IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/900/2018

Date of Order: 17.06.2019

Between:

Banavanath Nageswara Rao,
S/o.B. Samya, Age: 49 years,
Occ: Teacher in Kendriya Vidyalaya,
No.1, Uppal, Hyderabad – 500 039,
R/o. 1-93, Mahalaxmipuram,
Narapally, Ghatkesar, Medchal Dist-501301.

… Applicant

And

1. The Commissioner,
   Kendriya Vidyalaya Sangathan,
   18, Institutional Area,
   Shaheed Jeet Singh Marg,
   New Delhi – 110 016.

2. The Deputy Commissioner,
   Kendriya Vidyalaya Sangathan,
   Regional Office, Picket,
   Secunderabad – 500 009.

3. The Principal,
   Kendriya Vidyalaya No.1,
   Uppal, Hyderabad – 500 039.

4. The Director,
   Omni Hospitals, Kothapet,
   Dilsukhnagar, Hyderabad – 500 035.

… Respondents

Counsel for the Applicant … Mr. C. Rakee Sridharan

Counsel for the Respondents … Mr. B N Sharma

CORAM:
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

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

2. OA is filed challenging the recovery of excess payment made in regard to a medical claim.

3. Applicant working for the respondents organisation as Social Science Teacher, was admitted on 29.6.2015 in Omni Hospital, Hyderabad on medical emergency for cardiac complications. Respondents permitted the Hospital to treat the applicant vide their permission letter dated 30.6.2015. Applicant was operated by placing two stents in his heart and was discharged on 2.7.2015. Hospital authorities forwarded a bill for Rs.3,05,915 as per CGHS -2014 new rates on 2.7.2015 & 3.7.2015, which was paid by the respondents. Based on audit objection, the applicant was informed that a sum of Rs.1,50,750/- has to be recovered from his salary. Notice was accordingly issued on 5.9.2018. Representations were made on 18.5.2018, 4.8.2018 & 14.9.2018 to the Principal and the Commissioner, Kendriya Vidyalaya, but there being no relief, the OA is filed.

4. The contentions of the applicant are that he was admitted in an emergency state as per Rule 10 of Medical Rules in a CGHS empanelled hospital. Respondents gave permission for the treatment. After the treatment, applicant on being informed has represented to waive the recovery but yet a notice for recovery was issued based on an objection raised by the audit. Being a CGHS empanelled Hospital, it cannot charge excess amount and hence action to be taken to recover the amount from the hospital besides getting it de-empanelled. Respondents need to have

checked before paying the amount to the Hospital. The applicant is in no way responsible for the excess payment.

5. None for the applicant. Heard Mr. M.C. Jacob, learned Advocate representing Mr. B.N. Sarma, learned Standing Counsel for the respondents and perused the records submitted.

6. It is a fact that the applicant was admitted in an emergency condition for a heart ailment. On being permitted by the respondents the applicant was treated and a medical bill for a sum of Rs.3,05,915/- when raised was paid by the respondents. While making the payment it was the responsibility of the respondents to pass the bill based on approved rates. Hence it was not the mistake of the applicant. As has been observed by the Hon'ble Supreme Court in the under mentioned judgments, applicant should not be made to pay for the mistake of the respondents.

(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust,(2010) 1 SCC 287

"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."

(b) Rekha Mukherjee v. Ashis Kumar Das,(2005) 3 SCC 427 :

36. The respondents herein cannot take advantage of their own mistake.

Self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution. It needs no reiteration. Nevertheless, being on the subject of medical reimbursement, remarks made by the Hon'ble Supreme Court are profound and thought provoking

which is reproduced hereunder, for us all to ponder as to the approach one has to adopt on an issue where the life of an individual is at stake.

State of Karnataka v. R. Vivekananda Swamy, (2008) 5 SCC 328, the Apex Court has held 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 canpurushaartho 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. Shariirarakshanopaayaah kriyante sarvadaa budhaih

Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

* *

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."

The applicant did what is good to himself by acting as per norms. By preserving the body, he is back to duty to do deeds of merit and see the auspicious occasions of his wards scaling the ladder of life with dignity, respect and as per dharma.

7(I) Reverting to the issue per se, respondents have provided the facility of medical reimbursement and the applicant has followed the due procedure prescribed. He did not misrepresent or misguide the respondents in passing the medical claim. It is a fact that the applicant has been operated and treated. The claim is genuine. Clause (v) of para 12 of the judgment of the Hon'ble Supreme Court in State of Punjab Vs.

Rafiq Masih, which is extracted herein below, does apply to this case lock, stock and barrel:

> *"12. ... Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

It was the hospital which should have followed the norms and raised a bill as per the CGHS rates and should not have submitted an inflated bill. The respondents should have exercised the prescribed checks in passing the bill. Had it been done, the responsibility would have shifted to the applicant. Even now, it is not too late, the matter can be very well reported to the Additional Director, CGHS, Hyderabad to direct the Hospital authorities to charge as per approved rates, lest the clause of derecognising the hospital can be invoked as per the terms and conditions of recognising a hospital under CGHS rates. Somewhere someone has to fight for Dharma and the right place to begin this is a Gurukul institution like the respondents organisation. These are the institutions which groom the future citizens of the country. Therefore it is enjoined upon them the responsibility to fight for what is right and lead the way for posterity to remember. Rather than making the wrong right by forcing the hospital to cough up the excess charged the respondents are making the right wrong by directing the applicant who followed the rules prescribed. Using the power they have, respondents making the applicant pay, calls for respondents, who are an embodiment of wisdom and the giver of knowledge, to introspect as to whether what they are doing is correct! Instead of supporting a colleague who did no wrong, succumbing to the

diktat of a wrong doer is the least that is expected from as famous an institution like the Kendriya Vidyalaya. If the battle for the right is not fought the wrong will be victorious, thereby the practice of inflated bills being raised will go unabated by exploiting heath emergencies. No doubt Medical profession is a noble profession but the rules of the game have to be strictly adhered to. Therefore the right way to comply with the audit objection is to make the hospital pay the amount which it is not authorised to legally charge over and above what is permitted. Let this course be adopted with full force and vigour. Where there is a will there is a way. The will should operate in the right direction and not the other way, as has been seen in the present case.

II. The way has been shown by the judgment of the Hon'ble Supreme Court in the ***State of Punjab & Ors. v. Mohinder Singh Chawla and Ors., (1997) 2 SCC 83***, wherein it has been noted that right to health is an integral part of the right to life and therefore, if a Government employee has undergone specialized treatment for his/her medical treatment, the same must be reimbursed by the State.

Another judgment in Govt. of NCT of Delhi & Anr. v. Prem Prakash (Dr.) & Ors., 153 (2008) DLT 1 (DB) delivered by the Hon'ble Delhi High Court, wherein it has been observed as under:

> *"13. After reviewing several judgments of this Court on the subject and the Supreme Court and as noticed in para 13 of the judgment, it was held that while balancing the interest of the Government which does not have unlimited funds on the one hand and, therefore, has to limit his financial resources and paying capacity as also its duty towards its employee to reimburse medical expenses, a balance could be struck by directing the respondent-Government to reimburse medical expenditure in full when the following conditions are met:*

(a) The private hospital where the treatment is taken by a Government employee is on the approved list of the Government.

(b) The illness for which the treatment is required is of emergent nature which needs immediate attention and either the Government hospitals have no facilities for such treatment or it is not possible to get treatment at Government hospital and it may take unduly long for the patient to get treatment at Government hospital.

(c) The concerned employee/patient takes permission to get treatment from the Government hospital, which is granted and/or referred by the Government hospital to such a private hospital for treatment.

14. Following the aforesaid judgment of the Coordinate Division Bench, we are of the view that in the cases before us, the aforesaid three conditions are duly met. These were serious and emergent cases of cardiac ailment. The treatment was with the permission of the competent authorities and at the empanelled hospitals. Therefore, the respondents would be entitled to full reimbursement. We may mention that it would be open for the respondents to delete from the bills, charges for items like telephone, TV, cost of toiletries, etc., which do not form part of the package rates and if the same have been billed."

Further, as recently as on 28.04.2010, Hon'ble Delhi High Court provided relief in an identical case, based on the aforesaid judgment in WP (C) No.9229/2009, decided on April 28, 2010.

Telescoping the principles laid down in the judgments cited supra to the present case, it is evident that all the 3 conditions have been satisfied. Hospital is on the approved list, illness required emergency treatment and permission for treatment was granted by the respondents. Hence it is a fully covered case where relief sought has to be extended.

III. Therefore, keeping the above, the stay granted to stop recovery on 20.9.2018 is made absolute. The OA is accordingly disposed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of June, 2019

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