

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6345 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

GULAMKADAR KASAMBHAI SHAIKH
 Versus

THE STATE OF GUJARAT THRU THE PRINCIPAL SECRETARY

Appearance:

MR NAYAN D PAREKH(5010) for the Petitioner(s) No. 1
 MR UTKARSH SHARMA, AGP for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 18/07/2022

ORAL JUDGMENT

1. *Rule* returnable *forthwith*. Mr. Utkarsh Sharma, learned Assistant Government Pleader waives service of notice of Rule for the respondent - State.

2. With the consent of the learned advocates for the respective parties, the petition is taken up for final hearing today.
3. The prayer of the petitioner is that the petitioner who had undergone Angioplasty, was entitled to full reimbursement of Rs.,1,76,757-86 Paisa.
4. Mr. Parekh, learned counsel for the petitioner would draw the attention of the Court to a representation made by the petitioner on 23.1.2019 to the Regional Information Officer, Ahmedabad - respondent No.3 herein indicating that part reimbursement of Rs.62,100/- for the petitioner having undergone her surgery at Rajasthan Hospital is misconceived. The petitioner should be reimbursed the remaining amount of Rs.1,14,656/-. In support of his submission, Mr. Parekh has relied on a decision dated 18.9.2018 passed in Special Civil Application No.2736 of 2013 by the Coordinate Bench of this Court in the case of **Chanrakant Kantilal Dave v.**

State of Gujarat through Chief Secretary.

5. Mr. Utkarsh Sharma, learned Assistant Government Pleader for the respondents vehemently opposing the stand of the petitioner for reimbursement of the balance amount of Rs.1,14,656/- would submit that the claim of the petitioner for reimbursement though not disputed, inasmuch as, the Rajasthan Hospital is a recognized hospital for the purposes of reimbursement, if Rule 8 and 10 of the Rule in the GR dated 24.8.2015 are taken into consideration, had the petitioner the heart surgery at the Government hospital, the only amount that the petitioner can be reimbursed was Rs.62,100/- and not the additional balance of Rs.1,14,656/-.

6. The Coordinate Bench of this Court in somewhat similar circumstances where a senior citizen had undergone a bye-pass surgery at Sal Hospital and was reimbursed only Rs.66,000/- had considered the decisions of the Hon'ble Supreme Court on the issue

in SCA No.2736 of 2013 dated 18.9.2018 and held as under:

"1. The present writ-petition is filed by a Senior Citizen, claiming his medical reimbursement of Rs.1,76,000/ who suffered from a heart attack and had to undergo bypass surgery in an emergent situation.

2. The present petitioner underwent Coronary Artery Bypass Surgery (CABG) on 13.06.2011. The hospital in which he took the aforesaid treatment had issued medical bill of Rs.1,76,000/. The State Government only sanctioned an amount of Rs.66,000/ against the package bill of Rs.1,76,000/ incurred by the present petitioner. The petitioner, thereafter, issued a notice to the respondent-authorities on 05.05.2012 to reimburse him an amount of Rs.1,76,000/, but no decision was taken on the aforesaid notice. Since the respondent-authorities did not reimburse the outstanding amount, the petitioner was constrained to approach this Court.

3. Mr. Gogiya, learned advocate for the petitioner has invited attention of this Court to the Resolution dated 09.09.2005. He has submitted that the present petitioner under took the treatment at Sal Hospital which also figures in the list of approved hospitals in the aforesaid resolution. He has submitted that the petitioner underwent the treatment in the Year2011, whereas the respondent-

authorities while placing reliance on the aforesaid resolution dated 09.09.2005 has reimbursed the amount of Rs.66,000/ as mentioned therein. He has submitted that the State Government is required to revise the policy as per prevalent charges of the hospital mentioned therein. He has submitted that it is not the case of the respondent-authorities that the petitioner has concocted the aforesaid medical bills of Rs.1,76,000/.

4. In support of his submissions, reliance is placed by learned advocate Mr.Gogia upon the decisions of Apex Court in the case of **K.P.Singh versus Union of India, reported in 2001(10) SCC 167** and in the case of **Shiv Kant Jha versus Union of India, reported in 2018(3) SLR 328 (S.C.)**. He has submitted that as per the observations made by the Apex Court the State Government is bound to revise the rates from time to time so that beneficiary receive the reimbursement as per the expenses incurred by the concerned employee. He has submitted that in the case of Shiv Kant Jha (Supra) the Apex Court has directed the respondents to reimburse the amount, as claimed by the claimant even though treatment was taken by him from the hospital which was not approved by the State Government.
5. Learned advocate for the petitioner has also relied upon the judgment dated 26.03.2012, passed by this Court in Special Civil Application No.624 of 2002 for claiming interest.

6. In response to the submissions advanced by Mr.Gogia, learned advocate for the petitioner, Mr. Utkarsh Sharma, learned Assistant Government Pleader for the respondent authorities has submitted that as per the policy of the State Government promulgated vide Resolution dated 09.09.2005, the petitioner is entitled to an amount of Rs.66,000/ only. The attention of this Court is drawn to the Condition No.1 envisaged in the aforesaid resolution which signifies that an employee/pensioner would be entitled to minimum rate, as prescribed in the common package or as per the rate prescribed in the appendix to the aforesaid resolution. He has stated that present petitioner has been paid an amount of Rs.66,000/ towards reimbursement, as prescribed in the aforesaid appendix.
7. As regards the submissions advanced by Mr.Gogia, learned advocate for the petitioner, Mr. Utkarsh Sharma, learned Assistant Government Pleader has submitted that the petitioner is not entitled for an amount of Rs.1,76,000/ since he has not challenged the aforesaid Resolution dated 09.09.2005.
8. In the present case, it is undisputed fact that the petitioner has undergone Bypass Surgery at the age of 74 years. The petitioner having fallen seriously ill, was advised to for immediate and urgent bypass surgery. The petitioner, under medical advice, was taken to the Sal Hospital, Ahmedabad for such surgery/treatment wherein

considering the seriousness of the petitioner, he was operated for Coronary Artery Bypass Surgery (CABG) and remained as indoor patient in the hospital for the period from 13.06.2011 to 23.06.2011. For the said treatment and surgery, the Sal Hospital has issued total package bill of Rs.1,76,000/-. The State Government, after following resolution dated 09.09.2005 has reimbursed the amount of Rs.66,000/ in favour of the petitioner. Thus, the petitioner, who had undergone surgery in the Year 2011 has been paid the reimbursement as per the policy of the Year 2005 which is 6 years prior to the date of his surgery. It is also reported that the aforesaid rates are not yet revised and the same are prevalent as on date. The Apex Court in the judgment rendered in the case of K.P.Singh (Supra) has observed in Paragraph No.6 that:

“6. The last grievance, and it is of some note, is that a beneficiary of the Scheme will receive reimbursement only at the rate approved by the CGHS, regardless of the fact that in his particular town or city there are only private hospitals and no Government Hospital; there is, therefore, no option to him, but to enter a private hospital for such treatment. It is also submitted that the approved rates are not updated by the CGHS from time to time so that what the beneficiary receives by way of reimbursement, can be

substantially less than the cost that has actually been incurred upon his hospitalization while there is, we think, merit in the submission, it is not for us to dictate what should be done. We direct the Union of India, immediately to consider this aspect and give appropriate directions thereon. It would clearly be appropriate for it to update its approved rates on an annual or, at least, be annual basis.”

9. The Apex Court though has observed that there is merit in the submissions of revising the rates time to time, however, ultimately directed the Union of India to consider this aspect and gave appropriate directions thereon.

10. The Apex Court, in the recent decision, in the case of **Shiv Kant Jha versus Union of India, reported in 2018(3) SLR 328 (S.C.)** has observed thus:

“13) It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor,

who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by

taking a very inhuman approach, the officials 12 of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court."

11. *In the case before the Apex Court the employee had taken treatment in a hospital which was not at all recognized or approved by the State Government or it was not included in the Government Order. The Apex Court has observed thus:*

"14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law

does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRTD device and have done so as one essential and timely. Though it is the claim of the respondent State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS 13 rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.”

12. The Apex Court has noted the submissions advanced by the respondent State that “the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS 13 rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry”. The Apex Court has observed that the petitioner was taken to hospital under emergency conditions for survival of his life which

requirement was above the sanctions and treatment in empanelled hospitals. The Apex Court directed the respondent State to pay balance amount to the writ petitioner towards his medical reimbursement.

13. In light of the law enunciated by the Apex Court, this Court is of the opinion that the present petitioner, who is now aged about 82 or 83 years cannot be relegated back to the respondent authorities to re-examine his case for medical reimbursement.

14. In light of the observations made by the Apex Court, the respondent authorities shall pay the balance amount of Rs.1,10,000/ along with interest of 9% from the date of filing of present writ-petition to the present petitioner within a period of four weeks from the date of receipt of the copy of the present order. The State Government is also directed to further consider the aspect of updating their approved rates from time to time and issue appropriate directions thereon on an annual basis.

With the aforesaid observations and directions, present writ-petition is allowed and is accordingly, disposed of. No order as to cost. Rule is made absolute.”

7. In light of the law laid down by the Coordinate Bench of this Court in the case of ***Chanrakant Kantilal Dave (Supra)***, the petition is allowed. The respondents are directed to reimburse the balance amount of Rs.1,14,656/- to the petitioner together with the interest @ 9% p.a. from the date of filing of petition till its realization within a period of *ten weeks* from the date of receipt of copy of this judgment.
8. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No order as to costs.

VATSAL S. KOTECHEA

(BIREN VAISHNAV, J)

THE HIGH COURT
OF GUJARAT

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