated period, the payment due and payable to the petitioners shall be made within one month thereafter, failing which the Government shall be liable to pay interest at the rate of 12% per annum after the expiry of the period of one month as prescribed. The interest amount so payable shall be deducible from the salary of the officer (s) concerned and responsible

for dealing with and for not making the payment within the aforesated period and that the said amount shall not be reimbursible by the government under any head. It is clarified that for any such delay beyond the aforesated period the interest accrued thereon shall be paid by the government in the first instance and the deductions shall be made after the liability has been fastened by the concerned quarters.

(14) Before we part with this judgment, the circumstances and the situations faced with by the government and by the citizens of this country, we feel that the State has also to look at its finances because whatever is earned, it has to be spent for the benefit of the sovereign. The sovereignty lies and vests in the citizens of this country but the same has been diluted to the extent of one divided by 100 crores. By passage of time it is being diluted every day, unless some method is adopted for stopping the dilution of the same, which obviously lies in the hands of the Parliament which is House of Wisdom of the representatives of the sovereign. We must know our needs/resources and the day a child takes birth another mouth opens to dicipate our resources. No doubt, human life is precious but this precious life is also to be looked after in a reasonable, respectable and methodological manner. When a child comes he steps in as a sovereign and he expects not only the parents to look after him/her but the State has also to play its own part because the entire income earned in the country is controllable and controlled by the State.

(15) The question arises how much is to be spent for this little citizen to become an intelligible person and a meaningful sovereign of the State. The elders have to carve out a place for him, full of shade, full of clean air and healthy food as also the environment acceptable as per the medical norms and also to be educated to be turned out to be an asset in the society. For all this, some methodology has to be adopted by all constituents of the Constitution of India i.e. the Legislature, Executive and so also the Judiciary. The cumulative effect has to be that we have to control the game of multiplication so that our resources should not be allowed to deplete and the place may not become small and the resources available may be reachable comfortably for each other. The effort has to be made to put a stop to the increase of population. In this direction, the positive act on the part of the Parliament in first instance is required as the self education has not given the desired results.

(16) The government employee is entitled to certain reliefs as envisaged under the rules promulgated but by virtue of some rules, the reliefs are not claimable as a matter of right. However, the relief claimable becomes a right by the practice which is adopted by the government. Sometimes there are no rules but the established practice makes the rule acquire the force of law after having been interpreted by the judiciary. We have pondered over the reliefs which have been claimed by the petitioners in all the aforesaid petitions. The government over the passage of time has revised the recognised list of the hospitals and from time to time have also added some hospitals but according to our mind, this would not and cannot be the solution because we do not find any rule or regulation required to be followed for setting up of a hospital. Perhaps we are looking into this aspect for the first time. According to us, whenever a hospital is set up it must conform to certain basic requirements and only then such hospital should be allowed to function—be it a private hospital or a government hospital. We have noticed that for setting up of a medical college, the norms have been provided but for setting up of a hospital, which is essentially required to be attached with a medical college, the norms are missing. It would be appreciated if the Government would set up some kind of institute or an authority to define the norms for setting up of a hospital. However, for setting up of a dispensary as well, some essentials can be promulgated. This endeavour may eliminate the process of picking and choosing a hospital required to be recognised by a government. We are sure by adopting such procedure, administering of medical treatment to the public may also be streamlined.

(17) WE have examined the approach of the petitioners in claiming medical bills running into thousands and lakhs in given case(s). This generally becomes heavy so far as the State exchequer is concerned. We have been told that the employees are being paid fixed amount for the medical expenditure and that the said amount may not be sufficient keeping in view the prices of the medicines which have gone up in the last about one decade. It may not be possible for the government to increase the fixed medical allowances. The government employee is being paid the said allowance for the entire family which may not be sufficient and which may again leave him diverting some of his funds from his salary. We are of the opinion that instead of paying medical allowances, the government may look

into the prospectus and aspects of taking out Medical Insurance of the employee and his family by diverting those allowances for meeting the premium in that regard so that at a given point of time, the medical insurance may take care of his total expenditure which may have to be incurred for getting the treatment in the hospital or from the Doctor of his/her choice. The modalities can be worked out by constituting an authority in this regard and in this process the dwindling of State exchequer under this head can be stopped. While promulgating such a scheme the suggestions from all concerned quarters can also be asked.

(18) While giving such facilities to an employee, the appreciation of a small family can be kept in mind and the advantage for having a small family can be passed on to the employee so that this may also help the government in reducing the population.

(19) Copies of this judgment be sent to the respective Chief Secretaries of Punjab and Haryana, Advisor to the Administrator, Union Territory, Chandigarh and the Secretary to Government of India, Health and Family Welfare, New Delhi, for making an effort to render the benefit and assistance accordingly.

R.N.R.