

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00530/2017

DATED THIS THE 16th DAY OF JANUARY, 2019

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

KV.Pavan Kumar,
S/o K.Venkateswarlu
Aged about 28 years,
working as Senior Social Security Assistant,(Sr.SSA)
EPFO, Regional Office,RR Nagar,
Residing at No.69,1st Floor,
8th cross, Janapriva Abodes, Kenchenahalli,
Rajarajeshwari Nagar,
Bengaluru – 560 098.Applicant

(By Shri S.K.Abhijeet, Advocate)

Vs.

1. The Regional Provident Fund
Commissioner ,II,
Sub- Regional Office,
Opp. Rajarajeshwari Temple,
Rajarajeshwari Nagar,
Bengaluru – 560 098.

2. The Assistant Provident Fund
Commissioner , HRM II,
Regional Office,
Bhavishya Nidhi Bhawan”,
Rajaram Mohan Roy Road,
PB.No.25146,
Bengaluru – 560 025.

3.The Regional Provident Fund
Commissioner ,II,
Regional Office,
Bhavishya Nidhi Bhawan”,
Rajaram Mohan Roy Road,
PB.No.25146,
Bengaluru – 560 025.

4. Union of India,
represented by its Secretary.
Ministry of Labour & Employment,
Government of India,
Shram shakthi Bhavan,
Rafi Marg, New Delhi - 110 001Respondents

(By Smt. Shweta Anand Advocate)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

1. We heard this matter. Apparently the procedure involved is this. We quote from the operation note:-

| | | | |
|----------------|------------------------|----------------|--------------|
| Name | : Mr. K Venkateswaralu | Age/ Gender | : 55 |
| Years/MALE | | | |
| Patient Number | : 10020000726473 | Admission No | : IP-001 |
| D O A | : 13/11/2014 | Operation Date | : 20/12/2014 |

OPERATION NOTE

Surgeons : Dr. Devi Prasad Shetty, Dr. Julius Punnen, Dr. Ebrahim Patel

Anesthetist : Dr. Hema C Nair

Diagnosis : Chronic thrombo embolic pulmonary hypertension(CTEPH),
severe tricuspid regulation, h/o DVR, normal LV, h/o
seizures and old right CVA

Operation : Pulmonary thrombo endarterectomy under intermittent TCA

Findings : Ascending aorta- normal
Cardiomegaly++
MPA – dilated, no clots
RPA- thrombus obliterating 50% of lumen
LPA – dilated, no clots
Chronic organised clots in lobar and segmental branches
right side and left lower lobe

C P B Data

Cannulae : Aortic – Edwards, SVC/IVC – DLP

Prime : Clear

Oxygenator : Affinity

Arterial Filter : Spictra

CPB Time : 212

Cross Clamp Time : 182

Myocardial Protection

Systemic cooling to 18 degree centigrade with cold blood cardioplegia at 4 degree centigrade.

Procedure : median sternotomy

Pericardial well created.

After heparinization, high aortic cannulation and selective caval Cannulation through RA body.

Intermittent antegrade sanguinous plegia at regular intervals.

Lv vent through, small opening in the fossa ovalis after opening RA.

While cooling to 18 degree centigrade, distal mpa opened and Extended onto left hilum, inspected for clots, removed as much clots as Possible.

Similarly, RPA opened between SVC and ascending aorta, extended to Hilum, trombus removed.

Ra opened and looked for clots in RA/RV.

At 18 degree centigrade, under intermittent TCA endarterectomy Completed.

During rewarming, RPA,LPA and RA closed.

After full rewarming, came off cpb with adrenaline and dobutamine Supports in normal sinus rhythm.

Opening in the fossa ovails left open.

One RA and two RV pacing wires, two drain in the mediastinum and One left pleural space.

Routine chest closure after decannulation, shifted to ITU in good Hemodynamics.

At the end of the procedure the swad and instrument count was Correct.

Junior Consultant Surgeon

Consultant Cardiac Surgeon

Cheif Medical Officer
Narayana Institute of Medical Sciences
Unit of Narayan Health
No. 258/A, Bommasandra Industrial Area
Hosur Main Road, Bangalore-560099"

2. Following which an Essentiality Certificate was issued. Provided with the help of the learned counsel we had

examined the final bill also. Apparently, this matter was settled by the respondents by paying more than half of his claim as they also did not have an applicable data on which to pass an order. The respondents had chosen to rely on the wisdom of the Additional Director, CGHS and asked for his opinion. Apparently, he had not given any opinion as yet.

3. With the help of the learned counsel we had carefully gone through the operation note and the procedure adopted for the operation. We find that whenever Aorta and left ventricle are to be procedurally affected it becomes a very serious operation. We, have carefully gone through the final bill also. It does not appear to us as excessive, even though no parameters exist as the Hon'ble Apex Court had time and again had said that saving a life of a patient is of a paramount importance and the Essentiality Certificate covers this point. The applicant relies on the decision of the Hon'ble Apex Court in Shiva Kant Jha vs. UOI in WP.(Civil)694/2015. We quote from the paragraph 13 of the said judgement as produced by the learned counsel for the applicant.

“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 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”

4. Whereas the respondents relies on the decision of the Hon'ble Apex Court in State Of Punjab & Ors vs Ram Lubhaya Bagga & Ors reported in (1998) 4 SCC 117 which we quote in full:-

**“State Of Punjab & Ors vs Ram Lubhaya Bagga
Etc. on 26 February, 1998**

**Bench: S.B. Majmudar, M. Jagannadha Rao, A.P.
Misra**

PETITIONER:

STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:

RAM LUBHAYA BAGGA ETC. ETC.

DATE OF JUDGMENT: 26/02/1998

BENCH:

S.B. MAJMUDAR, M. JAGANNADHA RAO, A.P.

MISRA

The Judgment of the Court was delivered by

MISRA, J. - Leave granted.

2. In these set of appeals arising out of Special leave petitions, the common question which has come up for consideration is the entitlement towards medical expenses of the Punjab government employees and pensioners as per the relevant rules and the Government policy. In pith and substance, the scale at which their reimbursement is admissible towards their medical expenses incurred in a nongovernmental hospital. It is not a new phenomena, such employees have been and are still raising such issue repeatedly with the changing scenario, political, social and financial the policy of reimbursement is not static. In the recent past in spate of petitions dealing with the 1991 policy of the State Government this Court settled this principle in the case of [Surjit Singh vs. State of Punjab & Ors.](#), (1996 (2) SCC 336 and [State of Punjab vs. Mahinder Singh Chawla](#) (1997 (2) SCC 83. Consequent to the effect of the said and other decisions and their resultant impact on the State exchequer and other actors led the State Government to reconsider its old policy of 1991 by making

necessary modifications, deletionsa through order dated 9.9.94 till it was substituted through a new policy dated 13th February, 1995. All the earlier rulings were based on the aforesaid old policy including the clarification dated 8th October, 1991. The same was partially withdrawn on 9th September, 1994 followed by placing the new policy on 13th February, 1995. In short respondents grievance, is the claim which was allowed by this Court earlier when such employees were admitted for heart ailment in escorts a non-governmental hospital, is now being declined which was allowed by this Court earlier when such employees were admitted for heart ailment in Escorts a non-governmental hospital, is now being declined which is in contradiction to the said rulings of this Court.

3. In short in SLP (C) No. 13167 respondent is said have suffered a severe heart attack on 13th March, Research Center in an emergency. On 27th March, 1995 and was taken to the Escorts Hearts Institute and Research Center in an emergency. On 27th March he underwent coronary artery bypass graft surgery. Finally he was discharged on 10th April, 1995. The entire expenses incurred for the treatment, surgery, post-operative check up etc. came to Rs. 2,11,758,70. In May, 1996 he has submitted the bill to the government for reimbursement.

4. The appellant's stand is that as per new policy dated 13th February, 1995 the reimbursement of the medical expenses incurred in any private hospital is only admissible, if for such ailment, treatment is not available in any government hospital, and for this no

objection certificate is obtained from the Civil Surgeon or Director of Health Services as the case may be. Respondent's case was not referred to the Escorts for any treatment by any of the competent authority. For any such claim an employee must obtain no objection certificate from the concerned authority. In cases of emergency if admitted in a private hospital ex-post facto approval could be obtained from the concerned authority of course within the permissible parameters. As the claim relates to surgery conducted after the new policy and the reimbursement amount is claimed on the basis of the bill of the Escorts, the same is, according to appellant not permissible in as much as the Committee of Technical Experts has decided as per the new policy that only rates as prevalent in All India Institute of Medical Sciences, New Delhi, will be paid.

5. The respondents with vehemence challenge this stand and the new policy of the appellant which has come into force on 13.2.95 as the same being violative of Article 21 of the Constitution of India. It is argued this is one of the most sacred fundamental rights given to its citizen. Since right to life is protected under this Article hence refusing to pay the amount spent to save one's life amounts to the curtailment of such right, hence violative of Article 21. In earlier decisions this Court has said that the right to live does not mean mere survival or animal existence but includes the right to live with Human dignity. In other words, man's Life should be meaningful, worth living. Pith and substance of life is the health, which is the nucleus of all activities of life including that of an employee or other viz. the

physical, social, spiritual or any conceivable human activities. If this is denied, it is said everything crumbles.

6. This Court has time and again emphasised to the Government and other authorities for focussing and giving priority and other authorities for focussing and giving priority to the health of its, citizen, which not only makes one's life meaningful, improves one's efficiency, but in turn gives optimum out put. Further to secure protection of one's life is one of the foremost obligation of the State, it is not merely a right enshrined under Article 21 but an obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution. The obligation includes improvement of public health as its primary duty. Learned counsel for the appellant on the other hand does not deny such a right but urges that the same can be placed within permissible limits by rules and policies laid down. The right claimed may be sacrosanct, which has to be given, but the same can be put within reasonable limits, under a policy which is framed after taking into consideration various factors. Thus the only question is, whether the new policy is arbitrary, unreasonable violative of any law or principle to be struck down. Of course it has to stand to the test of reasonableness and not to erode or curtail any of the Constitutional or Statutory right of any employee, If not, the claim cannot go beyond the policy.

7. Shri Rajeev Dhawan, learned senior counsel appearing for the appellants submits with force that it would be no violation, if medical facility in absolute term as desired is not provided because of any

financial constraints viz. lack of financial resources or for such other reasons. No right under the Constitution is absolute in term. It has to be balanced with the need, equity and the resources available.

8. In Vincent Panikurlangara vs. Union of India: (1987) 2 SCC 165;

"Para 16 - In a series of pronouncement during the recent years this court has called out from the provisions of part IV of the Constitution these several obligations of the State and Called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical betterment of these depends the building of the society of which the Constitution makers envisages. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top."

9. In Kirloskar Brothers Ltd. vs. Employees State Insurance corporation, 1996 (2) SCC 682; "Para 9

" The expression 'life' assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the work place and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workman enables him to enjoy the fruits of his labour, to keep him physically fit and human right to protect his health. In that case health insurance, while in service

or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workmen."

10. In *Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal*, 1996 (4) SCC 36; ""Para 9 &Para 16-

- The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in the welfare State. The Government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21."

It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional

obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State has to be kept in view."

11. On the basis of last decision reference to above, the question is, whether such a right is absolute and no financial constraints could be pleaded or if it could be, to what extent? This we would be advertizing little later.

12. Learned counsel for the appellants fairly submits that in respect of any such claim of reimbursement for a period prior to the new policy, the old policy of 1991 as modified before the new policy would be applicable. so far as the old policy goes the law is well settled through various decisions of this Court about which there is not much dispute.

13. Before proceeding further we would like to refer to a preliminary objection raised by learned counsel for the respondent that under this new policy when the State Government denied such claim of an employee in circumstances similar to the present case, the said employee filed a writ petition which was allowed by the High Court in the case of Varian Singh vs. State of Punjab (1996 (4) SLR 177) against that judgment the State filed SLP (C) No. 12954 of 1996 and it was dismissed by this Court on 17th December, 1996. Hence it is contended for the respondent that the State cannot take up the same stand which has become final. We are informed and it is not disputed that the

said dismissal of the SLP was not by any reasoned order. Points raised here before us was neither raised nor decided in that SLP by this Court. As this question is likely to come in future, we feel it is necessary to decide and settle it. Hence this preliminary objection raised by the respondent has no force.

14. The validity of the claim of the respondents has been upheld by the High Court under the impugned order and the which respondent has been held entitled to total reimbursement of his expenses incurred in a private hospital. To appreciate all this it is necessary to shortly give the periphery of the earlier policy of 1991 and the new policy dated 13th February, 1995.

15. The old policy of 1991 was framed in supersession of the earlier Punjab Government's letter dated 27th May, 1987. This is a policy for the reimbursement of the medical expenses incurred on treatment taken abroad or in a hospital other than the hospitals of the Government of Punjab (both outside and in the State of Punjab). Relevant portion of the same is quoted hereunder:

(ii)"The person who is in need of medical treatment outside India or in any hospital outside and in the State of Punjab) as the case may be may make an application for getting treatment in these hospitals directly to the Director, Health and Family Welfare, 2 months in advance, duly recommended by the CMO/Medical Superintendent indicating that the treatment for the disease mentioned is not available in the hospital of the Government of Punjab. In case of emergency duly authenticated by CMO/Medical

Superintendent the application can be made 15 days in advance.

(iii) Director, Health and Family Welfare, Punjab will place the application of the employee concerned before the Medical Board within 15 days on the receipt of application. In case of emergency, if immediate meeting of Medical Board cannot be convened, such application may be circulated to all the members of the Medical Board and decision taken thereof.

16. Thereafter on 8th October, 1991, the policy was further clarified so far as the choice of hospitals is concerned which is also quoted hereunder:-

"Policy for reimbursement of medical expenses incurred on medical treatment taken abroad and in hospitals other than those of the Government of Punjab, both within and outside the State was laid down. However, as per the 12th item of these instructions, a list of those diseases for which specialised treatment was not available in the government hospitals was to be prepared in addition to identifying medical institutions/hospitals/clinics of repute where such specialised treatment was available. Open Heart Surgery; Escorts heart Institute, New Delhi; Christian medical College, Ludhiana; Apollo Hospital, Madras."

17. We find two significant points in the said policy, one the procedural and the other nominating few designated hospitals other than government hospital for treatment. The procedure laid down under this was very onerous, some times not workable, specially in emergency cases. Under it if one needs medical

treatment either outside India or in any hospital other than the Hospital of Government of Punjab, an application seeking approval for such treatment in such hospital has to be made to the Director of Health and Family Welfare two months in advance duly recommended by CMO/Medical Superintendent indicating that the treatment for such disease is not available in the hospital of the Government of Punjab. In cases of emergency such application is to be authenticated by CMO/MS to be made fifteen days in advance. It is this procedure which deprived persons from getting prompt and better treatment at other places. Some of the serious diseases do not knock or warn through bell giving them time. Emergency cases require immediate treatment and if with a view to comply with procedure one has to wait then it could be fatal. One may not in such cases live, if such a procedure is strictly followed. It seems keeping this in light, the Government in 1991 modified its policies by including Escorts Heart Institute, New Delhi;

Christian Medical College, Ludhiana and Appollo Hospital, Madras, in case of Open heart Surgery as the designated hospitals for treatment of such permissible diseases. Government in its 1991 policy, also reserved its right to revise the list in future. The listing of the aforesaid designated hospitals was with the approval of the Finance Department. Thereafter on 9th September, 1994 on the advice of the Finance Department the aforesaid 1991 policy was again modified by withdrawing the clarification dated 8th October, 1991 wherein private hospitals in the State and outside were recognised for treatment. hence the benefit of the

designated hospitals was no longer available to an employee for being reimbursed towards his medical expenses. it is in this background present that the new policy dated 5th October, 1995 has come in to force. The relevant portion of the Said State Policy is reproduced below:-

" As per instructions issued vide Punjab Government letter No. 7/7/85- 5HBV/2498, dated 25.1.1991 the policy regarding reimbursement of medical emphases incurred on medical treatment taken abroad an din hospitals other than the hospitals of the Government of Punjab (both outside and inside the State of Punjab) was laid down. The Government has reviewed the decisions taken in the aforesaid letter and it has now been decided as under:-

TREATMENT AT AIIMS

District Civil Surgeons shall be competent to permit treatment of a particular disease at AIIMS, New Delhi on the basis of recommendations of the District level Standing Medical Board provided the treatment is not available in the Government Hospitals of the State.

The expenditure on reimbursable items on such a treatment in AIIMS, New Delhi, shall be reimbursed to Government employees/pensioners.

TREATMENT IN PRIVATE HOSPITALS IN THE COUNTRY

It has been decided that employees and pensioners should be given freedom to get treatment in any, private institute/hospital (of their own choice), in the country provided that he/she gives an undertaking

out of his/her free will and in an unambiguous terms that he/she will accept reimbursement of expenses incurred by him/her on his/her treatment to the level of expenditure as per rates fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less. The rate for a particular treatment would be included in the advice issued by the District/State medical Board. A Committee of technical experts shall be constituted by the Director Health and Family Welfare Punjab to finalise the rates of various treatment packages and the same rate list shall be made available in the offices of the Civil Surgeons of the State.

However, this permission would be granted by the Director, health and Family Welfare, Punjab on the advice of State medical Board in case of treatment in Private Hospitals outside the State and the District Medical Board in case of treatment in private hospitals within the State.

It is further submitted that in an emergent case prior permission could be waived from the Medical Board but Ex-post facto approval from the Medical Board for reimbursement of medical expenses is absolutely essential in accordance with the instructions dated 5.10.1995.

TREATMENT ABROAD

The treatment of a disease in a country abroad would be permitted in extremely rare cases where satisfactory treatment and follow up should be

recommended by the State Medical Board. Prior approval of the State Medical Board shall be a prerequisite in such cases. All efforts should be made by the concerned employee/pensioner to take prior approval of the State Medical Board."

18. Learned counsel for the respondents strongly relies on the case of Surjit Singh (supra). The contention is that in that case the claim for getting reimbursement expenses incurred in Escorts was upheld and hence it would be impermissible now for the State Government to deny reimbursement of expenses incurred at Escorts on the basis of the alleged new policy. The decision under the new policy to reimburse expenses only on the basis of the rates at the AIIMS, it is contended illegal. Everyone in order to protect his life has to go wherever best possible treatment is available. If respondent went to Escorts which was once a designated hospital. The refusal now to reimburse expenses incurred at Escort has no justifiable ground to stand.

19. Having heard learned counsel for the parties at length, we find the Surjit Singh's case admittedly was based on the old policy. There the medical reimbursement claim, was admissible at the rate admissible in Escort's, as Escort's was one of the designated hospitals. In that case denial of such rate was therefore rightly rejected. However, strong reliance has been placed by the respondent on the following paragraphs of [surjit Singh vs. State of Punjab](#) (1996 (2) SCC 336) which is as under:

"Para 9 - The Policy, providing recognition for treatment of open heart surgery in the escorts, specifically came to be examined by a Division bench of the Punjab and Haryana High Court at Chandigarh titled as [Sadhu R. Pail vs. State of Punjab](#) (1994) 1 SLR 283 (P & H) wherein the claim of the then writ petitioner to medical reimbursement was accepted when in order to save his life he had got himself operated upon in the Escorts, and the plea of the State that he could be paid rates as prevalent in the AIIMS was rejected. special leave Petition No. 22024 of 1995 against the said decision was dismissed by this Court on 2.2.94."

"Para 12- The appellant therefore had the right to take steps in self-preservation. he did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy."

20. Same argument is submitted for drawing parity with the said case. Here also it is urged, when one gets heart attack he has to wait in a long queue, in the government hospital and may be by the time his turn comes he may not survive. it is hence argued that the medical facility provided would be futile.

21. As aforesaid the said decision would render no assistance to the respondents. Under the old policy there were designated hospital including Escorts. That

was the foundation of the Said decision. relevant portion in this regard is quoted hereunder:-

"When the State itself has brought for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life."(Surjit Singh's case (Supra).

22.That was a case where the petitioner got heart attack being in England and was hospitalised and operated in Birmingham hospital and this Court held that as much as Escort was one of the designated hospital under the old policy of the reimbursement permissible to the appellant would be at the rate as that of Escorts and not of AIIMS as ordered by the State.

23.The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be. let us now examine this new policy. learned senior counsel for the appellants submits that the new policy is more liberal in as much as it gives freedom of choice to every employee to undertake treatment in any private hospital of his own choice any where in the country. The only clog is that the reimbursement would be to the level of expenditure as per rates which are fixed by the Director, Health and Family Welfare, Punjab for a similar package treatment or actual expenditure which ever is less. Such rate for a particular treatment will be included in the advice

issued by the District/State Medical Board for fixing this. Under the said policy a Committee of Technical Experts is constituted by the Director to finalize the rates of various treatment packages and such rate list shall be made available to the offices of the Civil surgeons of the State. Under this new policy, it is clear that none has to wait in a queue. One can avail and go to any private hospital anywhere in India. Hence the objection that, even under the new policy in emergency one has to wait in a queue as argued in Surjit Singh case (supra) does not hold good.

24. In this regard Mr. Sodhi appearing for the State of Punjab has specifically stated that as per the Director's decision under the new policy, the present rate admissible to any employee is the same as prevalent in AIIMS. It is also submitted, under the new policy in case of emergency if prior approval for treatment in the private hospital is not obtained, the ex-post-facto sanction can be obtained later from the concerned Board or authority for such medical reimbursement. After due consideration we find these to be reasonable.

25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of [Article 21](#) of the Constitution of India. so far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the

policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates [Article 21](#) When it restricts reimbursement on account of its financial constraints.

26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. 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 government is rendering this obligation by opening Government hospitals and health centers, 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 up-keep, maintenance and cleanliness has to be beyond aspersion. To employ 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 then try point but also during the whole tenure of their service. Since it is one of the most sacrosanct and a 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 its this obligation with top priority including by way 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. for every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

27.Coming back to test the claim of respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of Article 21. Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are;

" to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure which ever is less."

28. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by a Committee of technical experts.

" The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalize the roles of various treatment packages."

29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of [Article 21](#) or [Article 47](#) of the Constitution of India.

30. In Vincent vs. Union of India: AIR (1987) SC 990:

" In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health..... In a series of pronouncements during the recent years, this court has culled out from the provisions of Part- IV of the Constitution, the several obligations of the State and called upon it to effectuate them in order that the

resultant picture by the constitution fathers may become a reality."

31.The next question is whether the modification of the policy by the State by deleting its earlier decision of permitting reimbursement at the Escort and other designated hospital's rate is justified or not? This of course will depend on the facts and circumstances. We have already held that this court would not interfere with any opinion formed by the government if it is based on relevant facts and circumstances or based on expert advice.

32.Any State endeavor for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

'Article 41: Right to work, to educate and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want.'

33.It is submitted by the appellants that earlier under the 1991 policy, for bringing in some of the designated Hospital for treatment, sanction from Finance department was obtained. Later upon an appraisal of its expenditure it was found that the bulk of the States budget was being taken by few elites for such treatment like Heart ailment etc. to the detriment of large number of other employees who suffered. hence on the advise of the Finance department by means of

order dated 9th September, 1994 the facility of reimbursement of full charges at designated hospital was withdrawn even under the old policy of 1991 from 9.9.94.

34. Financial constraints on the State is also evident from what is recorded in the case of Waryam Singh (supra), which is also a case from Punjab:-

" Para 30 - When Civil Writ Petition No. 16570 of 1995, the Court issued a notice to the respondents to show cause as to why a direction may not be issued to the Government to decided all pending matters of medical dated 16.11.1995, the learned Government counsel produced before the Court a list of cases pending in 57 departments/offices of the Government of Punjab. these lists show that over 20,000 cases involving claim of medical reimbursement ar pending in the various departments/offices of the Government. In some cases, the claim is for as small amount as of Rs. 10/- and as high as of Rs. 1,75,000/-. these lists also show that some cases of medical reimbursement are pending for last more than six years. In other cases, the duration of pendency is less. Reasons given in majority of the cases are absence of sanction of paucity of funds."

35. Learned Counsel for the appellant submits that in the Writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the

appellant's decision to exclude the designated hospital cannot be said be such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Part III of the Constitution is not absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that government will give due consideration and priority to the health budget in future and render what is best possible.

36. For the aforesaid reasons and findings we uphold governments new policy dated 13th February, 1995 and further hold it not to be violative of Article 21 of the Constitution of India.

37. In the Civil Appeals arising out of SLP(C) Nos. 13167/97 and 12418/97, the surgery at Escorts was after the introduction of the new policy and therefore the extent of medical reimbursement can be only according to the rates prescribed by AIIMS. However, the respondents therein are not entitled to the full expenditure that was incurred at Escorts. We therefore, allow the appeals in part and direct that the respondents are entitled to reimburse only at AIIMS rate. The appellant will therefore reimburse the respondents to the extent within one month from today.

38. The appeals arising out of SLP (C) No. 12143/97 and 12144/97 though the treatment at Escorts was

after the new policy the amount as claimed has already been paid at Escorts rates. On the facts and circumstances of this case, we are not inclined to interfere and therefore no question of any refund arises. These appeals are dismissed.

39. So far as the appeal arising out of SLP (C) No. 11968/97 is concerned, we find that the respondent had the heart attack on 9th February, 1995 and was advised to go to Delhi on 18th February, 1995 but on account of long strike in the All India Institute of medical sciences (AIIMS) he was admitted in the Escorts. On those facts we are not inclined to interfere. the respondents has been paid at the admissible are the in AIIMS but claims the difference between what is paid and what is admissible rate at Escort. Looking to the facts and circumstances of this Case we hold that the respondent in SLP (C) No. 11968/97 is entitled to be paid the difference amount of what is paid and what is the rate admissible in Escorts then. The same should be paid within one month from today. We make it clear reimbursement to the respondents as approved by us be not treated as precedent but has been given on the facts and circumstances of these cases.

40. For the reasons and findings recorded herein before, the new policy dated 13th February, 1995 is upheld. The impugned High Court orders to that extent are set aside, Appeals arising out of SLP(C) Nos. 13167 and 12418 of 1997 are allowed to the extent indicated above and are disposed of accordingly. Appeals arising out of SLP (C) Nos. 12143, 12144 and 11968 of 1997 are dismissed, subject to the further

direction given in the appeal arising out of SLP (C) No. 11968 of 1997. There will be no order as to costs."

5. But, then this judgement may not relate to this matter at all. As it relates to a matter out side the purview of the issues involved in this case. The respondents rely on documents R-1 and R-2. They would say that the diseases and treatment in question is conservative in nature and not in package price list provided by the OM dated 13.11.2014 issued by the Min. of Health and Family Welfare which they have produced as document R-3. They would also say that by document R-4 it was referred to Additional Director for his opinion and it was also taken up with the Director, Min. of Health and Family Welfare, Government of Karntaka vide document R-5. But apparently no reply was received. Therefore, they have taken legal opinion and which stated that CS(MA) rule is not applicable. But then, apparently legal opinion fail and all these are mere guidelines as the Hon'ble Apex Court held time and again the issue is if a surgical procedure is required to save a patient's life then the entire amount is payable whether within the package or not. These packages in CGHS /CS(MA) rules are basically mere guidelines nothing more. Both sides admit that this is a rare operation. That is why with the help of both counsels we had gone through the entire operation procedure as well as final bill which is item wise bill in great detail. We had examined each and every aspect in the final bill and could not come to a conclusion that it is in any way excessive as, if at all bills are excessive then each element would be excessive not only one. These kind of

operations can be performed only by the great experts. But even then we find that a reasonable bill had been issued by the concerned hospital. Therefore, the grounds taken by the respondents does not seem to be correct.

6. We also find that since there is no package rates available by CGHS breaking it down into available elements and granting an amount will, even then leave aside those elements which could not be held as part of the package. Therefore, the prejudice is on the part of the respondents only. For which applicant need not suffer. Having examined the matter in detail and all these elements we are of the view that the hospital has charged correct or apparently correct fees and in view of the essentiality certificate issued by the concerned Doctor the entire amount has become payable. Therefore, we allow the OA and direct the respondents to make payment within 2 months next without interest and thereafter with interest at the rate of EPF charges from its constituents. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

bk.

Annexures referred to by the Applicant in OA.No.530/2017

5-16 dated 07.10.2015

ANNEXURE– R4 – KN/PF/SRO/PRN/Admin/2014-15/400 dated
13.02.2015

ANNEXURE– R5 – KN/PF/SRO/PRN/Admin/2015-16 /200 dated
23.09.2015

ANNEXURE– R6 - NO/MDA?855/15-16 dated 03.10.2015

ANNEXURE – A1 - Copy of the order dated 16.11.2016

ANNEXURE – A2 - Copy of the representation dated 08.12.2014

ANNEXURE – A3 - Copy of the Application dated 02.01.2015

ANNEXURE – A4 - Copy of the Representation dated 19.01.2016

ANNEXURE – A5 - Copy of the letter dated 13.02.2015

ANNEXURE – A6 - Copy of the letter dated 17.07.2015

ANNEXURE – A7 - Copy of the letter dated 28.07.2015

ANNEXURE – A8 - Copy of the letter dated 28.07.2015

ANNEXURE – A9 – Copy of the letter dated 23.09.2015

ANNEXURE – A10 & A11– Copy of the letter dated 01.10.2015

ANNEXURE A12, A13 & A14 – O M dated 01.10.2012 & 01.08.2013

ANNEXURE A15, A16 & A17- Copy of the letter dated 07.04.2016

Annexures referred to by the respondents in reply

ANNEXURE– R1 - No 19-3/2014/ADMIN. (129)/5287 dated
13.11.2014

ANNEXURE– R2 - BN/PF/HRM-II?2016-17/229 dated 16.11.2016

ANNEXURE– R3 – KN/PF/SRO/PRN/Admin/201

ANNEXURE– R7- KN/PF/SRO/PRN/Admin/2015-16 /262 dated
02.11.2015

ANNEXURE– R8- NO HRM-8/9(10)2018/Medical/Bangalore dated
16.06.2014

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