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

Decided on: 30.05.2025

+ W.P.(C) 1200/2018
HEMANT KUMAR

.....Petitioner

Through: Ms. S. Janani, Senior Advocate
with Mr. Nishant Kumar,
Advocate.

versus

FOOD CORPORATION OF INDIA AND ORS.Respondents

Through: Mr. Rishi K. Awasthi and Mr.
Rahul Raj Mishra, Advocates.
Mr. Ripudaman Bhardwaj, CGSC
with M. Kushagra Kumar, Mr.
Abhinav Bhardwaj, Mr. Amit
Kumar Rana, and Mr. Manpreet
Manchanda, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of this writ petition under Article 226 of the Constitution, the petitioner, an employee of the respondent – Food Corporation of India [“FCI”], challenges a circular of FCI dated 09.02.2015, to the extent that a ceiling rate was set for reimbursement in respect of liver transplants. He also seeks directions upon FCI to release to him, the balance amount spent towards a liver transplant surgery.
2. The petitioner has been employed by FCI since 1992 and has been serving as an auxiliary worker at its Mayapuri Depot.



3. The dispute in this petition concerns a liver transplant operation, which he was compelled to undergo on 16.02.2016, having been diagnosed with chronic liver disease. The controversy, in brief, is that the petitioner was admitted to Medanta, The Medicity Hospital, Gurgaon [“Medanta”], and was advised to undergo the transplant urgently. Medanta was not then empaneled by FCI for liver transplant surgery. The petitioner consequently sought approval to undergo the surgery at Medanta. However, before the approval was granted, his situation deteriorated, and he had to undergo the surgery on an emergency basis on 16.02.2016. The approval was subsequently granted on 22.02.2016, but subject to the ceiling of Rs. 14 lakhs, as provided in FCI’s policy for liver transplant dated 09.02.2015. As Medanta was not then an empaneled hospital, its rates were, however, not fixed according to the approved rates, and the petitioner paid in excess of Rs.33 lakhs for the surgery. He claims the balance amount.

4. On 09.02.2015, FCI issued a Circular, detailing its policy for liver transplants [“Circular”] applicable to its employees and their dependents, drawing upon an Office Memorandum [“OM”] dated 16.01.2013 issued by the Ministry of Health and Family Welfare, Government of India. Clause 5, to the extent it deals with the ceiling rate for reimbursement, reads as follows:

*“5. Ceiling Rate for reimbursement for Liver Transplantation Surgery
(a) Package rate for Liver Transplantation Surgery involving live Liver donor shall be Rs.14,00,000/- (Rupees Fourteen Lakhs only). This would include Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) for pre – transplant evaluation of the donor and the recipient and Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand only) for transplant Surgery.*



(b) *Package rate of Liver transplant Surgery involving deceased donor shall be Rs.11,00,000/- (Rupees Eleven Lakhs Only).*”

5. Clause 6 of the Circular contains the following provisions entitled “Reimbursement criteria”:

“6. Reimbursement criteria: -

*As Liver Transplant Surgery is a planned surgery, therefore, prior permission has to be obtained before the surgery is undertaken. **However, if for some reasons it is done in emergency to save the life of the patient, the FCI Standing Committee shall consider the case referred to it for recommending grant of ex-post -facto permission on a case basis.**”¹*

6. A detailed procedure for sanction has been provided in Clause 7, which, *inter alia*, contemplates submission of a detailed estimate, “*duly signed by the Competent Authority of the Hospital where the Liver transplant treatment is proposed to be taken*”. A Standing Committee has been constituted, headed by the Executive Director of FCI, including expert doctors in Gastro-enterology/Gastro-intestinal Surgery, in addition to officers of FCI. The Standing Committee is charged with examining the medical records and rendering its advice and recommendations. Clauses 8 and 9 stipulate that the Competent Authority to grant permission for liver transplant, would be the Managing Director and the financial concurrence of the Executive Director (Finance) would be taken in each case.

7. Clause 11 emphasises urgency in processing of such application, in the following terms:

“11. It shall be ensured that top priority is given in sending the necessary reference to Headquarters and stern action shall be taken

¹ Emphasis supplied.



against the officers / official found responsible for undue delay (if any) at any stage of reference.”²

8. The following documents, relating to the petitioner’s reimbursement claim, have been placed on record by the parties:

A. On 28.08.2015, FCI had entered into an agreement for two years with Medanta for provision of medical services to its employees, but the said Agreement did not cover liver transplantation surgery.

B. A certificate was issued by Medanta on 23.01.2016 stating that:

*“This is to certify that Ms. Hemant Kumar (MM00827714) is suffering from HBV/ Ethanol related CLD **for which he needs to undergo urgent Liver Transplant**, as it is the only cure for his terminal liver disease. **He needs surgery as early as possible**. Mr. Bhanu Pratap is a prospective donor. Patient is admitted at present in the hospital. **The liver transplant package at Madanta, The Medicity Hospital, Gurgaon, will be as follows:***

Standard Liver Transplant Package :-

1. Pre Transplant charges for both patient & donor Opd basis : Rs. 2,10,000/-
2. Hospital Transplant Package : Rs. 18,25,000/-
3. Hepatitis B, Cost of Hepatitis B Immunoglobulin is :Rs. 5,00,000
4. Post Liver Transplant Charges for both patient & donor : Rs. 1,40,000/

To be paid at first follow up patients and donor life time consultation charges for Hepatology and Liver transplant team

Total : Rs. 26, 75, 000/-³

C. A case summary dated 27.01.2016, prepared by the treating doctor, advises liver transplant as early as possible, once fit.

D. On 01.02.2016, the doctor again certified that the petitioner required a transplant as early as possible and that he was admitted to the hospital. However, the name of the prospective donor was

² Emphasis supplied.

³ Emphasis supplied.



different, as compared to the certificate dated 23.01.2016. The package charges mentioned in the letter dated 23.01.2016 were reiterated.

E. On 04.02.2016, the Assistant General Manager, Industrial Labour-L, FCI, addressed a communication to the General Manager at the Regional Office, FCI, Noida, with regard to the petitioner's case. It was stated therein that all necessary documents in terms of FCI's Circulars pertaining to liver transplant had been forwarded. The package rate of Rs.26,75,000/- indicated by Medanta was also mentioned. It was specifically noted that the petitioner had been admitted at Medanta since 21.01.2016, and that the doctor had stated that his condition was "*very critical and due to this, it is necessary to transplant the liver of the workman immediately otherwise the workman can die*". Sanction or approval was therefore sought on humanitarian grounds, so that the procedure could be carried out within time.

F. The petitioner's wife addressed a further communication dated 15.02.2016 to FCI, noting that FCI had not responded to the request, and emphasising the urgency in the proposed liver transplant. With the said communication, she submitted yet another certificate from the Hospital, issued on the very same day, advising "*early liver transplant, in view of the patient's disease condition*".

G. By a letter dated 22.02.2016, the Deputy General Manager (IR-L) informed the Executive Director, North Zone, that the Standing Committee had examined and recommended the petitioner's case,



based on which the Chairman and Managing Director [“C&MD”], FCI, had accorded approval for liver transplant. The respondent has placed on record the minutes of the Standing Committee, which note that two specialist doctors (members of the Standing Committee) have been consulted, and have recommended the petitioner’s case for liver transplant. However, the approval was limited to the ceiling rates prescribed in the Circular dated 09.02.2015.

H. On the petitioner's discharge, the total bill raised by Medanta was, however, for the sum of Rs. 33,17,248/-.

I. FCI has paid a sum of Rs.16,77,181/- out of this amount.

J. The petitioner addressed a legal notice to FCI on 07.12.2017 detailing the above facts, and demanding the balance amount of Rs.16,40,067 with interest of 12%.

K. FCI responded to the legal notice on 08.01.2018, relying upon the aforesaid Circular dated 09.02.2015.

9. As the petitioner’s request remained unsatisfied, he filed the present writ petition before this Court.

10. I have heard Ms. S. Janani, learned Senior Counsel for the petitioner, and Mr. Rishi K. Awasthi, learned counsel for FCI.

11. The principal ground upon which reimbursement of the entire amount has been declined to the petitioner is the applicability of the Circular dated 09.02.2015. Although the Circular has been challenged by the petitioner in this case, I am of the view that the present case can be decided on its own facts, without adjudicating the validity of the Circular itself.



12. At the time of the petitioner's surgery, Medanta was admittedly an empaneled hospital, but not for liver transplants. It was therefore not subject to the rates stipulated in the OM or the Circular. It may be noted that an agreement was subsequently entered into on 19.09.2017 between FCI and Medanta, whereby Medanta was empaneled for liver transplants also. Under the said Agreement, the rates for various treatments were agreed upon between FCI and Medanta. As the petitioner's treatment was prior to this Agreement, however, the issue must be considered from a slightly different perspective, where rates were not agreed upon between FCI and Medanta.

13. From the very first communication from Medanta forwarded to FCI, which is dated 23.01.2016, Medanta had stipulated its package rate as Rs. 26,75,000/-. The urgency of the treatment was also indicated in its communications dated 23.01.2016, 27.01.2016, and 01.02.2016. An internal letter dated 04.02.2016, referred to above, shows that FCI itself was aware of the urgency. The communication quotes the treating doctor's opinion that the petitioner "*is very critical*" and requires an immediate transplant, failing which he runs the risk of fatality. The petitioner's wife reiterated this on 15.02.2016, with yet another communication of the same date from the Hospital.

14. Despite these communications, the documents annexed to the counter affidavit reveal that FCI sought the opinion of expert members of its Standing Committee only on 17.02.2016 and 18.02.2016. Both experts opined that liver transplant was an appropriate treatment option, and the Standing Committee approved the same on 19.02.2016. The recommendation was approved by the C&MD, who is the Competent



Authority, on 22.02.2016. By this time, the petitioner had already been operated upon on 16.02.2016.

15. Clause 6 of the Circular dated 09.02.2015 requires prior permission for liver transplant surgery, but also contemplates grant of *ex post facto* permission in a given case. The position is therefore that the petitioner's treatment at Medanta Hospital was duly approved by the Standing Committee. However, the time taken to process the petitioner's case was almost one month. Such a prolonged procedural delay, particularly when the respondent was being informed time and again of the urgency, led to a situation in which the petitioner had to undergo the surgery without full information as to the extent of reimbursement which FCI proposed to grant.

16. In the facts and circumstances of this case, therefore, I am of the view that the capping of the reimbursement at the ceiling rates mentioned in the Circular, despite the petitioner's representation throughout that the package rate at Medanta was Rs.26,75,000/-, is too harsh a consequence. It is the FCI which failed to abide by the spirit of the directive in Clause 11 of the Circular, that such claims must be processed urgently.

17. Ms. Janani has cited three judgments which support this view:

- a. In *Suman Rakheja v. State of Haryana*⁴, an employee had been treated at a hospital which was not recognized/approved by the employer therein. The Supreme Court found that the treatment was required in an emergency situation and therefore directed reimbursement to the extent of 100% at the

⁴ (2004) 13 SCC 562.



approved rate (All India Institute of Medical Sciences rate) and 75% of the actual expenditure in excess.

- b. In *Shiva Kant Jha v. Union of India*⁵, also, the employee took emergency treatment at a non-empaneled hospital. The Supreme Court permitted reimbursement, holding 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

⁵ (2018) 16 SCC 187.



*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.***⁶

The Court therefore directed reimbursement but confined its decision to the facts of that case.

- c. Ms. Janani also cited the decision of a coordinate Bench in *Daljit Singh v. Govt. of National Capital Territory of Delhi & Ors.*⁷, wherein full reimbursement was ordered, despite package rates stipulated by the employer in view of its delay in revising the rates.

18. The petitioner's case herein stands on a higher footing. Although his treatment was taken at a hospital which was not empaneled at the relevant time for the particular procedure, the treatment has been approved by the Committee. It is, therefore, a case where treatment at the

⁶ Emphasis supplied.

⁷ W.P.(C) 16651/2006, decided on 10.01.2013.



hospital in question was approved, albeit *post facto*. The package rate, which would be charged by Medanta, was known to FCI all through. Despite the urgency of his condition, the petitioner waited to have the operation for a period of approximately three weeks. The delay in FCI's response meant that he was unable to make a fully informed decision, as to whether to have the surgery at Medanta or elsewhere. Had he known that he would be reimbursed only partially, perhaps he would have chosen differently.

19. In these facts, I am of the view that the package rate prescribed in the Circular could not have been applied to the petitioner's case, and he is entitled to reimbursement at the package rate quoted by Medanta.

20. As far as the petitioner's challenge to the validity of the Circular is concerned, Mr. Awasthi's argument rests on the decision of the Supreme Court in *State of Punjab & Ors. v. Ram Lubhaya Bagga & Ors*⁸. The Court was concerned with a policy of the Punjab Government with regard to the scale of reimbursement for treatment of employees in non-government hospitals. While upholding the policy, to the extent that reimbursement for treatment in private hospitals was permissible at a prescribed scale, the Court held that the same is justified as limited resources have to be reasonably allocated. The judgment in *Ram Lubhaya* was followed in *Confederation of Ex-Servicemen Associations and Ors. v. Union of India*⁹ also.

⁸ (1998) 4 SCC 117, (hereinafter, "*Ram Lubhaya*").

⁹ (2006) 8 SCC 399.



2025:DHC:4665



21. In the view I have taken on the applicability of the Circular to the petitioner's case, it is not necessary to adjudicate the question of validity thereof.

22. For the reasons aforesaid, the petition is partially allowed, to the extent that the petitioner is entitled to reimbursement to the extent of Rs.26,75,000/-. The balance amount, after adjusting the amount already paid by FCI to the petitioner, be remitted to him within six weeks from today.

23. The writ petition is disposed of in these circumstances.

PRATEEK JALAN, J

MAY 30, 2025

Bhupi/Jishnu/