

Rattan Lal Gupta vs Uoi & Ors on 9 August, 2010

Author: Veena Birbal

Bench: Veena Birbal

* HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 9th August, 2010

+ W.P.(C) 4790/2007

RATTAN LAL GUPTA Petitioner
Through : Mr. R.M. Sinha, Adv.

versus

UOI & ORS Respondents
Through : Mr. B.V. Niren, CGSC for R-1

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Veena Birbal, J.

Petitioner retired as a Civilian Staff Officer from the Ministry of Defence, Central Government and is getting a regular pension. Being a retired Central Government employee, the petitioner is a life beneficiary of the Central Government Health Services (CGHS) Scheme. A copy of the CGHS card issued in favour of the petitioner is annexed with the petition. It is stated that on 29.08.2003, the Director (CGHS) had granted permission to the petitioner for implantation of the Pacemaker (dual chamber) through Apollo Hospital, Sarita Vihar, New Delhi. The petitioner was admitted in the said Hospital on 30.08.2003 and the Pacemaker (dual chamber) was implanted on the same day. The petitioner was discharged on 02.09.2003. At the time of discharge from the hospital, the petitioner was handed over a bill amounting to Rs.1,82,650/- and was asked to pay Rs.45,830/- as the hospital could claim only Rs.1,36,820/- from the CGHS as a result of which petitioner had to pay Rs.45,830/- from his pocket. The said amount was paid by the petitioner as there was a difference between the actual cost of the pacemaker implanted and the cost of the pacemaker permitted by CGHS. Further, the bill also included Rs.16,160/- towards procedural cost of pacemaker also. The

doctor who had implanted the pacemaker had also given a certificate to the effect that the pacemaker implanted was an essential one for the proper treatment of the petitioner. Petitioner made a representation dated 29.09.2003 claiming the said amount from respondent. Respondent sent a cheque of Rs.16,160/- only to the petitioner against the reimbursement of Rs.45,830/-.

By way of present petition, the petitioner has prayed for an issuance of a writ of Mandamus/any other order directing the respondent to pay the balance amount of Rs.29,220/-, paid by the petitioner to the hospital incurred in the implantation of Pacemaker (dual chamber) along with interest @ 12% p.a. with cost of litigation.

Respondent has opposed the present petition by filing a reply wherein it is admitted that the petitioner underwent implantation of Pacemaker (dual chamber) in Apollo Hospital after taking approval from Director (CGHS). It is stated that the ceiling for the Pacemaker (dual chamber) is Rs.1,15,000/- as per O.M. dated 12.06.1996. The said amount was reimbursed to Apollo Hospital. The package rate for procedure of implantation is Rs.16,160/- and the same is also the approved rate which is also reimbursed to the petitioner. The stand of the respondent is that reimbursement is done as per CGHS rates as such nothing is due for payment to the petitioner. It is stated that the difference of the amount over and above the CGHS rate was to be borne by the beneficiary himself.

The question for consideration is whether the petitioner is entitled for the difference in cost of Pacemaker (dual chamber) which has been charged from him by the Apollo Hospital than the rate prescribed in OM mentioned above. The difference claimed by the petitioner is Rs. 29,220/-.

There is no controversy with regard to the amount incurred and spent by the petitioner for the implantation of Pacemaker (dual chamber).

The stand of the respondent is that the petitioner is governed by OM dated 12.06.1996 and has been paid accordingly.

Perusal of record shows that Joint Director (CGHS) had given the permission for Pacemaker (dual chamber) to the petitioner and a letter dated 29.08.2003 in this regard was sent by the CGHS to Medical Superintendent, Apollo Hospital. In the OM dated 12.06.1996, rates are prescribed wherein maximum ceiling in respect of Dual Chamber Pacemaker is fixed at Rs. 1,15,500/-. The petitioner was operated on 29.08.2003. It is a matter of common knowledge that with the passage of time, the rates have gone high. Apollo hospital is also one of the approved hospitals of the Government. Learned counsel for petitioner has also pointed out that petitioner is 80 years of age.

In V.K. Gupta v. Union of India & Anr.; 97 (2002) DLT 337 petitioner therein was referred to Escorts Heart Institute and Research Centre Ltd. (EHIRC) for the treatment. The Office Memorandum of 18.09.1996 was the subject matter of adjudication and this court had granted reimbursement of full expenses incurred at the EHIRC to the petitioner over and above the rates given in aforesaid O.M. The relevant portion of the aforesaid judgment is as under:-

"The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognised by them for treatment on the basis of applying the rates as per the previous memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Coordinate Bench of this Court in Civil Writ No. 5317/1999 titled M.G. Mahindru v. Union of India and Another, decided on 18.12.2000, wherein the learned Single Bench relying on the decisions of Narendra Pal Singh v. Union of India and Others, 79 (1999) DLT 358, as well as State of Punjab and Others v.

Mohinder Singh Chawla etc., JT 1997 (1) SC 416, directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at CGHS or RML Hospital and the petitioner was referred after due permission to a speciality hospital duly recognised by the respondents. The respondents cannot, therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised." The court directed reimbursement of full expenses on the treatment.

In M.G. Mahindru v. Union of India and Another; 92 (2001) DLT 59 wherein it has been held that full reimbursement of medical expenses to a speciality hospital, which was on an approved list of CGHS, cannot be denied to a retired Government servant.

In K.S. Mathew v. Union of India & Anr.; 122 (2005) DLT 450 wherein also despite restrictive and ceiling limit fixed by the O.M. to reimburse medical expenses, petitioner was granted full reimbursement for expenses incurred at EHRC.

It is also the stand of the petitioner that doctor who had implanted the Pacemaker had given a certificate that the Pacemaker implanted was essential one for the proper treatment of the petitioner.

Further, it is not the stand of the respondent that the Pacemaker (dual chamber) of the rate fixed within the ceiling limit was available. Respondents are therefore not justified in not reimbursing the balance amount of Rs.29,220/- to the petitioner.

In view of above discussion, it is held that the petitioner is entitled to the reimbursement of entire expenses incurred by him at the time of treatment. Respondents are therefore directed to pay the balance amount of Rs. 29,220/- to the petitioner within a period of four weeks from today.

Petition is allowed in the above terms with no order as to costs.

VEENA BIRBAL, J.

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