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(2014) 03 P&H CK 0240

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4836 of 2013 (O&M)

Harinder Pal Singh — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision: March 7, 2014

Acts Referred:

- Constitution of India, 1950 - Article 21, 37, 41, 47

Citation: (2014) 176 PLR 631 : (2014) 3 SCT 483

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: H.S. Dhindsa, Advocate for the Appellant; Monica Chhibber Sharma, D.A.G, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Rajesh Bindal, J.

The petitioner, who is presently working as Homeopathic Medical Officer in Govt. Homeopathic Dispensary, Civil Hospital, Phillaur, Distt. Jalandhar, has filed the present petition impugning the action of the respondents, whereby the claim for reimbursement of medical bill has been rejected on the ground that though treatment of Multifocal Motor Neurology (MMN) was available in PGI, Chandigarh (Annexure P-15) but still the petitioner got the same from abroad. Rejection letter (Annexure P-16) has also been challenged. Learned counsel for the petitioner submitted that petitioner was suffering from neurological disorder. He was getting treatment from CMC Hospital, Ludhiana but did not feel any improvement in his health. Dr. Jai Raj D. Pandian, Professor and Head of Department of Neurology, CMC Hospital, Ludhiana referred his case to Neurologist in Prince of Wales Hospital, Sydney, Australia. The petitioner claimed prior approval for reimbursement to get treatment from the said hospital but late posting of letter by the official resulted in late receipt thereof (Annexure P-7) hence, the petitioner could not appear before the Board on 4.1.2012. Further the petitioner vide letter dated 12.1.2012 again

requested to consider his case immediately because of his appointment at Prince of Wales Hospital, Sydney, Australia was from 6.2.2012 to 10.2.2012. But no action was taken. The petitioner was admitted in Prince of Wales Hospital, Sydney, Australia during the aforesaid period and again from 8.3.2012 to 9.3.2012 for treatment. The petitioner claimed medical reimbursement of Rs. 10,30,238/- for the aforesaid treatment. The same was rejected on the ground that the treatment for multifocal motor neurology is available in PGI, Chandigarh.

2. Learned counsel for the petitioner while placing reliance on the judgment of this Court in Ujaggar Kaur Bakshi v. State of Punjab and others 2004 (2) S.C.T. 857 stated that treatment in private hospitals is permissible subject to reimbursement being allowed at the rates fixed by Director, Health and Family Welfare. Thus, the petitioner is entitled to reimbursement at least to that extent as the treatment of the petitioner as such is not disputed.

3. On the other hand, learned counsel for the respondents submitted that the petitioner was suffering from spinal muscular atrophy (SMA) for which treatment was being taken from CMC, Ludhiana. The Board constituted for checking the possibilities of treatment abroad concluded that SMA does not have any specific treatment and the treatment of MMN is also available at PGI, Chandigarh. Hence, there was no need to refer the petitioner abroad for treatment. Further sanction for reimbursement for medical expenses incurred by the petitioner for getting treatment abroad could not be allowed.

4. After hearing learned counsel for the parties, I find the action of respondents to be totally arbitrary. From the pleadings, it is evident that the petitioner in the present case was suffering from neurological disorder. For the treatment of the above disorder IVIG (Intra venous Immuno Globulin) was administered to him. It is a liquid medicine prepared from healthy human blood.

5. SMA is an autosomal recessive disease caused by a genetic defect in the SMN 1 gene, which encodes SMN, a protein widely expressed in all eukaryotic cells. SMN is apparently selectively necessary for survival of motor neurons, as diminished abundance of the protein results in death of neuronal cells in the anterior horn of the spinal cord and subsequent system wide muscle wasting (atrophy). Spinal muscular atrophy manifests in various degrees of severity which all have in common general muscle wasting and mobility impairment. Other body systems may be affected as well, particularly, in early-onset forms. SMA is the most common genetic cause of infant death. The term spinal muscular atrophy is used both as a specific term for the genetic disorder caused by deficient SMN, and a general label for a larger number of rare disorders having in common a genetic cause and slow progression of weakness without sensory impairment caused by disease of motor neurons in the spinal cord and brainstem. (Source Wikipedia)

6. Hon''ble the Supreme Court in Surjit Singh Vs. State of Punjab and Others, while dealing with the case of medical reimbursement, quoted certain passage from Garuda Purana on self preservation of one''s life. Paragraph 11 thereof is extracted below:

"11. 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, 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 Verses 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:

17. Vinaa dehena kasyaapi canpurushaartho na vidyate Tasmaaddeham dhanam rakshetpun-yakarmaani saadhayet 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.

18. Rakshayetsarvadaatmaanamaatmaa sarvasya bhaaj anam Rakshane yatnamaatishthejje 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.

19. Shararakshanopaayaah kriyante sarvadaa budhaih Necchanti 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.

20. Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati. If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself."

7. Part-III of the Constitution of India gives a picture of various fundamental rights available to citizens of India whereas Part-IV indicates the areas in which the State has to render service to the people in general and to weaker section in particular. Article 21 speaks of protection of life and personal liberty. Article 41 requires the State to make effective provisions within the limits of its economic capacity and development for securing right to work and right to education and to better assistance in cases of unemployment, old age, sickness etc. Article 47 declares raising of the level of nutrition and the standard of living of its people and improvement of better health, as among primary duties of the State.

8. In Waryam Singh Vs. State of Punjab, this Court observed as under:

"20. From the above discussion, it is clear that the Courts have unhesitatingly read the provisions of part-IV of the Constitution as integral part of various fundamental rights enumerated in Part-III of the Constitution. Therefore, it must be held that Article 47 of the Constitution which declares that raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties as well as Article 41 which obliges the State to make effective provision for securing among other things public assistance in cases of sickness and disablement within the limits of its economic capacity and development forms part of Article 21 of the Constitution. It is the duty of the State to provide adequate assistance to the people in cases of sickness. Various finer aspects of life would be rendered meaningless if one cannot get adequate medical attention. In fact, providing of medical assistance to sick and disabled is an integral part of the obligations of the State to improve public health. Therefore, every provision made by the State legislature or executive for providing medical assistance will be deemed to have their source in Articles 21, 41, and 47 of the Constitution and in appropriate case the citizen will be entitled to enforce such provisions and it will be no answer to such a claim that the provisions of Articles 41 and 47 are not enforceable by virtue of Article 37. After having given effect to the provisions contained in Part-IV of the Constitution, the State cannot back track and deny the benefit of the legislative measure or executive orders passed by it for giving effect to the contents of the Directive principles of the State Policy, which as already held above, form part of the right to life enshrined in Article 21 of the Constitution."

9. Hon''ble the Supreme Court in State of Punjab and others Vs. Mohinder Singh Chawala, etc., held that right to health is integral to the right to life. Government has a Constitutional obligation to provide health facilities. If the government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference where the government servant had undergone such treatment therein, it is the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.

10. In State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., the right of a citizen to life under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizens as its primary duty.

11. Reference can also be made to a judgment of this Court in C.W.P. No. 1523 of 2011 titled, ''Om Parkash v. State of Haryana and others'' decided on 7.2.2013.

12. Further in a recent judgment in Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, Hon''ble the Supreme Court reiterated the principle that right to health is a fundamental right under Article 21 of the Constitution of India.

13. Medical treatment especially when it is for neurological disorders, is not a matter of luxury which anybody opts without there being a need. In case of an emergent need any person reaches the hospital, where he can get best treatment. At that stage, there is no time to find out or peruse the list of government/approved hospitals, which could enable an employee to get reimbursement of the expenses incurred or seek prior approvals. Had there been no emergency, any patient would certainly go to the hospital which is recognised by the Government as in that case, he gets full reimbursement. If an employee is treated in an approved hospital, reimbursement on the expenditure incurred for treatment is made at the rates fixed by Department of Health and Family Welfare, Punjab. As against that, reimbursement is denied in case of treatment from an unapproved hospital.

14. The relationship of a doctor and a patient is a matter of confidence and trust. Any patient would like to go to the best doctor available. Even if the petitioner had not gone to any government or any of the approved hospitals and had chosen to get himself treated from an hospital abroad, the liberty cannot be left with the Head of the Department to refuse reimbursement, once it is found that the patient had taken treatment. It is not that only medicines are to be taken orally. The rejection of the claim on these hypertechnical grounds, is totally arbitrary. The beneficial policies cannot be interpreted or kept in water tight compartment. These are to be interpreted liberally considering the facts and circumstances of the case. The fact that the petitioner had been operated upon in Prince Wales Hospital, Australia for his disease is not in dispute. Once that is so, the entitlement of the petitioner to reimbursement of the expenses incurred by him in terms of the rates prescribed by Director, Health and Family Welfare, Punjab cannot be denied. Accordingly, the action of the respondents in denying medical reimbursement to the petitioner is declared illegal. They are directed to process the claim made by the petitioner as per rates prescribed by Director, Health and Family Welfare, Punjab. Needful be done within a period of two months from the date of receipt of copy of the order and due payment be made to the petitioner.

The petition stands disposed of.