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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 03rd February, 2025*

\+ W.P.(C) 1608/2016

JAGDISH CHANDRA .....Petitioner

Through: Mr. Abhishek Agarwal and Ms.Vinita Sasidharan, Advocates.

versus

STATE TRADING CORPORATION OF INDIA LTD.....Respondent

Through: Mr. S.B. Upadhyay, Senior Advocate with Mr. Tarkeshwar Nath, Mr. Abhishek Kumar and Mr. Harshit Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition is preferred on behalf of the Petitioner laying a siege to order dated 10.11.2015 passed by the Respondent/State Trading Corporation of India Ltd. ('STC') rejecting the claim of the Petitioner for medical reimbursement to the tune of Rs.23,79,313/- on account of medical expenses incurred by him in Max Super Speciality Hospital, Saket, on the treatment of his wife who was hospitalized on 09.01.2012 in a serious condition for 21 days and expired on 31.01.2012.

2. Case of the Petitioner as set out in the writ petition is that Petitioner was employed with STC from 1966 and after serving for 31 years, retired in the year 1997. Respondent introduced a Voluntary Retirement Scheme ('VRS') on 09.04.1997, which provided that regular employees who had

completed minimum 10 years of service in STC or 40 years of age, shall be eligible to seek voluntary retirement by making an application in writing through proper channel to the Competent Authority. VRS came into force w.e.f. 10.04.1997.

3. Clause 5 of VRS enumerated the benefits available under the Scheme which included Provident Fund and Gratuity as admissible, ex-gratia payment to the extent stipulated, travel expenses etc. As for medical benefits, it was provided that benefits as stipulated under STC (Retired Employees') Medical Benefits Scheme, 1981 ('Medical Scheme') will be available, provided that the employee has rendered minimum of 15 years of service and provided further that he/she does not avail similar benefits from any other source.

4. On 04.05.2006, Respondent issued a Circular requiring retired officers to pay 5% of the in-patient treatment amount in empanelled hospitals and 95% was payable by the Respondent. Procedure for reimbursement was also laid down in the circular. On 16.01.2007, STC issued a circular giving a list of hospitals empanelled till further orders and this included Max Super Speciality Hospital, Saket. On 12.11.2010, based on a representation by the STC Ex-Employees' Welfare Association, bringing forth that the Circular dated 04.05.2006 was contrary to the undertaking given by the STC, Chennai Office before the Madras High Court in W.P. 15314/2005, STC withdrew the Circular dated 04.05.2006 but issued another Circular dated 12.11.2010 imposing a ceiling limit/cap on the amount reimbursable towards indoor medical expenses. It was further provided that in case of major ailments such as cancer, kidney, heart ailments, paralysis, major accidents etc., treating hospitals will be allowed to

exceed in their entitlements up to double the amount of the ceiling limit, with approval of the Competent Authority, on a case-to-case basis.

5. Petitioner's wife was hospitalized in Max Super Speciality Hospital, Saket on 09.01.2012 in a serious condition for multiple organ failure due to severe sepsis. She was also suffering from chronic kidney disease (Stage-V) requiring haemodialysis thrice a week. She expired on 31.01.2012 in the hospital and bill to the tune of Rs.25,75,275/- was raised by the hospital.

6. In a Board meeting held on 09.11.2012, STC resolved to withdraw the ceiling limit on hospitalization expenses and it was decided that the employees who had retired prior to 01.01.2007 will be allowed medical expenses on hospitalization at actuals while to those who retired post 01.01.2007, an option will be given to avail medical expenses on hospitalization at actuals but without pensionary benefits or to avail pensionary benefits with proposed ceiling/slab on medical expenses on hospitalization, as per rules. The decision was prospective in operation. Another Circular was issued on 22.02.2013, in partial modification of the existing Medical Scheme, stipulating that employees who had retired on or before 25.11.2008 will be allowed indoor medical expenses on hospitalization at actuals, however, 5% of the total expenditure towards indoor treatment shall be borne by the retired employees as was in vogue prior to September, 2010. For employees retiring on or after 26.11.2008, medical reimbursement/expenses on indoor treatment on hospitalization will be as per ceilings laid down in the table given in the circular.

7. Petitioner filed a writ petition in this Court on 19.12.2014 being W.P. (C) 414/2015 seeking a declaration that Circular dated 12.11.2010 be declared as invalid and direction be issued to the Respondent to comply with

terms of VRS dated 09.04.1997 and reimburse medical expenses to the tune of Rs.23,79,313/-. Writ petition was disposed of as withdrawn on 16.01.2015 with a direction to the Petitioner to file a comprehensive representation and a direction to the Respondent to pass a speaking order within two months, pursuant to which Petitioner made a detailed representation on 27.03.2015. Speaking order was passed by the Respondent on 25.05.2015 rejecting the claim on the ground that as per the policy in vogue, no reimbursement could be granted over and above the slab-wise ceiling prescribed in Circular dated 12.11.2010.

8. In a challenge to the speaking order in the second writ petition being W.P. (C) 8530/2015, the speaking order was set aside on 10.09.2015 by this Court with a direction to the Respondent to decide the representation afresh as the earlier order did not address the grounds raised by the Petitioner. Representation was again rejected vide order dated 10.11.2015 on the reasoning that VRS was a welfare measure and that treatment of Petitioner's wife was undertaken between 09.01.2012 and 31.01.2012, during which period indoor treatment expenses were governed by slab-wise annual ceiling, which in case of the Petitioner was Rs.2.75 lacs, as per his designation. However, keeping in view the nature of the ailments and treatment undertaken, the ceiling limit was doubled to Rs.5.50 lacs at the request of the Petitioner. It was also stated that even if Petitioner's claim is considered under Clause 4.4 of the Medical Scheme as urged by him, in the event of treatment in a private hospital, reimbursement will be subject to maximum of such rates as are chargeable by All India Institute of Medical Sciences ('AIIMS'). Affordability was also taken as a ground to deny the claim. Since the speaking order dated 10.11.2015 was passed during the

pendency of W.P. (C) 8530/2015, this writ petition was disposed of with liberty to the Petitioner to challenge the order.

9. Challenging the speaking order dated 10.11.2015, learned counsel for the Petitioner submitted that VRS is a concluded contract in which the prime consideration was the contribution of the Petitioner of all his pensionary benefits earned on account of unblemished 31 years of service with STC. Under VRS, medical benefits were offered and terms of the scheme could not be altered unilaterally by the Respondent to the detriment of the Petitioner. From the time of retirement of the Petitioner in 1997 till 2006, Respondent was reimbursing actual costs incurred by the retired employees. The dissonance occurred when a Circular was issued on 04.05.2006, requiring the retired employees to pay 5% of the expenditure incurred on indoor treatment while 95% was payable by the Respondent. This was opposed by the STC Employees and while this condition was withdrawn, impugned Circular dated 12.11.2010 was issued arbitrarily imposing ceiling limits on the medical expenses incurred by retired employees. On the resentment of the ex-employees, Board of STC resolved in its meeting held on 09.11.2012 to withdraw the ceiling limits and Circular dated 22.02.2013 was issued but bringing back the earlier condition of contribution of 5% by the retired employees. Benefits under this circular were wrongly given prospectively, without any legal basis and once the circular itself stated that employees retiring on or before 25.11.2008 were covered, Petitioner could not be excluded having retired in 1997.

10. It was further contended that Petitioner's wife was hospitalized in a serious and critical condition and as hospital records would indicate she was suffering from severe sepsis and multiple organ failure. She underwent

haemodialysis thrice a week and expired on 31.01.2012 in the hospital. Clearly, Petitioner's wife was admitted in hospital in emergency and once the factum of treatment is not in dispute and the hospital was an empanelled hospital, there was no reason to deny reimbursement of the actual expenditure incurred in the hospital. Financial condition and affordability cannot come in the way of reimbursement of medical expenses to the retired employees and this contention of employers has been negated by Courts in several cases.

11. Petitioner had placed reliance on Clause 4.4 of the Medical Scheme which provided that for expenditure in case of hospitalization in private hospitals, there will be no annual ceiling and individual claims will be settled subject to the prescriptions therein. Assuming for the sake of argument, Petitioner had placed reliance on the said clause and he was disentitled to actual reimbursement, the case of the Petitioner has to be treated as one of emergency and it is a settled law that full reimbursement of medical expenses is to be given in cases of hospitalization in emergent conditions. In this context, reliance was placed on the judgment of the Supreme Court in ***Shiva Kant Jha v. Union of India, (2018) 16 SCC 187*** and the judgments of the Division Benches of this Court in ***Jagir Kaur v. Union of India and Another, 2024 SCC OnLine Del 4698; Union of India and Another v. Joginder Singh, 2023 SCC OnLine Del 2707*** and the judgment of the Co-ordinate Bench in ***RS Yadav v. Govt. of NCT of Delhi and Others, 2023 SCC OnLine Del 2415.***

12. It was argued that in ***Prithvi Nath Chopra v. Union of India & Anr., 2004 SCC OnLine Del 274,*** this Court held that once the hospital is on the empanelled list, full medical reimbursement is to be paid and it is for the

employer and the concerned hospital to resolve their *inter se* billing issues. Reliance was also placed on the judgments in ***Milap Singh v. Union of India & Anr., 2004 SCC OnLine Del 493*** and ***Suraj Bhan v. Govt. of NCT of Delhi & Ors., 2010 SCC OnLine Del 1109,*** in this context. It was also urged that plea of financial loss even otherwise cannot be a ground to deny medical reimbursement to retired employees, as held by this Court in ***PEC Retired Employees Welfare Association v. Union of India and Another, 2019 SCC OnLine Del 8725.***

13. Petition was strenuously opposed by STC. Mr. S.B. Upadhyay, learned Senior Counsel supported the impugned order and argued that Petitioner was working as Marketing Manager with STC when he chose to opt for voluntary retirement in 1997 under VRS. Clause 5.1 of VRS provided that medical benefits as stipulated in the Medical Scheme would be granted if the retired employee had rendered minimum of 15 years of service and had not availed any similar benefit from any other source. Para 3 thereof also provided that Chairman of the Corporation shall have the power to amend, modify or relax any provision of the Scheme at his sole discretion. Clause 4.4 of the Medical Scheme provided as follows:-

> *"4.4 The expenditure in the case of hospitalization will not be subject to any annual ceiling but the individual claims, will be settled subject to the following restrictions*
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> *For room rent the ceilings as applicable to working employees will be applicable with reference to last pay drawn. For other charges there will be no restriction if treatment is taken in a Government hospital. In the event of treatment in a private hospital/nursing home claim will be subject to the maximum of such rates as are chargeable by the All India Institute of Medical Sciences."*

14. Bare perusal of Clause 4.4 shows that for treatment in private hospital during hospitalization, medical claim will be subject to maximum rates as

chargeable by AIIMS and thus even under the Medical Scheme, Petitioner is not entitled to claim any amount over the AIIMS rates. Medical Scheme was modified vide Circular dated 12.11.2010 and ceiling limits were provided for reimbursement of medical expenses incurred for indoor treatment by the retired employees or their spouses, in consonance with the directive of Department of Public Enterprises ('DPE'), Government of India issued vide O.M. dated 08.07.2009. Petitioner retired as Manager (Marketing) and therefore, he fell in the slab with ceiling of Rs.2.75 lacs per annum. However, keeping in view the nature of illness of his wife, the amount was doubled to Rs.5.50 lacs as the circular did provide so in cases of major ailments. The Medical Scheme is only a welfare measure and not a grant or aid and the fact that STC pays from its own resources cannot be overlooked and therefore, affordability is a crucial factor.

15. It was further argued that Petitioner's wife was admitted to the hospital between 09.01.2012 to 31.01.2012 and at the relevant time, the applicable circular was Circular dated 12.11.2010, which provided a cap of Rs.2.75 lacs and not the Circular dated 22.02.2013, which was made applicable prospectively from the date of its issue and Petitioner cannot seek benefit under the same to claim actual expenses incurred. Explaining the objective of providing a ceiling limit, it was submitted that during 2011-12, a sum of Rs.5.63 crores was spent by STC on treatment of its employees and spouses. In 2011-12, around 3002 retired employees including their spouses were granted medical benefits only because there was a ceiling limit, else it would have been difficult to settle all claims. Learned Senior Counsel relied on the following judgments in support of STC:-

(a) ***State of Punjab and Others v. Ram Lubhaya Bagga and Others, (1998) 4 SCC 117:*** When the Government forms its policy, it is based on number of circumstances including constraints of resources and no State of any country can have unlimited resources to spend on any project;

(b) ***State of Punjab and Others v. Mohan Lal Jindal, (2001) 9 SCC 217:*** Even if in a given case it is a case of emergency, reimbursement will be at AIIMS rates as per the policy;

(c) ***Confederation of Ex-Servicemen Associations and Others. v. Union of India and Others, (2006) 8 SCC 399:*** Contributory scheme of medical facilities cannot be illegal or unconstitutional. Ultimately, State has to cater to the needs of its employees, past and present and has to undertake several other activities as a welfare State. In the light of financial constrains and limited means available, if a policy decision is taken to extend medical facilities to ex-defence personnel by allowing them to become members of contributory scheme and requiring them to make one-time payment, which is a reasonable amount, it cannot be said that such action would violate fundamental rights guaranteed by Part-III of the Constitution;

(d) ***State of Rajasthan v. Mahesh Kumar Sharma, (2011) 4 SCC 257:*** Where a Government servant is posted at a station or is sent on duty or is on leave at a station outside Rajasthan and he or his family member falls ill, he shall be entitled to free medical treatment as an indoor and outdoor patient in hospitals maintained by Central or State Governments on a scale admissible under the Rules, as if he had been on duty or leave in Rajasthan; and

(e) ***J.K. Sawhney v. Punjab National Bank, 2010 SCC OnLine Del 3011:*** No doubt, it is the constitutional obligation of the State under Article 21 of the Constitution of India to safeguard the right to life of every person and the right to lead healthy life but no law mandates entitlement to free medical treatment without any limitation on the amount that can be claimed as reimbursement.

16. Heard learned counsels for the parties and examined their rival submissions.

17. The moot question that arises for consideration before this Court is whether Petitioner is entitled to medical reimbursement to the tune of Rs.23,79,313/- on account of treatment of his wife in Max Super Speciality Hospital, an empanelled hospital of STC.

18. Petitioner sought voluntary retirement in 1997 under VRS introduced by STC on 09.04.1997, after rendering 31 years of service. It was categorically provided in VRS that medical benefits as stipulated under the Medical Scheme dated 03.10.1981 will be provided to the employee seeking voluntary retirement provided he had rendered minimum 15 years of service in STC and had not availed similar benefits from any other source. The Medical Scheme required the retired employee who intended to join the scheme to contribute annually depending on the slabs based on last drawn Basic Pay. Clause 4.1 provided that benefits will be available to the retired employee and his/her spouse only. Expenditure was to be borne initially by the employee and subsequently reimbursement was to be made on production of bills/receipts, etc. in the prescribed form. Insofar as outdoor treatment was concerned, expenditure incurred on consultation charges, cost

of medicines etc. was reimbursable subject to ceilings prescribed in the Scheme. Insofar as hospitalisation was concerned, Clause 4.4 governed the field. It was stipulated that in case of hospitalisation, expenditure will not be subject to any annual ceiling but individual claims will be settled subject to restrictions: (a) for room rent, ceiling as applicable to working employee was applicable with reference to last pay drawn; (b) for other charges there was no restriction if treatment was taken in Government hospital but in the event of treatment in a private hospital/nursing home, claim was subject to maximum of such rates as chargeable by AIIMS.

19. Subsequently, various circulars were issued by STC. By Circular dated 04.05.2006, STC unilaterally required the retired employee to pay 5% of the actual cost for in-patient treatment in empanelled hospitals while 95% was payable by STC. On 16.01.2007, Max Super Speciality Hospital was included in the list of empanelled hospitals. On resistance by ex-employees and based on an undertaking before the Madras High Court, condition of 5% payment by retired employees was withdrawn vide circular dated 12.11.2010 but ceilings were imposed on the amount of reimbursement in case of indoor treatment based on the designations of the employees. For major ailments and accidents, double the amount of the ceiling limit was permissible on case-to-case basis with the approval of the Competent Authority. On 22.02.2013, another circular was issued by STC amending the Medical Scheme partially. For employees retiring on or before 25.11.2008, it was decided that indoor medical expenses on hospitalisation will be allowed on actuals. Condition of 5% contribution was re-introduced and for employees retiring on or after 26.11.2008, ceilings were imposed at the rates specified in the Circular No.IR/02/2013.

20. Both parties have made their respective submissions on the terms of VRS, Medical Scheme and the circulars issues from time to time. Petitioner has, in fact, challenged the Circular dated 12.11.2010 as imposing onerous conditions on retired employees as also being in the teeth of medical benefits promised and assured under VRS. One of the arguments made on behalf of the Petitioner and which, in my view, is really the heart of the matter is that Petitioner's wife was admitted in Max Super Speciality Hospital on 09.01.2012 in an emergency condition and therefore, apart from other grounds raised in the writ petition, Petitioner is entitled to actual reimbursement based on the law laid down by the Supreme Court in ***Shiva Kant Jha (supra).*** Before proceeding further, it would be useful to refer to the law pertaining to medical reimbursement claims in case of hospitalisation in emergency.

21. The law on this issue is no longer *res integra*. In ***Shiva Kant Jha (supra),*** the Supreme Court was dealing with a contention raised by the Respondent that the Petitioner had not approached the empanelled hospital during medical emergency and hence, rules did not permit reimbursement of the medical claim. Negating this contention, the Supreme Court observed that the Government employee during his lifetime or after retirement is entitled to get benefit of 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 and very little scope is left to the patient or his relative to decide the manner in which ailment is to be treated. Right to medical claim cannot be denied merely because name of the hospital is not included in the Government order, as the real test is factum of treatment. Before any medical claim is honoured, authorities are

bound to ensure as to whether the claimant had actually taken treatment and the treatment is supported by records duly certified by doctors/hospitals concerned. When an employee is admitted to a hospital in emergency condition, law does not require prior permission where survival of the person is the prime consideration. It is also observed that though it is the claim of the State that the rates in the hospital in question were exorbitant and that the rates charged for such facility and reimbursement can only be at CGHS rates and that too, after following the laid down procedure, it also cannot be denied that the Petitioner was taken to hospital under emergency condition for survival of his life, which requirement was above the sanctions and treatment in empanelled hospitals.

22. In this context, I may allude to a judgment of the Division Bench of this Court in ***Joginder Singh (supra),*** where challenge was laid by the Government to an order passed by Central Administrative Tribunal directing the Government to reimburse the balance amount towards claim for medical reimbursement in regard to treatment taken by the Respondent at a private hospital. Dismissing the writ petition and upholding the order of the learned Tribunal, the Division Bench observed that patient has little scope to decide nature of treatment and merely looks forward to an expert guidance/ treatment for relieving him from immense pain and suffering. A patient in distress is not in a position to go against the specialist medical advice for surgery in emergency. Significantly, noting that the Respondent had taken treatment in an emergency in the said case, it was held that medical claim for treatment undertaken in emergency should not be denied for reimbursement merely because the hospital is not empanelled and the test remains whether claimant has undertaken the treatment in emergency as

advised and the same is supported with record, as preservation of human life is of paramount importance and State is under an obligation to ensure timely medical treatment to a person in need thereof. Relevant paragraphs from the judgment are as follows:-

> ***"10.*** *Respondent is a retired pensioner, who was merely employed as a Senior Carpenter with the Central Government. On November 03, 2017, he was initially taken to Mata Chanan Devi Hospital, Janak Puri, Delhi since he fell unconscious and was duly examined. Further, as advised at Mata Chanan Devi Hospital, respondent was taken by his wife for treatment to Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi which specializes in Neurosurgery and underwent surgery on November 04, 2017.*
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> ***11.*** *It may be noticed that "Trigeminal Neuralgia" is a chronic pain condition affecting the trigeminal nerve in the face which carries the sensation from the face to the brain. The symptoms of the disease range from mild to severe facial pain often triggered by chewing, speaking or brushing of teeth. The treatment available to alleviate the debilitating pain may be with combination of medication, surgery and complementary therapies. Generally, if a patient does not respond to the medication or condition worsens over a period of time, surgical option may have to be preferred, which includes stereotactic radiation surgery using gamma knife and cyber knife.*
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> ***12.*** *It is pertinent to note that prescription dated November 03, 2017 issued by Dr. Jayant Misra, MS M Ch. Consultant Neurosurgeon, Rancan Gamma Knife Centre reflects that 'the respondent was advised Gamma Knife Radiosurgery as emergency treatment' apart from other treatment as advised therein. Merely because the respondent was conscious, awake and oriented at time of admission at VIMHANS cannot lead to an inference that his claim of being admitted in emergency, is false. It may further be noticed that an emergency treatment certificate was again issued on October 18, 2018 by Dr. Jayant Misra certifying that the respondent was admitted on November 04, 2017 after OPD consultation on November 03, 2017 on emergency basis for his severe 'Right Sided V1V2 Region Trigeminal Neuralgia.' The certificate also reflects that the respondent was unable to eat/drink/sleep/wipe his face/speak at the time of admission on November 04, 2017. In the facts and circumstances, there existed continued emergent condition for undertaking the treatment by respondent at VIMHANS, as advised at Mata Chanan Devi Hospital. Merely because the respondent was suffering from the 'Right Sided V1V2 Region Trigeminal Neuralgic' for past four months, does not lead to an inference that the medical condition did not require emergent*

treatment, which was undertaken as a last resort by the respondent as advised.

13. *The medical claim for treatment undertaken in emergency should not be denied for reimbursement merely because the hospital is not empanelled. The test remains whether the claimant had actually undertaken the treatment in emergent condition as advised and if the same is supported by record. Preservation of human life is of paramount importance. The State is under an obligation to ensure timely medical treatment to a person in need of such treatment and a negation of the same would be a violation of Article 21 of the Constitution of India. Administrative action should be just on test of fair play and reasonableness. Accordingly, keeping into consideration the constitutional values, the executive instructions need to be applied than rejecting the claim on technical ground of undertaking treatment in a nonempanelled hospital, since the CGHS/State is responsible to ensure proper medical treatment in an emergent condition and further cannot escape the liability, if the treatment undertaken is genuine. Any denial of claim by the authorities in such cases only adds to the misery of the Government servant by further forcing him to resort to Court of law.*

14. *Observations of the Hon'ble Apex Court in Shiva Kant Jha (supra), as reflected in paras 17, 18 & 19 may also be beneficially reproduced:-*

> *"17. 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*

of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

18. 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 CRT-D 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 rates and that too after following a proper procedure given in the Circulars issued on time to time by the Ministry concerned, 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.

19. In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only."

15. *It needs to be kept in perspective that patient has a little scope to decide the nature of treatment and merely looks forward to an expert guidance/treatment for relieving him from immense pain and suffering. The patient in distress is not in a position to go against the specialist medical advice for surgery in emergency.*

16. *Even assuming that in emergency, gamma knife surgery may not render an immediate relief as contended by learned counsel for the petitioners, but it is an established alternative medical treatment for trigeminal neuralgia as per literature. There may be a difference of opinion on the line of treatment to be adopted by the experts but only the*

treating physician/surgeon appears to be the best placed to adopt the right course of treatment in an emergent situation.

17. *Keeping in view the emergency certificate and the treatment papers filed by the respondent, it cannot be said that the treatment was not taken in an emergent condition or the respondent should have deferred the immediate surgery by gamma knife, as advised by the Specialist.*

18. *For the foregoing reasons, we agree with the reasons and findings of the Tribunal. The writ petition is accordingly dismissed. No order as to costs. Pending application, if any, also stands disposed of."*

23. In ***Union of India and Others v. Surendra Kumar Gaur, 2023 SCC OnLine Del 5635***, wife of the Respondent was suffering from chronic liver disease and was rushed to a nearby private hospital in a state of emergency and treated. Medical reimbursement claim for the actual amount spent on treatment was denied on the ground that admissibility of reimbursement was governed by rates applicable in CGHS. Division Bench of this Court upheld the order of the Central Administrative Tribunal holding that the treatment was undertaken in an emergency situation and therefore, the case was covered by the judgment of the Supreme Court in ***Shiva Kant Jha (supra).*** In ***Jasbir Singh v. Union of India and Others, 2024 SCC OnLine Del 9***, Petitioner's mother was admitted in emergency and was operated for "*left parieto occipital horse shoe shaped craniotomy and evacuation of intracerebral haematoma*" and was discharged after 20 days only to be re-admitted in emergency in ICU and was diagnosed with "Urosepsis and pneumonitis" but later discharged. In the third spell, she was admitted with septicaemia and other diseases but expired in the hospital. Claim for reimbursement was rejected by the Respondents on the sole ground that emergency was not justified. The Tribunal rejected the Original Application and Petitioner approached this Court. The Division Bench held as follows:-

> *"17. The emergency certificate for admission on October 05, 2012 has not been disputed by respondents, yet only a part reimbursement of sum of Rs. 45,643/- has been made without logical reasons. There is nothing on record to indicate if the treatment undertaken/availed at Paras Hospital was not required by the patient. The petitioner had no other option in view of critical condition of his mother to rush to the nearest hospital closest to the residence.*
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> *18. In the facts and circumstances, we do not find any logical reasons for restricting the reimbursement since the same was undertaken due to emergent medical condition."*

24. In ***Jagir Kaur (supra),*** medical reimbursement claim was based on emergency admission in Apollo Hospital. Petitioner's husband was shifted to ICU in a critical condition, where he passed away. Tribunal rejected the reimbursement claim on the ground that the treatment was in a non-empanelled hospital and Petitioner's husband being a CGHS beneficiary, could be allowed reimbursement limited to the rates specified for empanelled hospitals. Setting aside the order of the Tribunal and upholding the claim of the Petitioner, Division Bench of this Court held as follows:-

> *"4. In the impugned order, the learned Tribunal took a view that the judicial precedents quoted above were "judgments in person and not judgments in rem" and if ratio of those judgments is applied to all cases, thereby directing full reimbursement of medical bills raised by non empanelled private hospitals, it would create a situation where significant amount of money from government exchequer would be claimed by the private hospitals by over-invoicing. The learned Tribunal also took a view that the Technical Standing Committee had recommended reimbursement of medical bills as per the limitations contained in OM dated 20.06.2020 of the Ministry of Health and Family Welfare and that the earlier OM dated 06.06.2018 cannot be completely ignored, especially because the latter was issued in compliance with the directions of the Supreme Court in the case of Shiva Kant Jha (supra).*
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> *5. Having examined the said OM dated 20.06.2020 (pdf page no. 213 of the paperbook), we are of the considered view that the same cannot be a ground to deny relief to the petitioner. For, the said OM dated 20.06.2020 was directed towards the hospitals; and there is nothing on record to show that the petitioner was aware of the same, so as to give her an opportunity of informed choice of the hospital, which in any case was not possible*

during those grave circumstances across the world. If the respondents suspect that the subject medical bills raised by the Indraprastha Apollo Hospital are inflated ones, nothing prevents them from initiating appropriate legal proceedings against the hospital, instead of depriving the petitioner a full reimbursement, especially it not being their case that the petitioner colluded with the hospital to obtain an inflated bill.

6. The provision under Article 21 of the Constitution of India ensures health and timely medical treatment being necessary components of the fundamental right to life, and the same cannot be negated or even diluted on the basis of bald suspicion of the State that the non empanelled hospitals would unjustly enrich themselves even in such dire situations of the pandemic. Right to health being an integral part of right to life, it was the bounden duty of the State to ensure best possible medical treatment, at least for survival of its Subjects through government medical facilities. And that having collapsed, now the State cannot turn around to reject the medical claims on the ground that the medical treatment was availed from a non empanelled hospital.

7. One cannot dispute the peculiar circumstances that were created during Covid pandemic worldwide, in which on account of extreme scarcity of medical beds and collapse of infrastructure, number of lives were lost. During Covid, the unprecedented calamity across the world, hospitals and clinics were inundated with patients, far exceeding their capacity with extensive strain on the intensive care units and emergency rooms. There was acute shortage of medical oxygen, so the demand skyrocketed. The pandemic exacerbated economic inequalities, whereby the economically disadvantaged met with extreme difficulty to access the necessary medical care. That crisis underscored the need for comprehensive reforms in the healthcare sector across the world and especially in our country writhing under severe resource crunch. In such frantic and forlorn scenario the priority above financial implications was to save lives of kith and kin, so one could not be expected to wait for a bed and/or oxygen etc. in CGHS panelled hospital. The Covid patients were being shifted wherever the medical beds, oxygen, ICU and ventilators were available across the country. Priority, as aforesaid was to save life.

8. The only test in such extraordinary situations must be as to whether the medical treatment was actually availed of. Once the answer is in affirmative, the reimbursement must be full while dealing with such cases pertaining to Covid pandemic. In the present case, it is not at all in dispute that late Sh. Pritam Singh had to be admitted in the Indraprastha Apollo Hospital in emergency, where he was diagnosed with Covid and in the course of medical treatment, shuttling between the Ward and the ICU, he passed away while being on ventilator support. That should be a close of the chapter so far as reimbursement claim of petitioner is concerned.

9. We find the guiding light extended by the Hon'ble Supreme Court in the case of Shiva Kant Jha (supra) as follows:

> *"17. It is a settled legal position that the government employee during his lifetime 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 specialised 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 of CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.*
>
> *18. 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 abovesaid 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 CRT-D 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 CGHS rates and that too after following a proper procedure given in the circulars issued on time to time by the*

> *Ministry concerned, 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"*
>
> *(emphasis supplied)*
>
> *10. In view of the above discussion, we are unable to uphold the impugned order, so the same is set aside and consequently the present petition is allowed, thereby directing the respondents to reimburse to the petitioner the entire remaining amount of Rs. 4,80,879.15 paise with interest thereon at the rate of 4.5% per annum for the period from the due date till payment of the same within a period of four weeks from date of this order."*

25. It would be both relevant and useful to refer to a recent judgment of the Division Bench of this Court in ***Hira Lal Bhat v. Chairman and Managing Director BSNL and Others, 2024 SCC OnLine Del 9065***, where the Petitioner was a retired employee of BSNL and was undergoing treatment for liver cirrhosis. He was admitted to Apollo Hospital on 19.03.2015 and discharged on 01.04.2015 but was re-admitted the same day and advised liver transplant surgery, which he underwent and recuperated and was discharged. Thereafter, he sought reimbursement of the expenses incurred in the hospital, however, BSNL reimbursed nearly half of the amount as per CGHS rates. Tribunal dismissed the application of the Petitioner accepting the stand of BSNL that Apollo Hospital was not an empanelled hospital for the surgery in question and the surgery was not in emergent circumstances. Relying on the judgment of the Supreme Court in ***Shiva Kant Jha (supra)*** and of the Division Benches of this Court in ***Joginder Singh (supra); Surendra Kumar Gaur (supra); Jasbir Singh (supra)*** and ***Jagir Kaur (supra),*** it was held as follows:

> *"26. These decisions, which follow the exordium in Shiva Kant Jha, make it clear that in a case in which the patient has to undertake emergency treatment, she or he is entitled to reimbursement of the actual*

expenses undergone. The Court cannot go behind the Emergency Certificate. In such a situation, the issue of whether the hospital is, or is not, empanelled, recedes into insignificance. The only factor which remains as relevant is whether the claimant did, or did not, undergo the concerned treatment. If she, or he, did, complete reimbursement of the expenses incurred must follow.

27. In a departure from normal practice, we have deemed it appropriate to reproduce the passages, from the above cited decisions of this Court which set out the facts in the said cases only to underscore the stark similarity between those cases and the present. It is a matter of regret that, despite these decisions, the respondent is constraining claimant after claimant to subject herself, or himself, to endless litigation, merely to obtain her, or his, just dues.

28. Needless to say, we are in complete disagreement with Mr. Gangwani in his contention that the liver transplant surgery undertaken by the petitioner was not an emergency treatment. Even de hors the certificate, the facts speak eloquently for themselves. The petitioner had been admitted, for a protracted period of time, in the Apollo Hospital, undergoing treatment for liver cirrhosis. Though he was discharged on 1 April 2015, he had to be re-admitted on the very same day, for liver transplant. The transplant was performed the very next day. The less said about the respondent's stand, in such circumstances, that the transplant surgery was not an emergency, the better.

29. The submission of Mr. Gangwani that the Emergency Certificate, of which a screen shot is provided in para 4 supra was a stock certificate issued at the time of admission of a patient in emergency, is clearly incorrect, as the certificate is issued on 11 April 2015, 9 days after the liver transplant surgery was undertaken, and not at the time when the patient was admitted to emergency. The certificate clearly records that the petitioner was undergoing treatment for liver cirrhosis in the Apollo Hospital. It is a well-known fact that liver cirrhosis is a serious ailment and often results in the requirement for liver transplant. The fact that the petitioner, having been discharged on 1 April 2015, had to be readmitted on the very same day, for undergoing liver transplant surgery clearly indicates that the surgery was an emergency. This is further underscored by the fact that the surgery had to be performed on the very next day i.e. 2 April 2015. In fact, the surgery could have taken place earlier but the petitioner was in search of a donor but no donor was available. His son, ultimately, and as we note commendably, came forward to donate a part of his liver for father's treatment. The submission that the liver transplant surgery undertaken by the petitioner was not an emergency is therefore rejected at the outset.

30. For reasons which we do not even deem it necessary to state, we

also unequivocally reject Mr. Gangwani's contention that the words "& readmitted same day for liver transplant surgery on 2.4.2015" may have been an interpolation, as it is different in a different hand, as compared to the writing elsewhere on the Certificate. It has to be remembered that the Certificate was issued on 11 April 2015. The noting that the petitioner was readmitted on 2 April 2015, therefore, merely stated a fact - which, mercifully, the respondent does not dispute - and, consequently, was obviously entered in the hand of the doctor, or other hospital staff, who wrote it. It is also a matter of common knowledge that, in speciality hospitals, oftentimes a prescription, or certificate, is not written by the doctor in charge, and may be entered by the Senior Resident or Junior Resident who works with her, or him. We merely seek to emphasize, by these observations, that Mr. Gangwani's reliance on the "difference" in the handwriting in the words "& readmitted same day for liver transplant surgery on 2.4.2015" were written on the Emergency Certificate merits outright rejection.

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34. We express our displeasure at the manner in which this case has been contested by the respondent. The Supreme Court, in the passages from its judgment in Shiva Kant Jha already extracted supra, has clearly advocated an expansive approach while dealing with medical reimbursement claims of persons who have undergone serious and emergency medical treatment. We regret to say that these words of advice of Supreme Court have apparently fallen on deaf ears as, in case after case where emergency treatment is undertaken, the concerned persons, after having suffered the ailment and undergone emergency treatment, are having to battle for years before Court for getting their due reimbursement.

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36. We are of the view that the Tribunal was clearly in error in rejecting the petitioner's claim. We, therefore, quash and set aside the impugned judgment of the Tribunal. OA 3205/2018 as well as WP(C) 9176/2019 filed before this Court stand allowed. The respondent is directed to reimburse the entire medical expenses claimed by the petitioner within a period of two weeks from today. In the event of the said expenses not being reimbursed within a period of two weeks from today, the respondent would also be liable to pay costs to the petitioner of Rs. 50,000/-, which would be additionally payable, within two weeks thereof."

26. To the same effect is the decision of the Division Bench in ***Indian Council for Agricultural Research v. Pramod Nischal, 2025 SCC OnLine Del 343***. From a reading of the aforementioned judgements, it is palpably

clear that if an employee undertakes treatment in an emergency, he/she is entitled to reimbursement of actual expenses incurred. The only question is whether as a matter of fact, claimant undertook the treatment. Once the answer is in the affirmative, reimbursement must be full. The Supreme Court and the Division Benches of this Court have emphasized and highlighted that there is a positive obligation on the State to ensure timely medical treatment and no fetters can be placed on this right. How a patient is to be treated is a decision which vests only with the doctor, who is well-versed in the field and very little scope is left to the patient or his relative to decide the manner of treatment. Where an employee is admitted in a hospital in an emergency condition, law does not require that prior permission has to be taken in such a situation where the prime consideration is the treatment and survival of the patient. In fact, the Courts have repeatedly held that in an emergency case, even the fact that the treating hospital is not empanelled, will make no difference. In ***Hira Lal Bhat (supra)***, the Division Bench reiterated and re-stated that Court cannot go behind the emergency certificate and the factum of the employee undergoing treatment is enough. Court expressed displeasure in the manner the case was contested by the Respondent despite the Supreme Court in ***Shiva Kant Jha (supra)*** clearly advocating an expansive approach while dealing with medical reimbursement claims of persons who have undergone serious and emergency medical treatments. With great regret, Court stated that the words of advice of the Supreme Court have fallen on deaf ears and concerned persons after having suffered the ailment and undergone emergency medical treatment, are made to suffer further to get their due reimbursements.

27. I may now examine the claim of the Petitioner in light of the aforesaid judgments. Petitioner has categorically averred in the writ petition that his wife was hospitalised on 09.01.2012 in a very critical condition for multi organ failure due to severe sepsis and was subsequently shifted to ICU. On account of chronic kidney disease (Stage-V), she was also undergoing haemodialysis thrice a week and passed away on 31.01.2012. These averments are not traversed or controverted by STC and the prime reason for rejection of the medical reimbursement claim is that since the hospitalisation and treatment of Petitioner's wife was in the year 2012, Circular dated 12.11.2010 will apply and no reimbursement can be made over and above the ceiling limits mentioned therein. It is also stated that looking at the nature of medical ailment, while Petitioner was entitled to a sum of Rs.2.75 Lacs as per his designation, he has been reimbursed double the amount. A stand is also taken that even going by Clause 4.4 of Medical Scheme, Petitioner is entitled to AIIMS rates at the highest.

28. It is evident that in the anxiety to contest the claim of the Petitioner, STC has completely overlooked that Petitioner's wife was admitted in the hospital in a critical condition with severe sepsis and was shifted to ICU, where she passed away. The factum of treatment in emergency is not controverted by STC. Therefore, neither Clause 4.4 of the Medical Scheme, which no doubt Petitioner himself relies on, nor the ceiling limit in the Circular dated 12.11.2010, can be an impediment in the way of the Petitioner getting reimbursement of actual expenses, in light of the settled law. Division Bench has painfully held that despite the judgment of the Supreme Court in ***Shiva Kant Jha (supra)***, people are being made to suffer and undertake prolonged battles for years for medical reimbursement claims

on frivolous grounds, even in cases where emergency treatments are not disputed. In light of the fact that the present case is a case of emergency and covered by the aforesaid judgements, none of the cases relied upon by learned Senior Counsel for STC will come to the aid of the Respondent.

29. Accordingly, the writ petition is allowed, setting aside the impugned order dated 10.11.2015. Respondent is directed to reimburse the entire medical expenses claimed by the Petitioner on account of hospitalization of his wife, subject to adjustment of the amounts already paid. The needful shall be done within six weeks from today, failing which STC shall pay interest @ 6% per annum from today till the date of actual payment.

30. Writ petition stands disposed of.

JYOTI SINGH, J

FEBRUARY 03, 2025/*B.S.Rohella*