

# SUPREME COURT OF INDIA

The Secretary to the Government of Haryana

Vs.

Vidya Sagar

C.A.No.4384 of 2009

(S.B. Sinha and Deepak Verma JJ.)

16.07.2009

## JUDGMENT

**S.B. Sinha, J.**

1. Leave granted.

2. The sole respondent was an employee of the State of Haryana. He has since retired. He was serving in the 'Health Department' of the State having joined services on 26.11.1961. He retired on 7.9.1988 on health grounds.

3. He suffered an heart attack on 15.8.2002. He was treated in the Post Graduate Institute of Medical Sciences and Research, Chandigarh. He underwent a bye-pass surgery at Fortis Heart Institute and Multi-Speciality Hospital, Mohali. It is on the recognized panel of the hospitals of the State of Haryana. He submitted a bill for a sum of Rs.1,87,907.65 towards medical expenses borne by him for its reimbursement.

“Relying on or on the basis of a circular issued by the State of Haryana dated 30.11.1993, the Department sanctioned payment for a sum of Rs.1,62,298/- only.”

4. Aggrieved by the said order, the respondent filed a writ petition before the High Court of Punjab and Haryana. The said writ petition was allowed, holding:

“We have heard learned Counsel for the parties. Shri W.R. Dua, learned counsel for the petitioner drew our attention to the Punjab Services (Medical Attendance) Rules 1940, as applicable to the Haryana employees/pensioners and the instructions issued by the Haryana Government vide circular letter No. HD.HR. No.2/82/98-IHB-III dated 31.10.2002 to show that Fortis Hospital, Mohali has been recognized by the Haryana Government for the treatment of Haryana Government employees/Pensioners/Family Pensioners. He then referred to the instructions issued vide letter dated 11.8.1992 (Annexure P.5/A) to show that heart disease has been treated as one of the chronic ailments and argued that the petitioner is entitled to full

medical reimbursement in terms of the instructions issued by the Government vide letter dated 25.8.2003.

Learned Assistant Advocate General could not put forward any tangible argument to controvert the submissions of Shri W.R. Dua. Having considered the entire matter, we are convinced that the Petitioner is entitled to reimbursement of the entire expenses incurred by him in his treatment at Fortis Hospital, Mohali and the decision of the Respondents to pay only 75% thereof is legally unsustainable.”

5. Mr. Manjit Singh, learned counsel appearing on behalf of the State, contended that the High Court committed a serious error in so far as it failed to give effect to the circulars issued by the State laying down the norms for reimbursement of the medical bill.

6. Mrs. Nanita Sharma, learned counsel appearing on behalf of the respondent, on the other hand, urged that the heart disease having been considered to be one of the chronic diseases, the circular letter dated 28.5.2003 would prevail.

7. The Commissioner and Secretary of the state of Haryana, Health Department, by a circular dated 30.11.1993 directed as under :

“I have been directed to invite your attention to the Haryana Government letter No.2/296/86-H.R.II-III dated 19.11.1985 (sic 1986) and to say that the decision for granting recognition to Nivedic Prosyek Centre Daulat Singh Zirakpur (Punjab) Batra Hospital New Delhi for taking special treatment to serving Haryana Govt. officers/officials/pensioners/family pensioners and members of their family and dependants subject to the condition that the conditions that the officers/officials/pensioners who would undergo for treatment in those approved institutions will get reimbursement at the rates of All India Institute of Medical Sciences (AIIMS) New Delhi/PGI. The 75% of the excess expenditure in comparative to AIIMS will also be re-imbursed and the rest of 25% will be borne by the claimant himself. If a Patient avails extra comfort as single room instead of double occupy room facilities, as such the whole expenditure will be borne by the claimant himself.

2. This has the concurrence of the finance department vide their memo No.56/80A/86-6 Fin. Deptt. TT/229-1532-2297 dated 13.10.93.

3. This order will come into force from the date of issue.”

8. However, it appears that on or about 28.5.2003, the same authority, referring to an earlier memo dated 11.8.1992, directed as under:

"I have been directed to draw your attention on the above subject to the memo No.2/160/89-1 H.B. III dated 11.8.1992 whereby reimbursement on the out door treatment of chronic diseases upto maximum of Rs.6,000/- to the Haryana Govt. employees/officers/pensioners/family members of pensioners used to be allowed. The

matter regarding removing the maximum limit for reimbursement of expenses incurred on the treatment of chronic diseases has been under consideration of the Government keeping in view the interest of employees and pronouncements delivered by the Courts in this respect. Now the Government has decided that in view of instructions dated 11.8.1992 reimbursement of all the expenses incurred on the treatment of chronic diseases outdoor as well indoor shall be allowed. All the other conditions issued on 11.8.92 shall remain in force. These instructions will take effect from the issue of this letter.

The concurrence of the Finance Department has been obtained vide their endst. No.70/20/2000-6 H.A. III/1450 dated 28.5.2003.”

9. The High Court, as noticed hereinbefore, was of the opinion that heart disease having been treated to be one of the chronic ailments in terms of the circular letter dated 11.8.1992, the respondent was entitled to reimbursement of the medical bill in its entirety.

“We see no reason to differ with the views of the High Court. Although the circular dated 28.5.2003 does not expressly supersede the circular letter dated 30.11.1993, but the latter having been issued subsequent to the former and in relation to a particular category of disease, namely, the chronic diseases, shall prevail over the earlier general circular letter. The said circular letter dated 28.5.2003 brings within its umbrage not only the expenses incurred for the treatment of chronic disease outdoor but also indoor. In that view of the matter, the impugned judgment must be sustained.”

10. Mr. Singh had relied upon a decision of this Court in *State of Punjab & Ors. v. Ram Lubhaya Bagga & Ors.*<sup>1</sup> to urge that obligation on the part of the State to foot the medical bill of its employee can be restricted by framing appropriate rules and/or by issuance of requisite circular. No exception to the dicta laid down therein can be taken. However, the said decision is itself an authority for the proposition that the State can change its policy decision from time to time. Once the State in its magnanimity adopted a decision that the medical bills in their entirety in connection with the heart diseases shall be reimbursed, the authorities of the State being bound thereby were obligated to comply therewith.

11. The question has also been considered by this Court in *State of Karnataka & Anr. v. R. Vivekananda Swamy*<sup>2</sup> in the following terms :

“24. 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 Rules furthermore having been framed the proviso to Article 309 of the Constitution of India constitute 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 hospital and on the other he, at his option, may get himself treated from other recognized hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited.”

12. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/- (Rupees ten thousand only).

<sup>1</sup>(1998) 4 SCC 117

<sup>2</sup>(2008) 5 SCC 328