

# SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Mahesh Kumar Sharma

C.A.No.2278 of 2011

(J.M. Panchal and H.L.Gokhale,JJ.,)

02.03.2011

## JUDGMENT

**H.L.Gokhale,J.,**

1. Leave granted.

2. This appeal by special leave by the State of Rajasthan is preferred against the judgment dated 5th September, 2007 of a Division Bench of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No. 749 of 2007 dismissing the appeal filed by the appellant against the judgment and order passed by a learned Single Judge of that Court dated 12th September, 2006 in Civil Writ Petition No. 2611 of 2006.

3. The facts giving rise to the present appeal are thus:-

“The respondent was an employee working in the District & Sessions Court at Balotra, Rajasthan. He had gone to Uttaranchal on leave where he suffered a heart ailment. On his way back to Balotra, he suddenly fell ill and got admitted in the Escort Heart Institute in New Delhi and was operated for by-pass surgery. He claimed the reimbursement of the full medical expenses from the State of Rajasthan. The State Government accepted his request to a limited extent and granted him reimbursement upto an amount of Rs. 50,000/- which was permissible as per the Rules.”

4. The respondent felt aggrieved and hence filed a writ petition which was allowed by the learned Single Judge and the appeal therefrom was dismissed by the Division Bench and hence this appeal by special leave by the State of Rajasthan.

5. The Division Bench as well as the Single Judge have relied upon a judgment of a Division Bench of the Rajasthan High Court viz *Shankarial Vs. State of Rajasthan reported in*<sup>1</sup>. What had happened in that case was that the wife of the appellant had similarly gone along with

him outside Rajasthan where she had suffered a heart problem. She was taken to Escort Heart Institute in New Delhi where she was operated. The reimbursement of the expenditure of her surgery was declined by the Government. She filed a writ petition which was allowed by the Division Bench.

6. The learned counsel for the appellant points out that the Division Bench of the High Court had erred in relying upon Rule 7 of the Rajasthan Civil Services (Medical Attendance) Rules, 1970 as against Rule 6 thereof. He points out that the Rule 6 of those rules is the relevant rule which applies to a situation where an employee goes outside the state and falls sick. Rule 7 deals with a situation where a Government servant is not in a position to obtain the necessary medical treatment for the disease in the State of Rajasthan which is a different situation and in which case he is permitted the treatment in the hospitals which are mentioned in Appendix-11 of the Rules. Rule 6(1), according to him, is the relevant rule which reads as under:-

6. Medical attendance and treatment outside Rajasthan:-

“(1) A Government servant 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.”

7. As stated above, Rule 7 deals with the treatment of a disease for which treatment is not available in the State of Rajasthan. Certainly it cannot be contended and it is not so contended by the respondent that treatment for a heart surgery is not available in the State of Rajasthan. The learned counsel for the respondent contended that the Escort Heart Institute, New Delhi has been included in the Appendix 11 by the office memorandum dated 25th August, 1989 and has been approved and recognized by State of Rajasthan. Rule 7(1) itself points out that such institute can be approached for surgery but only for which treatment is not available in Rajasthan. Rule 7(1) reads as under:

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 recognised 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. This being the position, in our view, the learned Single Judge as well as the Division Bench and the earlier Division Bench which decided Shankarial's case (supra) erred in relying upon Rule 7(1) and granting full reimbursement of the expenses which were incurred by the employee concerned while taking treatment in the Escort Heart Institute, Delhi.”

8. In this connection it will be profitable to refer to the judgment of a Bench of three Judges of this Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga and Others reported in*<sup>2</sup> where the Bench has laid down that the Government would be justified in limiting the medical facilities to the extent it is permitted by its financial resources. In the instant case, the Government has formulated necessary rules permitting the reimbursement of medical expenses in certain situations and upto a certain limit. The Government has been reimbursing the necessary expenditure as permitted by the rules uniformly. It will, therefore, not be proper for a

Government employee or for his relatives to claim reimbursement of medical expenses otherwise than what was provided in the Rules.

9. In the circumstances, we allow this appeal and set aside the Judgment rendered by the Division Bench as well as by the Single Judge. The writ petition filed by the respondent will stand dismissed.

10. Although, this appeal is being allowed, we are informed that the respondent has already been paid the amount which was directed under the Judgment dated 12.9.2006 of the Single Judge in January, 2008 and that the respondent has subsequently retired from the service. It is clear that the reimbursement was done in view of the then prevalent interpretation of the relevant rules in Shankarilal's case (supra). This being the position, in the facts and circumstances of the case, the appellant government will not recover the amount which has been paid to the respondent, nor will the government recover any amount which has been similarly paid to other employees seeking such medical reimbursement under Shankarilal's judgment which was prevalent so far. However, it is now made clear that the judgment in Shankarilal's case does not lay down the correct law, and stands over-ruled. The legal position as explained herein above shall apply hereafter.

11. The appeal is allowed and disposed of accordingly. However, there shall be no order as to the costs.

Judgment Referred.

<sup>1</sup>(2000) 3 WLC (Raj.) 585

<sup>2</sup>(1998) 4 SCC 0117