

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01570/2013

HYDERABAD, this the 11th day of February, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



Sri R.V. Balaram (since deceased) per LRs
1. Sandhya Malige

2. Pragnya Shri Krishna Sri Ram
3. Pragna Shriya Sri Ram

(LRs permitted to join vide order in MA 101/2017 dt.18.12.2020)

...Applicants

(By Advocate : Mr. N. Vijay)

Vs.

1. Govt. of India, Ministry of Health and Family Welfare,
Department of Health and Family Welfare,
New Delhi Represented by its Under Secretary.
2. Govt. of India, Ministry of Finance, Department of Revenue,
Central Board of Customs and Central Excise, North Block,
New Delhi Represented by its Under Secretary.
3. Central Board of Customs and Central Excise, North Block,
New Delhi Rep. by its Chairman and Spl. Secretary.
4. National Academy of Customs, Excise and Narcotics (NACEN), RTI
Jaweed Maskaan, 5-10-188/4/A, Hill Fort Road, Adarsh Nagar,
Hyderabad, Represented by its Additional Director General,
Hyderabad.
5. Commissioner of Customs and Central Excise, Hyderabad-II,
Commissionerate, Kendriya Shulk Bhavan, Basheer Bagh,
Hyderabad.Respondents

(By Advocate : Mr. T. Sanjay Reddy, Proxy Counsel representing
Mr. T. Hanumantha Rao, Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed by the original applicant Sri R.V. Balaram challenging the proceedings dt. 25.07.2012 and 26.11.2012 passed by the respondents 2 & 1 respectively as illegal, arbitrary and violative of Articles 14 & 21 of the Constitution of India and consequently to direct the respondents to reimburse the medical expenditure claimed by him.

Sri R.V. Balaram, who had filed this OA, died during the pendency of the OA. His LRs came on record to prosecute the OA. For convenience, Sri R.V. Balaram is referred as “Applicant”.

3. Brief facts of the case are that the applicant while working as Asst. Director in NACEN, Hyderabad fell ill on the midnight of 4th January 2008 and had to be admitted in an emergency in Global Hospital, Hyderabad. It was diagnosed as Liver Cirrhosis and the applicant was bedridden in a critical condition needing medical attention all the time in the ICU and at home in the year 2008. Therefore, he could not consult a Govt. specialist nor could he seek government permissions. Medical specialists suggested liver transplantation and the applicant completed required procedures for the same and since he could not get a matched organ from his friends and relatives, it was decided to go in for cadaver liver transplantation in India itself. Even for cadaver transplantation, suitable organ could not be selected and in the meanwhile multiple organ failure started. At this juncture Prof. Rela, Doctor from Kings Hospital London during his visit to the Global Hospital, has suggested immediate transplantation at Kings Hospital since post operative



care is better in the said hospital. Hence in order to save the life of the applicant it was decided to get him admitted in Kings Hospital, London by his friends and relatives. The mental trauma was so severe, that neither the friends/ relatives nor the family members of the applicant, could seek any official permission from the standing committee to go over to London for treatment. Applicant reached London on 1.11.2008 and after multiple medical complications calling for frequent hospitalization between November 2008 & August 2009, the transplantation was done on 22.5.2009 and applicant returned on 7.8.2009. With improved health applicant could approach CGHS for permission to seek treatment for post liver transplant at Global Hospitals, Hyderabad (Annexure A-6). Further, applicant after receiving the DG, NACEN, Faridabad ex post facto approval to visit London for medical treatment through ADG, NACEN, Hyderabad letter 18.10.2010, made a claim for Rs 74.89 lakhs on 29.12.2010. The claim was returned directing to process it under CS (MA)/CGHS rules and accordingly, the claim was scrutinized and recommended for sanction of a sum of Rs 59.54 lakhs. Ministry of Health & Family Welfare thereupon queried as to why i) opinion of a Govt. specialist was not taken, ii) prior permission of standing committee not taken to go abroad for treatment and iii) delay of 1 ½ years in preferring the medical claim. Despite reasons given by the applicant and the Addl. DG stating that the claim is genuine, it was rejected on 25.7.2012 on grounds that liver transplant is available in India. Therefore, though another representation was submitted on 24.9.2012, duly recommended by the Addl. DG, NACEN, it was again rejected resulting in the filing of the OA.



4. The contentions of the applicant are that rejection of the claim is against Articles 14 &21 of the Constitution of India. The standing committee after observing on 7.3.2012 was that liver transplant was available in India but related cadaver liver were not available in India and yet the stand of the committee in rejecting the claim is irrational and inconsistent. Parent department recommended the claim as it was genuine. The health complications that arose during the treatment and the fact that even in London it took 7 ½ months for transplant to be done, were not duly considered. The claim has 3 components and rejecting the claim in toto is perverse. The 2nd respondent has issued guidelines on 16.1.2013 fixing norms for liver transplant surgeries to CGHS/CS (MA) Rules beneficiaries and respondents should have followed the guidelines for considering the claim.

5. Respondents, *per contra*, state that the applicant has taken treatment for liver damage from January 2008 to 18th October in Global Hospital, Hyderabad and at Kings College Hospital, London from Nov 2008 till August 2009. On return from London, applicant sought *ex-post-facto* permission for above treatment, which was given on 8.10.2010. Medical claim was preferred for Rs.74.89 lakhs which was scrutinized and after restricting it to Rs.59.56 lakhs, the claim was forwarded to the Min. of Health & Family Welfare for approval in accordance with OM dated 27.12.2006. The standing committee met on 7.3.2012 and while making some observations sought clarifications on 3 points. The committee examined the reply given on 19.4.2012 by the applicant, to the clarifications sought and rejected the claim on 13.6.2012, stating that liver transplant was



available in India. Another representation submitted by the applicant on 24.9.2012 met the same fate on grounds that liver transplant was available in India, the transplantation was pre- planned and prior permission should have been obtained as per procedure prescribed. Any claim beyond Rs.5 lakhs has to be sanctioned by the standing committee of the Ministry of Health and Family Welfare, consisting of expert medical doctors,. The claim was rejected in the meeting of the standing committee on 13.6.2012 and not when the committee met on 7.3.2012 where only certain observations were made. The ex-post approval given by the respondents is not binding on the Ministry of Health and F.W. There is no procedure of ex-post facto approval of any medical claim and therefore allowing a part of the claim does not arise. The standing committee is competent to scrutinize medical claims as per CS (MA) Rules 1944, CGHS rules r/w OM 27.12.2006. The applicant although out the treatment has not approached the CGHS/ Govt. Hospital for a suggestion on the treatment and since prescribed procedure was not followed the claim was rejected.

6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is about rejecting the medical claim of the applicant for having undergone liver transplantation at London and taking pre operative treatment at Global Hospitals, Hyderabad, without prior permission as required under the rules. Applicant was admitted in an emergency condition at Global Hospital, Hyderabad in the night on January 4th, 2008. We have gone through the medical records which are not only extensive but are exhaustive revealing that the condition of the applicant warranted immediate medical attention. Under the medical rules, an

employee can be admitted in emergency even in a hospital not recognised by CGHS, by following certain provisos laid there in. The applicant's health being precarious, he was advised Liver transplantation and since efforts to get it done in India did not fructify, it was got done at Kings College Hospital London, based on expert medical advise given, keeping in view the critical health condition of the applicant and post operative care being superior at the said hospital. After transplantation applicant returned to India and preferred a claim for Rs.74.89 lakhs which was pruned to Rs.59.56 lakhs as per eligibility. The claim being greater than Rs.5 lakhs, on being forwarded to the standing committee of the Ministry of Health and Family Welfare for approval, it was rejected on 13.6.2012.



II. The grounds for rejection are broadly as under:

- a. liver transplant facility was available in India,
- b. transplantation was pre- planned and
- c. prior permission not obtained as per procedure prescribed.

More than applicant's explanation, it is the response dated 20.4.2012, given by the Addl. D.G., NACEN, Hyderabad under whom the applicant worked, responding to the Ministry of Health and Family Welfare remarks, recommending the claim as genuine, which requires a close reading and hence extracted here under:

“1. Why opinion of Government Specialist was not taken?

As can be seen from the discharge summary of Global Hospitals, Lakdi-ka-pool, Hyderabad, Shri R.V. Balaram was admitted in the said Hospital on 05-01-2008 at 12:02 AM (just past midnight), wherein he was diagnosed of Non-Alcoholic Chronic Liver disease – more

specifically it was diagnosed as Liver Cirrhosis (coupled with enlarged spleen, nodules in intestine, renal dysfunction, pulmonary distress, hypertension, type-II diabetes etc.). Under these emergency circumstances and at that time of the night it was not possible for the individual to approach a Government Specialist for opinion.

Subsequently, the officer was reeling under continuous critical illness (which is explained in detail in next Paragraph). Thus his condition did not permit him to go through the Govt. specialist procedure.



2. *Why prior permission of the Standing Committee was not taken while going for treatment abroad?*

Shri R.V. Balaram's medical condition had further deteriorated leading to frequent and prolonged hospitalizations on account of various infections of lungs and kidneys, techy-cadia, encephalopathy and oxygen support in addition to dysfunctional liver. He was completely immobilized and had several recurrent admissions to the Hospital. At that stage, being bedridden, he was struggling for survival and anyone in that position would not be in a condition to even think of anything beyond mere survival. At this stage the experts had suggested the need for immediate Liver transplantation and Surgical and other medical interventions of highest standards as the medical condition was suggestive of multiple internal organ failure. In view of the multiple complications, advanced stage of the disease and non-availability of suitable organs, he had approached KINGS Hospital, London with the sole intention of survival, as the said Hospital has the best facilities for this purpose. This resulted in imminent need for moving to Kings Hospital, London immediately. At this juncture of critical illness, Shri R.V. Balaram was not in a position to approach the standing committee. More importantly, it should be noted that he was taken to Kings Hospital, London by his family and friends with the sole intention of saving his life. Their entire attention was concentrated on his survival only. Due to his complete immobility, and due to his relatives' single minded concentration on his survival and due to their lack of knowledge about the procedure requirements, the permission of the standing committee could not be obtained.

3. *Why it took him one and a half year to submit the bills for ex-post facto approval?*

After the Liver transplantation, though there was improvement, Shri R.V. Balaram has submitted that he was faced with several medical challenges. He suffered with varieties of infections. Thyroid imbalances and the renal problems with elevated levels of Creatinine and Urea, while he was on high immuno suppression regime. In addition to this he had two serious episodes of Herpes Shingles and persistent Urinary tract infection. He was diagnosed of DVT and kept on the course of Intravenous Heparin. He was also diagnosed of 45% left CCA luminal stenosis. He continuously had visual phenomenon and imbalance and finally he also suffered a brain stroke with a hyper intensive area in right occipital lobe in sub cortical region. Due to these complications, he was forced to stay on leave for most part of 2009 & 2010 even after he returned after the Liver transplantation. The sequence of illness has kept him out of physical condition to collect the documents from all places, put them in order and submit the claim.

It is pertinent to mention that there was no one to help him and had to be done by him alone. Hence the medical claim could not be submitted immediately. The delay in filing may kindly be condoned keeping the actual circumstances in mind.

In view the factual submissions made by Shri R.V. Balaram, Deputy Director, his case may be considered sympathetically on humanitarian grounds. His case is genuine to circumstances beyond his control, he was on leave for nearly three years without pay. It is therefore requested that the issue may be considered empathetically and procedural infractions, if any, may be condoned and the medical claim submitted may be sanctioned at the earliest."



III. The above remarks make it explicit that the claim is genuine and the excruciating circumstances under which the applicant had to undergo emergency treatment at Global Hospitals, Hyderabad as well liver transplant at Kings College Hospital, London. In the circumstances cited any human being would attempt to save his life and there after think about official procedures to be complied with. In the pursuit of obtaining official approval if the employee loses his life, then the very purpose of providing medical facility, as a welfare measure would be defeated. The intrinsic aspect to be examined is as to whether the claim is genuine. The permission granted by CGHS as per A-6 for post operative Liver Transplant treatment at Global Hospitals, Hyderabad stands testimony to the genuineness of the claim. Besides, the innumerable medical records on record speak for themselves that the applicant has undergone Liver transplant. The Standing committee has also not raised any objection in regard to the claim being genuine, but harped on procedural aspects. The post facto approval given by the respondents to travel to London for treatment on 8.10.2010 sets at rest any further doubts about the claim being genuine.

IV. We do observe that the bill was split into 3 phases viz, pre Transplant, Transplant and post transplant. CGHS has given approval for

post transplant treatment vide Annexure A-6 and therefore, it is surprising to note that even this part of the bill has been rejected. Further, clause 27.2 (b) of chapter 27 of Medical facilities to Central Government employees including CGHS beneficiaries permitst kidney and other organ transplant to be got done abroad. Moreover, para VI of the OM dated 16.1.2013 dealing with liver transplant surgery, issued by Ministry of Health & Family Welfare states as under:



“VI. Reimbursement Criteria:-

As Liver Transplant Surgery is a planned surgery and therefore, prior permission has to be obtained before the surgery is undertaken. However, if for some reason it is done in emergency to save the life of the patient, the Standing Committee shall consider the cases referred to it for recommending grant of ex-post-facto permission on a case to case basis.”

Therefore, in an emergency when a transplant is done the Standing Committee has to consider such cases. The circumstances in which the applicant had to get the transplant done is well explained by the Addl. DG, Hyderabad and needs no further reiteration. Therefore, the standing committee has not given due credence to this clause while rejecting the medical claim.

V. Even the OM dated 27.12.2006 permits the respondents to settle medical claims beyond Rs.2 lakhs as per prescribed rate list after obtaining concurrence of the internal financial advisor. The relevant paragraph is reproduced here under:

“4. The Ministry of Health & Family Welfare has been examining the question of further delegation of powers to the Heads of Departments/ Ministries in the matter and it has been decided with the approval of the competent authority to delegate powers to Departments/ Ministries to settle all cases where there is no relaxation of rules and the entitlement was worked out with reference to the rate list prescribed without any monetary ceiling. The delegation would, however, be subject to the condition that the Heads of the Departments/ Ministries may settle cases upto the limit of Rs.2,00,000/- (Rupees Two lakhs only) (worked out with reference to the prescribed rate list). In respect of cases involving payment exceeding Rs.2,00,000/- (Rupees

Two lakhs only) but as per the prescribed rate list, the concerned Departments/ Ministries may settle such cases in consultation with their respective Internal Finance Division. Only in those cases where the settled scheme/ rules are required to be relaxed, should the cases be referred to the Ministry of Health & Family Welfare.”

Thus as can be seen from the above, rules provide for getting liver transplantation done abroad and that if prior permission could not be taken the standing committee can consider the claim for transplant got done abroad in an emergency. Further, the claim preferred can be restricted to prescribed rates and allowed after taking concurrence of the Internal Financial Advisor. When the rules provide the leeway to consider the claim, we find it unfair to reject the claim in totality without taking the import and the spirit of the rules referred to. The standing committee observation was that Liver transplant facility is available in India. Agreed, if it is so then one would not be able to appreciate the fact as to why the rules provide for transplant abroad. When there is a provision in the rule, and particularly when one's life is in danger, procedural aspect of prior permission and delay in submitting the bill are not matters of inherent importance. The respondents claim that the standing committee members are expert medical doctors. Even the standing committee has made the following observation on 7.3.2012, as under, which do strengthen the claim of the applicant.

“The committee observed that Shri R.V. Balram is a CGHS beneficiary hence eligible for treatment abroad. Liver transplant is available in India but related match was not available Cadaver liver was also not available and his condition deteriorated.”

VI. Providing medical facilities to employees is a welfare measure taken up by the Govt. A Govt. employee is eligible to avail medical facilities while in service or on retirement. There can be no restrictions

placed on this right. The decision to how to treat a patient, lies entirely with the doctor based on his experience and qualifications. The patient or his family members have very little role in deciding the manner of treatment. Treatment is taken from specialist doctors and super specialty hospitals so that it is safe and proper. This choice of taking treatment from a specialty hospital in all fairness can be no ground to reject reimbursement since the hospital was not in the approved list or the procedure prescribed has not been followed. The litmus test is as to whether the treatment was taken and supported by documents certified by doctors. Once the documents are found to be true the claim cannot be rejected on technical grounds. It is important to note that law does not require prior permission to be taken for treatment when survival is at stake. We take support of the observations made by the Hon'ble Supreme Court in ***Shiva Kant Jha Vs. Union of India in Writ Petition (Civil) No.694 of 2015*** as under, in asserting what we did above.

"It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Specialty Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Specialty Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

Xxxxxx xxxx xx xx xxxx

Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration.”

In the case on hand the applicant had the right to take medical treatment. In an emergency he was admitted in Global Hospitals, Hyderabad in the night, for liver disease. The applicant and his family had no choice in regard to treatment. They had to go as per the advice of the specialist doctors in regard to transplant and in particular at Kings College Hospital, London so that the post operative care is safe. In addition, circumstances were critical and hence the decision to get Liver transplantation at London. Just because the applicant could not follow the procedures prescribed, it would not mean that he is ineligible for the treatment. The critical factor is that the treatment was genuine and medical records duly certified by the doctors were submitted. To save precious life, Govt. provided the medical assistance with certain rules to be followed. The intention of the Govt. was never that the rules be followed even if the situation requiring medical attention is life threatening. The purpose of the rules/procedures is to ensure that the employee avails the benefit in a proper manner and not to deny him the benefit debasing the very spirit of the rules. There is no requirement under law to seek prior permission to take medical treatment when one's life is about to be snuffed out. Hence the above verdict of the Hon'ble Supreme Court squarely applies to the case of the applicant.

VII. Moreover, a human being has to primarily self preserve itself to live life in its true form. Self preservation which is sacred and fundamental, is in fact a right to life under Article 21 of the Constitution. Self preservation involves preservation of the body. Without preserving



the body there can be no scope to perform any task in the physical plane.

If one does not protect his body then who else will protect it. Applicant's plight can be no different and to self preserve himself he has to get treated at the earliest and at a facility where he has confidence. If not, the vehicle called the body, cannot serve the respondents and therefore the Medical reimbursement rules for taking medical treatment at the appropriate time and be healthy to serve. There are rules which govern scrutiny of medical claims and the claim can be restricted as per rules but not totally deny it when the case is a genuine one. The remarks made are broadly based on the observation of the Hon'ble Supreme Court in **State of Karnataka v. R. Vivekananda Swamy, (2008) 5 SCC 328**, as under:-

20. Law operating in this field, as is propounded by courts from time to time and relevant for our purpose, may now be taken note of.

21. In Surjit Singh v. State of Punjab this Court in a case where the appellant therein while in England fell ill and being an emergency case was admitted in Dudley Road Hospital, Birmingham. After proper medical diagnosis he was suggested treatment at a named alternate place. He was admitted and undergone bypass surgery in Humana Hospital, Wellington, London. He claimed reimbursement for the amount spent by him. In the peculiar facts of that case it was held:

“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 Garuda Purana (a dialogue suggested between the Divine and Garuda, the bird): in the words of the Divine:

17. Vinaa dehena kasyaapi canpurushaartha na vidyate
Tasmaaddeham dhanam rakshetpunyakarmaani 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 bhaajanam



*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.*

* * *



*20. Sharirarakshanopaayaah kriyante sarvadaa budhaih
 Necchanti cha punastyagamapi kushthaadirogina
 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.*

* *

*22. 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.”*

*We may, however, notice that in that case, before this Court, Rules
 framed under the proviso to Article 309 of the Constitution of India,
 were not in force. What were in force were the policies regarding
 reimbursement of medical expenses framed by the State of Punjab on
 25-1-1991 and 8-10-1991.*

*This Court, however, considered the validity of a rule in regard to
 reimbursement of the medical expenses vis-à-vis the fundamental right of a
 citizen in terms of new policy evolved by the State of Punjab limiting claim
 for reimbursement in State of Punjab v. Ram Lubhaya Bagga opining:
 (SCC pp. 129-30, para 26)*

VIII. The objective of framing the medical rules is that there be a system of check and balances so that the employees avail of the medical benefits as per rules and that there would not be any bogus claims. The aspect which is of crucial significance is the whether the claim is genuine. Therefore, the usual provision is to get treated free of cost in Govt. hospital and in case of a private hospital as per approved rates. In the instant case applicant had to join the Global Hospitals in an health emergency and thereafter proceed to London for further treatment as per the advise of medical experts. The action of the applicant cannot be found fault in the circumstances he was placed like being bed ridden, the need to survive and there being no one at home who knows the official procedure to be followed for getting treatment in the country and abroad. Respondents having

admitted that the claim is genuine, should have processed the claim as per eligibility and not reject it lock stock and barrel. We rely on observations of the Hon'ble Apex Court in *Govt. of Haryana v. Vidya Sagar, (2009) 14 SCC 652*, as under, in remarking as at above.



10. *The question has also been considered by this Court in State of Karnataka v. R. Vivekananda Swamy (2008) 5 SCC 328 in the following terms: (SCC p. 336, para 24)*

"24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such Rules furthermore having been framed under the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognised government hospitals and on the other he, at his option, may get himself treated from other recognised hospitals/institutions subject of course to the condition that the reimbursement by the State therefore would be limited."

IX. Often we find that employees have to struggle a lot to get the genuine medical claims settled for multifarious reasons. An employee of the cadre of the applicant would not have the financial resources to meet the medical expenses of the magnitude of Rs.74.89 lakhs, unless, friends and relatives pitch in with some help. Morally the applicant is bound to repay the hand loans raised. In the critical health state he was it is understandable that friends and relatives would have come to his rescue. After recovery, applicant did make efforts to obtain post facto approval from the respondents to visit London for treatment and also permission from CGHS for taking post operative treatment from Global Hospitals, Hyderabad. The priority was to preserve his body and later the medical claim. Moreover, a person who has gone close to death in a complicated procedure like liver transplant, would not immediately have the requisite mental strength or the physical stamina, to present the bills raised in a manner acceptable to the respondents.

Therefore, one can expect some delay in preferring the medical claim. Such delay should not be viewed adversely to negate the claim. In fact, Govt. of India has stationed Welfare officers to assist in cases of the nature in question. Respondents organisation can be no exception to the same. It appears that respondents have not taken any initiative in this direction as is evident from the reply statement. On the contrary raising a query about the delay of 1 ½ years in preferring the claim is not in the realm of reason to say the least. It is a known fact that the CGHS deductions are made from the monthly salary of the employees. Therefore seeking reimbursement of cost of medical treatment is the right of the applicant and delay should be no reason to decline a claim. We echo the observations of the Hon'ble High Court of Punjab and Haryana in **Maninder Singh Patwari vs State Of Punjab And Ors** on 4 March, 2020 in CWP-17694-2017, as under, in stating the above.

From the above, it is evident that instead of reimbursing the medical bills, the petitioners are being made to run from one authority to another. As per the Department, the employee has to apply directly Oriental Insurance Company as per the procedure. There is nothing to show that the copy of the Insurance Scheme was ever circulated or brought to the notice of their respective employees or they were made aware of the procedure for claiming the medical reimbursement. Even otherwise, the petitioner being an employee of the respondent-department, it was incumbent upon the respondent-department to forward the medical claim to respondents No.6 and 9 instead of reimbursing the bills. Thus, there is negligence on the part of the respondent-State for not forwarding the same to the Oriental Insurance Company in case the bills had been received by the Department. Further, it is actually the duty of the respondent-State to ensure that medical bills of their employees are reimbursed taking into account that the agreement is between the State and the Oriental Insurance Company. The premium is also paid by the State. Therefore, it is for the respondent-State to procure the medical reimbursement from the Oriental Insurance Company and to deposit the amount in the accounts of their employees. In case of any violation of the policy, it is the State being the employer as well as the signatory to the agreement, who should contest on behalf of their employees. Further, respondents No.6 and 9 too on their part cannot reject the medical reimbursement only on the ground of delay i.e. beyond 30 days without examining the problem/difficulty of an employee, who is recovering or may be seeking reimbursement on account of his family member covered under the scheme and who is either trying to cope up with his or her ailment or may be



even death in certain cases. In the present case, it is not denied that the respondent-State has already paid the premium. Therefore, the respondents No.6 and 9 under no circumstances can deny the medical reimbursement on the ground of delay. The medical reimbursement is the right of the petitioner, which should have been granted immediately on receipt of the medical bills.



Accordingly, the writ petitions are allowed. The Oriental Insurance Company shall reimburse the medical bills to the petitioners as per the policy ignoring the already delay, if any, alongwith interest @ 9% per annum from the date the bills received in the office of the Deputy Commissioner till it is paid within a period of one month from the receipt of certified copy of this order. In case, the same is not paid within the period as mentioned above, the Insurance Company shall be liable to pay interest @ 12% per annum from the expiry of the period of one month. Further, in case the Oriental Insurance Company does not make the payment as directed, the State shall be held liable to make the payment towards the medical bills and recover the same subsequently from the Oriental Insurance Company.

X. We also observe that the right to health and access to medical aid to protect oneself while in service or on retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A of Constitution of India to make the life of an individual meaningful, purposeful and dignified. Respondent have no authority to deny the acclaimed right. We rely on the observation of the Hon Apex Court in **Secretary, Govt. of Haryana vs. Vidya Sagar, CA 4384/2009** decided on July 16, 2009, to remark as at above.

“... we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

XI. The right of a citizen to live, casts obligation on the State under Article 21 of the Constitution, which is reinforced by Article 47, placing a valuable responsibility on the State to secure the health of its citizens. It is more of a sacred obligation of the State to which the citizens look to for discharging this obligation. The applicant has done what he could do to save his life and looked towards the State for discharging its sacred obligation. Alas it was not to be and therefore not in accordance with the observations

of the Hon'ble Supreme Court in **State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117**, as under,



Hence the right of a citizen to live 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 citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal.

XII. In cases of nature on hand it is the realities of life which have to be taken into consideration. The complex circumstances in which the applicant was placed have to be appreciated before rejecting the claim. Respondents have been pointing out the procedural lapses on part of the applicant and if the question were to be flipped back towards the respondents by raising the question as to whether at any interval of time of more than 1 ½ years did the respondents guide/assist the applicant or his family to follow the procedure, the answer is a definite no, since, records on file do not indicate any such assistance. Hence, a procedural lapse caused due to the difficult circumstances in which the applicant is placed, should not be the basis for rejecting a genuine claim. We are supported by the observations of the Hon'ble Delhi High Court observations in **S. R.**

Sharma v. Govt. of NCT of Delhi & Ors in WP (C) No. 9229/2009

decided on April 28, 2010, as under:



28. *It appears to me that the follow up treatment of chemotherapy in this particular matter are inextricably linked to and the logical consequence of the main treatment undergone by the petitioner's son, for which the petitioner has been admittedly compensated and as such, the claim of the petitioner is allowed as a special case. No doubt the petitioner had not taken the permission as per the prescribed form Part —C as it appears that the said portion is not filled up by the petitioner at the time of obtaining permission but at the same time, one has to consider the realities of life. In a case where the child of a person is in such a critical stage of a disease, the parents are not always in the right state of mind. Here is a case of such nature, and had the petitioner at the time of obtaining the permission been correctly guided by the authority, the petitioner would have applied for obtaining the permission as per Part —C also. It appears to me that there was a bona fide mistake of the petitioner and benefit is to be given to the petitioner due to the facts and circumstances of the present case.*

XIV. Lastly, it is perplexing to note that the Standing Committee has made an observation on 7.3.2012 as cited supra at para 7(V). The observations, though not tacitly approve the expenditure incurred, yet they do indicate that the fact that the standing committee was appreciative of the difficulties the applicant faced in getting the transplant done. However, after making such an observation, it was but natural to take a favourable view in the matter. Nevertheless, the respondents claim that the committee consisting of medical experts has rejected the claim. It is not clear as to whether committee had a specialist in liver disease, which is usually the correct way in assessing medical cases, as per law. However, it is too late to go into this at this distant date. Having said that, we need to point out that the observation of the committee is a single liner stating that the transplant is available in India and that the explanation of the applicant is unsatisfactory. In what way it is not found unsatisfactory is not expounded in the minutes

submitted by the respondents. The decision of the committee has to be respected, but the committee has also a responsibility to take a decision as per rules and law. The rule was to consider transplants done abroad in emergency as stated at para IV above. The committee has not taken this rule into consideration while rejecting the claim. Besides, when the applicant has given elaborate and valid reasons for the 3 clarifications, duly supported by the controlling officer letter reproduced at para II, it was the bounden duty of the committee to state as to why the clarifications given by the applicant were not satisfactory. When the communication about a civil consequence is not clear then it is void under law. It is well settled that an order which is not speaking and not reasoned is invalid in the eyes of law. Reason is the heart beat of every conclusion without which the conclusion is lifeless as held by the Hon'ble Supreme Court in **Ram Phal v. State of Haryana, (2009) 3 SCC 258 : (2009) 2 SCC (Cri) 72 : (2009) 1 SCC (L&S) 645** at page 259 as under:

6. The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those who exercise power over others. This Court in *Raj Kishore Jha v. State of Bihar* [(2003) 11 SCC 519 : 2004 SCC (Cri) 212] has stated: (SCC p. 527, para 19)

“19. ... Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

The conclusion of the standing committee in rejecting the claim without giving justifiable reasons, is thus life less and invalid as per law.

XV. The clause 27.2 (b) of chapter 27 of Medical facilities to Central Govt employees including CGHS beneficiaries which has a statutory backing, provides for transplantation of organs abroad. Therefore, when

there is a statutory provision available, can an executive direction prevail over it, is the question which has to be looked into. It cannot, as observed by the Hon'ble Kerala High Court, in **N.M.Kutty Vs. High Court of Kerala (FB) MANU/KE/0017/1978 : (1978) I LLJ 333 Ker (FB)**, as under.



38. In case of conflict between the rules and the executive order rules would prevail.- Where there is conflict between the provisions of a rules made under proviso to Article 309 and the Government order made in exercise of the executive power under Article 162 of the Constitution, the former would prevail over the latter.

Therefore, the denial of reimbursement on the ground that transplant is available in India, when there is a provision under the rules, by an executive observation of the standing committee lacks validity. The committee need to base its decision within the ambit of rules and law.

XVI. Presuming for a moment that the applicant were to get Liver transplant in the country he would have been eligible for reimbursement in view of the emergent nature of the case. The applicant had to follow the advise of the expert doctors on the subject and for doing so, the respondents have forced him to come to the Tribunal instead of passing the bill as per approved rates, in accordance with the observations of the Hon'ble Apex Court in a series of judgments cited supra, which cover all the objections raised by the respondents from every perspective.

XVII. Hence, in view of the above, we find the decision of the respondents to reject the medical claim is against rules and law. We set aside the impugned orders issued by the 2nd respondent dt. 25.07.2012 and dt. 26.11.2012 issued by the 1st respondent. Consequently, we direct the respondents to reimburse the medical expenditure incurred by the applicant in the three phases of pre-transplant, transplant and post transplant as per

approved rates fixed under CGHS/CS(MS) Rules, keeping in view the instructions contained in OM dated 27.12.2006 cited supra. Time calendared to implement the judgment is 3 months from the date of receipt of this order.

With the above direction the OA is disposed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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