

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No. 645 of 2017

Date Of Decision: 31st August, 2018.

CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).

Shri Arun Kumar Chavan,
Research Officer(Retd.),
C.W.P.R.S., Pune- 24.
(R/at: H-4, Flat No. 2606,
Hari Om Co.Op. Hsg. Society,
M.H.B. Colony, Yerwada,
Pune- 411 006.

....Applicant.

(Applicant by Advocate Shri S P Saxena)

Versus

1. Union of India,
Through: The Secretary,
Ministry of Statistics and Programme
Implementation, 410, Sardar Patel Bhawan,
Parliament Street, New Delhi- 110 001.
2. The Director,
National Sample Survey Office,
Sankhiyiki Bhawan,
G.P.O. 'A' Bldg., C.B.D. Shahdarg,
Near Karkardoma Court,
New Delhi- 110 032.
3. The Director,
National Sample Survey Office,
Kendriya Sadan, 2nd Floor, A9, B Wing,
Opp. Akurdi Rly. Station,
Sector 26, Pradhikaran,
Akurdi, Pune- 411 044.

....Respondents.

(Respondents by Advocate Shri D.A. Dube)

Reserved On : 28.08.2018.

Pronounced on: 31.08.2018

ORDER

This application was filed on 16.08.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) To allow the application,

b) To direct the Respondents to arrange to reimburse the medical expenses incurred by the Applicant to him for the medical treatment/surgery done at Govt. approvaed Ruby Hall Clinic, Pune, for which the medical bill has already been submitted by the Applicant on 24.12.2010 in terms of C.S.(M.A.) Rules 1944, applicable to the Applicant,

c) To grant 12% interest on the amount of medical reimbursement, since it is over 6 $\frac{1}{2}$ years since the bill was submitted by the Applicant to the Respondents.

d) To pass any other order which may be just and equitable in the facts and circumstances of the case,

e) To award the cost of application."

2. The facts of the case are that the applicant developed acute pain in his chest on 31.11.2010 in the afternoon at his residence in Pune and rushed as an emergency patient to Lokmanya Hospital, Nigdi, which was five minutes away from his house and is a

Government approved hospital. The applicant claims that the Chief Medical Officer(CMO) of the Hospital, who admitted him on 31.10.2010 and treated him with medicines, had informed him that he had suffered a severe heart-attack. The applicant requested discharge on 02.11.2010 since the Lokmanya Hospital was focused on Trauma and Orthopedic cases and had no facilities for coronary cases. He, therefore, requested discharge and this was granted on 02.11.2010 with a diagnosis of Acute Anterior Wall Myocardial Infarction (Thrombolyzed with STK). The applicant then proceeded immediately to Ruby Hall Clinic of Grant Medical Foundation which is an empanelled hospital and was admitted on 02.11.2010 and diagnosed with Angio requiring PTCA with stent and was accordingly treated from 02.11.2010 to 06.11.2010 on which date, a communication was sent to CMO, CGHS/CSMA mentioning that the patient had acute Anterior Wall Myocardial Infarction and that this was informed to Dr. Kiran and a copy of this letter was sent to Joint Director, CGHS,

Pune. The total charges for treatment included Coronary Angio, Angioplasty, Stent cost, Registration charges and E.C. Fees, totalling Rs. 2,08,165/-. When these bills were submitted to respondents, they asked him to submit a document to show that the Lokmanya Hospital had referred him to Ruby Hall Clinic for his coronary treatment for which the applicant referred to the discharge summary of Lokmanya Hospital, their inability to handle heart patients, the fact that Ruby Hall Clinic was the next nearest at 45 minutes distance and that the Ruby Hall Clinic was a properly empanelled hospital and that he had followed all necessary procedures. On the lack of production of a specific certificate from Lokmanya Hospital, the respondents held that the applicant's case was not an emergency. The applicant's request to the respondents, that since Ruby Hall Clinic was empanelled, a specific permission from Lokmanya Hospital need not be insisted upon, was declined by respondents. The respondents have referred to an emergency

medical certificate issued by Lokmanya Hospital, Nigdi on 31.10.2010 as noted below:-

Lokmanya Medical Foundation's
Lokmanya Hospital, Nigdi
Tilak Road, Pradhikaran, Nigdi, Pune- 411044.
Phone: 30612000

Emergency Medical Certificate

Date: 31/10/2010.

To whomsoever it may concern

Mr. Arunkumar Laxman Chavan
age. 58Yrs, male, admitted in
Lokmanya Hospital Nigdi on
31.10.2010.

He is suffering from
Anterior wall MI & is treated for
the following.

Sd/-
LOKMANYA HOSPITAL NIGDI
DEPT. OF INTENSIVE CARE UNIT

3. They specifically contend as below:

"As per CSMA rules, if there was no facility in Lokmanya Hospital, Nigdi for Angiography/Angioplasty then Lokmanya Hospital should have referred the case to specialized hospital. In this case, the applicant had not been given any such advice by authorities of Lokmanya Hospital. It is observed from the discharge certificate (R-3) issued by Lokmanya Hospital, Nigdi that doctors have not expressed that it was an emergency case and have not referred the person to any

other specialized hospital. Hence, it is observed that the applicant has taken treatment from Ruby Hall Clinic instead of Lokmanya Hospital without the recommendation of Govt. Specialist or Chief Medical Officer Incharge."

4. Therefore, a specific rebuttal of the respondents is that if the Lokmanya Hospital did not have facilities for such specialized treatment, the doctors there should have made a specific reference that it was an emergency case so that the applicant could have taken treatment outside their hospital but they have not stated any such thing and therefore, the respondents concluded that the decision to avail of emergency treatment was taken by the applicant himself and he also took the decision to approach the CGHS empanelled hospital, Ruby Hall Clinic, without taking the recommendation of a Government Specialist or Chief Medical Officer, and this was not in accordance with the Rules of CSMA. They also state that all these decisions of the Ministry were duly informed to the applicant. Further, they also state that the hospitalization of the applicant on

31.10.2010 at Lokmanya Hospital and his subsequent discharge for which he had been charged Rs. 19,634/- and which was submitted by him on 24.12.2010 was paid on 28.03.2011.

5. The applicant filed rejoinder reiterating his claims including payment of the claim with interest and for which respondents have filed a sur-rejoinder again reiterating their previous stand.

6. The applicant also refers to the decision of the Hon'ble Apex Court in ***Shiva Kant Jha Vs. Union of India*** [AIR 2018 SUPREME COURT 1975] in **WP(Civil) No. 694/2015** decided on **13.04.2018** wherein the following views were expressed:-

"13. 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. Speciality 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 Speciality 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 the 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.

14. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a

purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. 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. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time-to-time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15. In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central Government

employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only."

7. The respondents instead argue that the Hon'ble Apex Court had, at the end of Para 15, made it clear that the said decision was confined only to the present case. During arguments, learned counsels for the parties were heard at length.

8. We note as learned counsel for applicant pointed out, that from 31.10.2010 upto 02.11.2010, no investigations were done by the team at Lokmanya Hospital nor could respondents show any evidence that any investigations that are peculiar to coronary conditions were undertaken by that hospital. It is obvious that the applicant made a serious mis-judgment by rushing to the nearest medical institution which turned out

to be irrelevant to his requirements.

Respondents have taken the plea that the head of that medical institution failed to refer him for immediate emergency treatment to a competent hospital but this argument cannot be held against the applicant in a manner that the respondents have so callously sought. It is, in this connection, that the applicant's plea that the panel of doctors at Lokmanya Hospital are all Orthopedicians and accident trauma surgeons becomes relevant and he has produced a website output which shows them as experts in the field of Knee Treatment, Shoulder Treatment, Sports Medicine, Back Ache, Spine Treatment, Hip Treatment, Physiotherapy, Neck Ache.

9. Even otherwise, these doctors have evidently acquired their MBBS which is the basic degree prior to becoming specialists and it should have been obvious to them even at the outset that, after giving the applicant initial resuscitation, they should have sent him onwards to a proper hospital. The failure to perform their duty as doctors

cannot be taken as an excuse by respondents to behave in this illogical manner. The respondents have also confirmed that they have no information on any investigations done by the Lokmanya Hospital and have only restricted their case on the technical objections set out in the previous paragraphs.

10. It is also evident from the "Emergency Medical Certificate" of the Lokmanya Hospital dt. 31.10.2010 that they had recognized that it was an emergency certificate and that the applicant was suffering from Anterior Wall Myocardial Infarction or to put it in plain terms, a heart attack. He needed attention and that too, quickly. The respondents cannot thereafter, hide behind the garb of technical objections by resisting payment of his rightful claims which have been put forward by an empanelled hospital.

11. The applicant has referred to the decision of the Hon'ble Apex Court in the case of a non-empanelled hospital which does not really correspond to the present case

because Ruby Hall Clinic is an empanelled hospital. It is the obligation of the Government to ensure that their employee gets the benefits of medical facilities without any fetters on his rights and that he avails the services of doctors specialized in that discipline so as to get safe treatment. The nature of the treatment also suggests that there was an emergency and the fact that the Lokmanya Hospital has issued a certificate on 31.10.2010 underlines the facts in favour of the applicant. In the circumstances, the applicant is entitled to obtain full reimbursement of his medical claim.

12. The applicant has also sought payment of interest on his claim which he had submitted on 24.12.2010 for Rs. 2,08,619/-. This bill is now pending for under eight years. It is also noted that the fixed deposit rates of SBI in December 2010 for a tenor of 5-8 years was 8.5%.

13. In the circumstances, respondents are directed to settle the bill of the applicant within eight weeks of receipt of these

orders, along with simple interest @ 8.5% from the date of submission of bill to date of payment.

14. The OA is accordingly disposed of as above.

(R. Vijaykumar)
Member (A)

Ram.