

CASE NO.:
Appeal (civil) 2336 of 2008

PETITIONER:
State of Karnataka and another

RESPONDENT:
Sri R. Vivekananda Swamy

DATE OF JUDGMENT: 01/04/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2336 OF 2008
(Arising out of SLP (C) No. 2593 of 2006)

WITH

CIVIL APPEAL NO. 2335 OF 2006
(Arising out of SLP (C) No. 1387 of 2006)

State of Rajasthan and others

Versus

Smt. Savitri Upadhyay

\005 Appellants

\005 Respondent

S.B. SINHA, J.

1. Leave granted in both the matters.
2. Interpretation and/or application of Medical Benefit Rules applicable in the State of Karnataka as also in the State of Rajasthan is in question before us in these appeals which arise out of the judgment and order dated 20th June, 2005 passed by a Division Bench of the Karnataka High Court in Writ Petition No. 10942 of 2005 and that of the judgment and order dated 4th August, 2005 passed by a Division Bench of the High Court of Rajasthan, Jaipur Bench, Jaipur in D.B. Civil Writ Petition No.6502 of 2004 respectively.
3. Respondent in the Karnataka case is an officer working in the Office of the Department of Commercial Taxes. He underwent 'Coronary Artery' Bypass Surgery in the Wockhardt Hospital and Heart Institute having been admitted on 19th June, 2000. A sum of Rs.1,50,600/- was said to have been incurred by him by way of medical expenses. He claimed re-imbursement thereof. The State of Karnataka sanctioned and reimbursed a sum of Rs.39,207/-. Feeling aggrieved, a writ petition was filed which, by reason of the impugned judgment, has been allowed.
4. Rajasthan case, relates to one Ajay Upadhyay, who was a Judicial officer. He had been suffering from some kidney problems. Respondent herein is his mother. Ajay Upadhyay was being treated for renal failure in 1997. He was referred to AIIMS for kidney transplantation by the SMS Medical College and Hospital, Jaipur. However, as AIIMS showed its inability to admit him because of non-availability of bed. Transplantation of kidney was carried out in Batra Hospital, Delhi, in 1997. Respondent, who was also an employee of the State claimed reimbursement of the said medical expenses. However, a sum of Rs.50,000/- was allegedly found admissible for the purpose of reimbursement out of the total claim of a sum of Rs.2.11 lacs. Respondent, however, claimed that the entire sum may be reimbursed. Other medical expenses incurred by Ajay Upadhyay, as follow up measures, have been reimbursed to the respondent herein.

Ajay Upadhyay joined Rajasthan Judicial Service in the year 2000. In February, 2003 he got himself treated in Batra Hospital. Allegedly his case was not referred therefor by the SMS Medical College and Hospital, Jaipur.

As he was not treated by AIIMS, he filed a writ petition in the High Court of Delhi for a direction to admit him therein. However, because of an emergent situation, he got himself admitted in the Batra Hospital. The said writ petition was withdrawn.

In the month of May, 2003 he again came to Delhi and got himself admitted and treated in Batra Hospital. He filed a representation before the Registrar General of the High Court of Rajasthan that on account of the sudden demise of his maternal uncle, he had to go to Delhi and as he fell ill there, went straightaway to Batra Hospital. He, therefore, prayed for reimbursement of his medical expenses incurred on that occasion also.

Indisputably, however, the Principal and Controller, SMS Medical College and Hospital, on or about 5th July, 2003, referred him to AIIMS. Allegedly in the reference order it was mentioned that the same was subject to medical expenses with a ceiling of Rs.10,000/- only. Ajay Upadhyay obtained treatment in the Batra Hospital from 4th July to 29th July, 2003. He unfortunately breathed his last on 7th November, 2003. Respondent claimed medical reimbursement to the tune of Rs.6,52,148/- with interest. Only a sum of Rs.75,000/- was, however, sanctioned by the State of Rajasthan as being admissible, purported to be in terms of the Rules.

5. Feeling aggrieved, a writ petition was filed in the High Court of Rajasthan which by reason of the impugned judgment and order has been allowed directing :-

" As a result of the aforesaid discussion the writ petition succeeds and same is allowed. The respondents are directed to release the amount of Rs.6,52,148/- in favour of the Petitioner of the medical expenses bills of Batra Hospital, New Delhi, where his son late Shri Ajay Upadhyay, an officer of the Rajasthan Judicial Service was treated, within a period of two months from the date of receipt of the copy of this order. The respondents are further directed to pay to the petitioner on the aforesaid amount the interest at the rate of 6% per annum from the date of submission of the first medical bill for reimbursement of the amount of Batra Hospital, New Delhi, till the payment thereof is made."

6. Before embarking on the contentions raised by learned counsel in these appeals, we may notice the relevant Rules framed by the States of Karnataka and Rajasthan.

7. The State of Karnataka in exercise of its power conferred upon it by the proviso to Article 309 of the Constitution of India and in supersession of the Karnataka Government Servants' (Medical Attendance) Rules, 1957 framed the Karnataka Government Servants' (Medical Attendance) Rules, 1963 (for short the 1963 Rules).

Rule 2 of the 1963 Rules provides that the same shall apply mutatis mutandis to the family of a Government servant as would apply to the Government servant himself. The explanations appended thereto reads :-

"2. Application. \026

Explanation .- I. For the purposes of these rules, "family" means.-

(i) the wife or husband;

(ii) the father and mother including step-mother; and

(iii) children including adopted children and step-children, of a Government servant who are wholly dependent on such Government servant.

Explanation II. "For the purpose of this sub-rule, . The father and mother including step-mother shall be regarded as wholly dependent on the Government servant if they ordinarily reside with him and their total monthly income does not exceed two thousand rupees."

"Authorised hospitals" and "medical institutions" have been defined in Rule 3(aa) to mean the hospitals and medical institutions specified in Schedule I. Rule 7 entitles a Government servant to receive free medical treatment in such Government Hospitals at or near the place where he falls ill, as can, in the opinion of the authorized medical attendant, provide the necessary and suitable treatment. "Authorised medical attendant" has been defined in Section 3(a) to mean a medical officer who is a Gazetted Government servant working in a Government hospital or Government Medical institution and various other authorities as specified therein. Rule 8(1), although is not relevant for our purposes, may be noticed which is in the following terms :-

"8. Admission to and treatment in wards. (1) the patients who under these rules, are eligible for treatment in a particular class of paying or special ward, may get themselves treated in any higher class of ward, by paying the difference in the rates for the two classes of wards."

Proviso appended to sub-rule (3) of Rule 8, which was introduced by reason of the Notification dated 22nd January, 2001, reads thus :-

" Provided that notwithstanding anything contained in these rules the Government Servant and his family shall be eligible for treatment in the wards of the authorized hospitals and medical institutions specified in Schedule I as per the rates specified in the Table below.-

Range of Pay
Category of Ward /
Class of
accommodations to
which entitled
Maximum ward
charges / room rent
to which entitled

(1)

(2)

(3)

(i)

Upto Rs.4,350
per month

General Ward

Rs.100/- per day

(ii)

Rs.4,351 to

Rs.11,840 per

month,

Semi-Private Ward

Rs.200/- per day
(iii)
Rs.11,841 and
above
Private Ward
Rs.500/- per day

Rule 14 specifies as to how and in what manner, the reimbursement of medical expenses is to be carried out.

Rule 15 provides for claims for reimbursement of medical charges.
Rule 31 empowers the Government to relax the provisions of the said Rules.

8. The judgment of the Tribunal, which was affirmed by the High Court, was based on the premise that persons similarly situated who had taken treatment from Wockhardt Hospital and Heart Institute had been given the benefit of the reimbursement of the medical bills, although the respondent was denied of the said benefit.

9. The Government of Rajasthan also in exercise of its powers conferred upon it by the proviso to Article 309 of the Constitution of India made Rules known as Rajasthan Civil Services (Medical Attendance) Rules, 1970 (in short the 1970 Rules).

Rule 2 provides for the extent of application of the said Rules which includes all government servants. Rule 3(1) defines "Authorised Medical Attendant" "Authorised medical attendant" has been defined in Section 3(a) to mean a Medical Officer of the Rajasthan Medical Department on duty in a hospital or dispensary and various other authorities as specified therein.

"6. Medical attendance and treatment outside Rajasthan.- (1) A Government servants including members of his family posted to a station or sent on duty or spending leave or otherwise at a station outside Rajasthan in India and who falls ill shall be entitled to free medical attendance and treatment as an indoor and outdoor patient in a Hospital maintained by the Central Government or other State Government on the scale and conditions which would be admissible to him under these rules, had he been on duty or on leave in Rajasthan.

(2) For the purpose of this rule "Authorised Medical Attendant" in respect of a Government servant or class of Government servant at a station outside Rajasthan shall mean an officer of Medical Department of Central or other State Government (as the case may be) on duty in a Government hospital or Dispensary at that station.

(3) The charges paid by the Government Servant posted at Delhi to the following private hospitals/clinics for X-Ray, Pathological, Bacteriological, Radiological tests and other kind of investigations which are considered necessary by the doctor of the State Government posted in Delhi, shall be re-imbursed:-

1. Sunderlal Jain Charitable Hospital, Ashok Vihar.
2. Massonic Charitable Polyclinic, Janpath, and
3. Sir Gangaram Hospital, Rajendra Nagar.

7. Treatment of a disease for which treatment is not available in the State. (1) A Government servant and the members of his family suffering from a disease for

which treatment is not available in any Government hospital in the State shall be entitled to medical attendance and treatment to the extent indicated in sub-rule (2) of this rule in a Hospital/Institution outside the State recognized by the Government, provided that it is certified by the Principal of a Medical College/Director of Medical & Health Services on the basis of opinion of the Authorised Medical Attendant to the effect that the treatment of a particular disease from which the patient is suffering is not available in any Government Hospital in the State and it is considered absolutely essential for the recovery of the patient to have treatment at a hospital outside the State.

(2) The following charges/expenses shall be reimbursable:-

(a) Cost (including Sales Tax) of Allopathic Drugs, Medicines, Vaccines, Sera or other therapeutic substances reimbursable under these rules.

(b) Sums actually paid to the Hospital/Institution on account of medical attendance and treatment including charges for surgical operations and ordinary nursing facility.

(c) Travelling allowance for journey by rail/road from duty point at the station at which the patient falls ill to the place of treatment outside the State and back to a single fare of the class to which his classification entitles him under Rajasthan Travelling Allowance Rules. Such traveling allowance shall also be admissible for an attendant, if the Authorised Medical Attendant certifies in writing that it is unsafe for the patient to travel unattended and that an attendant is necessary to accompany the patient to the place of treatment and back.

(3) The facility of medical attendance and treatment in the type of cases mentioned in sub-rule (1) can be had at any of Hospitals/Institutions mentioned in Appendix 11.

(4) For the purpose of reimbursement, the original receipts issued by such Hospital/Institutions and vouchers of medicines etc. shall be countersigned by the Authorised Medical Attendant of Government Hospital on whose advice the treatment outside the State was undertaken."

It does not appear that 1970 Rules provide for any power of relaxation.

10. Mr. Hegde, learned counsel appearing on behalf of the State of Karnataka and Mr. Aruneshwar Gupta, the learned Additional Advocate General, appearing on behalf of the State of Rajasthan submitted that having regard to the Rules framed by the States, the validity whereof is not being in question and in fact having been upheld by this Court, the High Courts of Karnataka and Rajasthan committed serious errors in issuing the impugned directions.

11. Mr. Bhat, learned counsel appearing on behalf of the respondent in Karnataka case, would, on the other hand, submit that the power of relaxation should have been exercised by the appropriate authority

judiciously and in a case of this nature, Article 14 of the Constitution of India is attracted. It was urged that as a large number of non Government Hospitals are now included in the list of hospitals, the impugned judgment should not be interfered with.

12. Ms. Shoba, learned counsel appearing on behalf of the respondent in Rajasthan case took us to the entire factual aspect of the matter and submitted that the High Court judgment is unexceptionable, keeping in view the fact that whatever is required to be paid is reimbursement of the bills for the month of May-June, 2003, although the State has reimbursed the bills for medical expenses for February, 2003, July, 2003 and also October, 2003. It was urged that as even in relation to the reimbursement of the medical bills for the year 1997, the State has favourably responded, the High Court cannot be said to have committed any error in issuing the impugned directions, particularly when correctness of the bills was verified and recommended by the High Court.

13. 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.

14. In *Surjit Singh vs. State of Punjab and others* : (1996) 2 SCC 336 this Court in a case where the appellant therein while in England fell ill and being a case of 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 the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine :

17. Vinaa dehena kasyaapi canpurushaartho na vidyate
Tasmaaddeham dhanam 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 every thing. He who protects himself by all efforts, will see many auspicious occasions in life.

20. Sharirarakshanopaayaah 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."

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 25th January, 1991 and 8th October, 1991.

15. This Court, however, considered the validity of a rule in regard to reimbursement of the medical expenses viz-a-viz 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 and others vs. Ram Lubhaya Bagga and others : (1998) 4 SCC 117, opining :-

"23. 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 the best of talents and tune 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 its 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. 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."

However, having regard to the fact that the medical facilities continued to be given and an employee was given free choice to get treatment from any private hospital in India but the amount of payment for reimbursement was regulated, it was opined :-

"29. No State or 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."

16. The said principle was reiterated in *State of Punjab and others vs. Mohan Lal Jindal* : (2001) 9 SCC 217.

17. The question came up for consideration before this Court in *Confederation of Ex-Servicemen Association and others vs. Union of India and others* : (2006) 8 SCC 399 wherein a Constitution Bench of this Court had the occasion to notice *Ram Lubhaya Bagga* (supra). Agreeing therewith it was opined :-

" In our considered opinion through the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay "one time contribution" neither violates Part III nor is it inconsistent with Part IV of the Constitution. Ex-servicemen who are getting pension have been asked to become members of ECHS by making "one time contribution" of reasonable amount (ranging from Rs.1800 to Rs.18,000/-). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable."

18. 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 a rule furthermore having been framed under the proviso to Article 309 of the Constitution of India constitutes 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 recognized government hospitals and on the other he, at his option, may get himself treated from other recognized hospitals/institutions subject of course to the conditions that the reimbursement by the State therefor would be limited.

19. In the Karnataka case, however, it is necessary to take into consideration the provisions of Rule 31 of 1963 Rules which confers an unequivocal power of relaxation to the authorised authorities specified therein. A public authority may exercise its power of relaxation only where there exists a provision therefor. [See - *Kendriya Vidyalaya Sangathan and Ors. vs. Sajal Kumar Roy and Ors* : (2006) 8 SCC 671 *Pitta Naveen Kumar and others. vs. Raja Narasaiah Zangiti and others* (2006) 10 SCC 261].

20. It, however, goes without saying that while exercising such a power, the authority must act judiciously keeping in mind the purport and object thereof. Considerations therefor, although may not partake a mathematical exactable but should always be fair and reasonable. Although it may not be possible for an employee to enforce a purported right on the premise that another person had obtained reimbursement for a similar kind of treatment, ordinarily fair procedure envisages a broad similarity. If any person has been shown any undue favour, we may add, by itself may not be a ground to favour another but when such a contention is raised, the State should be able to demonstrate a fair treatment. It is possible to draw a distinction on the basis of several factors, emergent situation being one of them. So viewed, we do not find that the State of Karnataka had acted arbitrarily.

21. Rajasthan case, however, involves some disputed questions of fact. Aay Upadhyay was a Judicial Officer. Indisputably he was suffering from a serious disease. The contention of the respondent to the effect that the appellant herein herself being a government employee was able to obtain reimbursement of the amount spent towards his treatment as far as back in 1977. We do not see any reason why he should not be reimbursed for the later period. It is true that ordinarily a government employee may have to get himself treated in AIIMS; it being a pioneer super-speciality institution, but we cannot also shut our eyes to the fact that for one reason or the other, Ajay Upadhyay could not be admitted in AIIMS. A writ petition was filed in the Delhi High Court which, because of passage of time, although was withdrawn but it is difficult for us to arrive at one conclusion or the other only on the basis of the averments made by the parties to the writ petition before the High Court; one of them being AIIMS itself. He developed trouble even after joining judicial service. He admittedly was referred to AIIMS. Whether such reference was made in February, 2003 or July, 2003 may be a matter of dispute. But if without any order of reference in February, 2003 reimbursement of expenditure incurred in February, 2005 has been effected and similarly for July and October \026 November, 2003 the respondent was reimbursed, we do not see any reason as to why reimbursement of the medical expenses for the period May and June, 2003 would not be allowed.

22. The State might be fighting this case on principle. It may be correct in its view. Applying the Rules strictly, respondent might not have been entitled for reimbursement for the period subsequent to the date of reference and not prior thereto. But as indicated hereinbefore there is no reason to ignore the statement made in para 2 of the additional affidavit filed on behalf of the respondent, which is to the following effect :-

"2) That the State Govt. had allowed the full reimbursment of medical bills of late Shri Ajay Upadhyay incurred in Batra Hospital, New Delhi, for the period of treatment in Batra Hospital, from 04.02.03 to 10.02.03 and from 04.11.03 to 07.11.03, and as such the reimbursement of medical bills of late Shri Ajay Upadhyay are still pending from 13.05.03 to 21.10.03 amounting to Rs.5,98,406.75 of Batra Hospital, New Delhi."

23. What, however, is requited to be taken into consideration is the three bills amounting to Rs,5,98,406.75 for the period 13.05.03 to 21.10.03.

24. There appears to be some discrepancies in regard to the said bills. We are not concerned with the 1997 bills. Our attention has been drawn to the following bills.

The first Bill was of Rs.42,197.00 for the period 04.03.03 to 10.02.03 As noticed hereinbefore the said bill has already been paid.

The second bill is for Rs.3,16,311.750 for the period 13.05.03 to 11.06.03. The said bill remains unpaid.

The third bill is for reimbursement of Rs.1,15,619.00 for the period 04.07.03 to 29.07.03.

The fourth bill does not appear to be on record. But from the respondent's letter dated 21st April, 2006 it appears that the same was for a sum of Rs.31,544/- for the period 04.11.03 to 07.11.03 which has already been paid.

25. The dispute, thus, centres round the aforementioned two bills amounting to Rs.3,16.311.75 ps. and Rs.1,15,619.00.

26. In a case of this nature, we are of the opinion, that having laid down the law for the future that claim for reimbursement must be made only in terms of the Rules and not dehors the same, and more so, when there is no power of relaxation, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the States of Karnataka and Rajasthan to pay the balance amounts. However, this order shall not be treated as a precedent.

We may, however, state that the reason for such a direction is that so far as the State of Karnataka is concerned, it has enlisted a large number of hospitals as approved medical institutions enabling its employees to obtain treatment therefrom.

27. So far as the Rajasthan case is concerned unlike the State of Karnataka there is no provision for exemption for payment of portion of the amount of bill which would be corresponding to the costs which would have been otherwise incurred by the employee in obtaining treatment from AIIMS. It is furthermore evident that ex-post facto sanction had been granted. The State did not disclose the basis for such grant. The grant was not dehors the Rules. Ajay Upadhyay indisputably obtained treatment at Batra Hospital from time to time. He being a judicial officer, the bills submitted by him had been verified by the Registrar of the High Court. Recommendations had also been made by the High Court for reimbursement of the said bills.

28. We, therefore, are of the opinion that in order to do complete justice to the parties, we pass the order as proposed hereinbefore and direct the States of Karnataka and Rajasthan to pay the balance amounts to the respondent.

29. The appeals are disposed of with the above directions. In the facts and circumstances of the cases there shall be no order as to costs.