



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9729 OF 2021

The Commissioner/Transport Manager
Kolhapur Municipal Corporation & Anr. .. Petitioners
Versus
Rajendra Ramchandra Kalekar .. Respondent

...

Mr.Abhijit M. Adagule for the Petitioners.
Mr.Rushikesh G. Patil for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATED : 05th JANUARY, 2022

P.C:-

1. I have considered the extensive submissions of the learned Advocates for the respective sides and have perused the petition paper-book with their assistance.

2. The petitioner Municipal Corporation has put forth prayer clause 9(b) as under :-

“This Hon’ble Court be pleased to quash and set aside the impugned Judgment and Order dated 08/11/2019, passed by the Ld.Member, Industrial Court No.1, Kolhapur, in Complaint (ULP) No.100 of 2014 and further be pleased to dismiss the Complaint (ULP) No.100 of 2014 filed by the Respondent.”

3. The Corporation has a medical reimbursement policy titled as 'Kolhapur Municipal Corporation (Medical Benefits) Regulation 1982' (कोल्हापूर महानगरपालिका (वैद्यकीय परिचर्या) विनियम 1982) framed under the Maharashtra Municipal Corporation Regulations, 1949 (Section 465(1)(1)).

4. The case before the Industrial Court put forth by the respondent in Complaint (ULP) No.100 of 2014 was, for seeking a declaration of unfair labour practices against the employer Corporation and for recovery of the medical bills to the tune of Rs.2,53,273/-, upon undergoing a heart surgery on 26/02/2013.

5. The relevant clauses of the reimbursement policy of 1982 are clauses 2(4), 2(8), 8(1), 8(3) and 8(4), which read as under :-

“2.4. अ. वैद्यकीय परिचर्या म्हणजे महानगरपालिका रुग्णालयात प्राधिकृत वैद्यकीय परिचर्याकडून देण्यात येणारी परिचर्या यात पॅथॉलॉजिकल, बॅक्टेरिऑलॉजिकल, रेडिओलॉजिकल अथवा तपासणीच्या इतर पद्धती व महानगरपालिका रुग्णालयात अथवा लॅबोरेटरीमध्ये होऊ शकणाऱ्या व प्राधिकृत वैद्यकीय परिचर्याकास आवश्यक वाटणाऱ्या निदान करण्यासाठी तपासणी व

ब. महानगरपालिका रुग्णालयाशी संलग्न असलेल्या मानसेवी वैद्यकीय अधिकारी यांचा सल्ला यांचा समावेश असेल.

2.8 उपचार म्हणजे ज्या महानगरपालिका रुग्णालयात रुग्णावर उपचार चालू आहेत अशा रुग्णालयात मिळू शकणारी वैद्यकीय अथवा शस्त्रक्रिया यांचा उपयोग यांत.

8.1 रुग्णास मोफत उपचार मिळतील

8.3 ज्या ठिकाणी रुग्ण आजारी पडतो तेथील महानगरपालिकेच्या रुग्णालयात आवश्यक असणाऱ्या सुविधा उपलब्ध नसतील अगर महानगरपालिकेच्या रुग्णालयात राहणेची सोय उपलब्ध नसेल तर प्राधिकृत वैद्यकीय परिचर्यक जर विलंबामुळे रुग्णाचे आरोग्यास धोका पोहोचणार नसेल तर आरोग्याधिकारी व आयुक्त या दोघांचे लेखी अनुमतीने त्याचे मते ज्या ठिकाणी योग्य उपचार होऊ शकतील अशा महानगरपालिकेच्या अथवा जवळ असेल त्या बिगर महानगरपालिकेच्या रुग्णालयात जरी ते रुग्णालय जिल्ह्याचे बाहेर असेल तर त्या ठिकाणी पाठवेल प्राधिकृत वैद्यकीय परिचर्यकाने अशा तऱ्हेच्या निकडीचा अहवाल ताबडतोब आरोग्याधिकारी व आयुक्त यांना पाठवला पाहिजे. आरोग्याधिकारी व कमिशनर या दोघांनी अशा निकडीच्या प्रकरणी मान्यता दिल्या खेरीज खर्चाची जबाबदारी महानगरपालिकेवर राहणार नाही.

8.4 जे उपचार महानगरपालिकेच्या रुग्णालयात उपलब्ध होऊ शकणार नाहीत अशा वेळी प्राधिकृत वैद्यकीय परिचर्यकास रुग्णालया हिताच्या दृष्टीने अत्यंत आवश्यकता आहे असे वाटले तर तो ज्या ठिकाणी खास उपचार उपलब्ध होऊ शकतील अशा बिगर महानगरपालिका रुग्णालयास रुग्णास पाठविले अशा वेळी त्याने आरोग्याधिकारी व आयुक्त यांची लेखी पूर्व अनुमती घेतली पाहिजे.

ज्या उपचार महानगरपालिकेच्या रुग्णालयात उपलब्ध होऊ शकणार नाहीत व रुग्णाचा हिताच्या दृष्टीने खास उपचारासाठी बिगर महानगरपालिकेच्या रुग्णालयात हलवणे अत्यंत आवश्यक आहे. असे प्राधिकृत वैद्यकीय परिचर्यकास वाटले तर विलंबामुळे रुग्णाचे आरोग्यास धोका नसेल तर आरोग्याधिकारी व आयुक्त यांची लेखी पूर्व सममतीने मध्यावर्ती राज्य सरकार मान्यता प्राप्त अशा रुग्णालयात खास उपचारासाठी रुग्णास पाठवेल. अशा निकडीच्या प्रकरणी प्राधिकृत वैद्यकीय परिचर्यकाने ताबडतोब आरोग्याधिकारी व आयुक्त यांचेकडे अहवाल पाठवला पाहिजे. आरोग्याधिकारी व आयुक्त यांनी अशा निकडीच्या प्रकरणी सममती दिल्याखेरीज येणाऱ्या खर्चाची जबाबदारी महानगरपालिकेवर असणार नाही.

प्राधिकृत वैद्यकीय परिचर्यकाकडून ज्या औषधांचा उपचार चालू केले आहेत, अशा औषधांचा उपचार शक्यतो ज्या ठिकाणी रुग्णास व उपचार चालू आहेत, त्याच महानगरपालिकेच्या रुग्णालयात घेतला पाहिजे.”

6. There is no dispute as regards the provisions of the reimbursement scheme reproduced above.

7. The learned Advocate for the petitioner draws my attention to the recommendation made by the Municipal Transport Workers Union, a recognized Union under the MRTU & PULP Act, 1971, which suggested to the Corporation that those employees who are not covered by the ESIC Act, be paid a monthly medical allowance. Such recommendation is dated 24/03/1998, signed by the General Secretary of the recognized Union. Based on the same, the Municipal Corporation passed a Resolution on 30/03/1998 bearing Resolution No.95, vide which it was resolved that those employees, who are not covered by the ESIC Act, would be entitled for a monthly medical allowance at the rate of Rs.20/- per month per employee.

8. The learned counsel for the respondent/complainant submits, on instructions, that he was not covered by the ESIC Act.

9. The learned counsel for the petitioner points out from paragraph 6 of his written statement that the complainant was aware of the non- applicability of the medical reimbursement scheme, since Resolution No.95 dated 30/03/1998 had discontinued the reimbursement facility to those workers who were beyond the coverage of the ESI scheme. The Industrial Court has recorded the submissions of the petitioner based on the pleadings in the written statement that medical allowance is paid to the employees who are not covered by the ESI scheme. So also, the medical bills submitted by the petitioner were photostat copies.

10. The complainant had filed the ULP complaint by invoking items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. The Industrial Court declared that the petitioner has indulged in unfair labour practices under item 9, which is “failure to implement a settlement agreement or award”.

11. There is no dispute that the complainant started feeling uneasy at around 4 p.m., after completing his duties at 12 noon, on 15/02/2013. His niece admitted him to the Apple Heart Hospital, Kadamwadi. He was in the Intensive Care Unit and a heart surgery was performed on 26/02/2013, which is after 11 days of his admission. There is no dispute that neither the complainant nor his relatives or the Union officer bearers approached the Corporation for seeking approval for his treatment in a private hospital not registered on the panel of the Corporation, as provided under clause 8(3) and 8(4) of the 1982 scheme, notwithstanding that the scheme was not applicable to the complainant because of Resolution No.95 dated 30/03/1998.

12. In the above backdrop, when the complainant himself did not comply with the requirements of the Kolhapur Municipal Corporation (Medical Benefits) Regulation 1982, the employer could not have been guilty of commission of ULP under item 9. So also, the Industrial Court has concluded that though medical reimbursement has been abolished, the same is not applicable to the complainant, despite the fact that the

Industrial Court has concluded in paragraph 8 that the ESI scheme was not applicable to the complainant.

13. Taking into account the above fact situation, it is obvious that the recognized Union itself asked for a monthly medical allowance in place of medical reimbursement. Resolution No.95 was accordingly passed by the Municipal Corporation, accepting the proposal of the recognized Union. Thereafter, medical reimbursement was stopped in the Municipal Corporation from April 1998 onwards and yet the Industrial Court came to a conclusion that the Corporation is guilty of ULP under item 9 of Schedule IV. Consequentially, the Industrial Court, in clause 4 of it's order, directed the petitioner to consider the representation and medical bills of the complainant and reimburse the same within two months, failing which interest at the rate of 8% per annum was granted.

14. I find that when the Industrial Court noted that Resolution No.95 was passed in pursuance to the proposal of a recognized Union and medical reimbursement was abolished from April 1998 onwards with regard to those employees who are not covered under ESIC and in lieu thereof Rs.20/- per month was made payable, there was no scope for the Industrial Court to conclude that the present complainant was entitled for medical reimbursement. There is nothing on record to suggest that any set of non-ESIC workers had been granted medical reimbursement. On these premises, the Industrial

Court could not have concluded that the complainant was entitled for medical reimbursement. Moreover, not a single instance of medical reimbursement to non ESIC covered employee from April 1998, was proved before the Industrial Court.

15. In view of the above, this petition is allowed. The impugned Judgment and Order dated 08/11/2019 delivered by Industrial Court No.1, Kolhapur is quashed and set aside and complaint (ULP)No.100 of 2014 stands dismissed. Consequentially, Misc. Application (ULP) No.12 of 2021 filed by the respondent under Section 50 of the MRTU & PULP Act, 1971, would not survive and stands disposed off. The Industrial Court No.1, Kolhapur shall issue a formal order of disposal of the said complaint.

(RAVINDRA V. GHUGE, J.)