

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 205 OF 2010
IN
WRIT PETITION NO. 1055 OF 2009

B.N. Makhija and Others

..Petitioners

versus

Union of India and others

..Respondents

Mr. R.A. Dada, Sr. Counsel with Dr. Ms. Poornima Advani, Mr. H.V. Kode
i/by The Law Point.

Mr. R.J. Rana, Sr. Counsel with Mr. A.M. Sethna i/by Dr. T.C. Kaushik for
Respondent No.s 1 and 2.

Mr. D.A. Nalawade, GP with Mr. R.A. Lokhande for Respondent No.4.

**CORAM : F.I. REBELLO &
A. A. SAYED , JJ.**

DATED : 7TH MAY, 2010.

P.C.

1 By the present Notice of Motion, the petitioners have prayed that the Court be pleased to direct the Union of India to permit enhanced reimbursement of 50% over and above the 2002 schedule of rates. This is based on the report submitted by the Expert Committee which was appointed pursuant to the order of this Court dated 16-12-2009, relying on an earlier order dated 7-11-2009 by another Bench of this Court who had directed the parties to appear before the Charity Commissioner. The report of Charity Commissioner's sets out that it would not be possible for him

considering the enormity as well as depth of the subject to decide the controversy and only an expert committee consisting of persons from medical field, hospital management and cost accountant could give a better and clear picture about the same. It is based on this that the Court on 16-12-2009 after hearing all parties through their Counsel appointed, the committee of 5 experts on the consensus of Counsel to submit the report which report is submitted and taken on record. The term for the committee was to submit a report as to what will be the reasonable rates which would be provided to the beneficiaries under the CGHS for various ailments. There were some other consequential directions.

2 We find that in the city of Mumbai for over about 2 lacs employees who are covered by the CGHS scheme of the Central Government, there are only two private hospitals and one clinic to which these employees can go. In the City of Mumbai there are some Government Hospitals as also Corporation hospitals. The State of Maharashtra as also the Municipal Corporation does not have any scheme on the pattern of CGHS for its retired employees. They can only avail of the facilities in these hospitals. Similarly a large number of citizens residing in the State of Maharashtra from the Districts close to Mumbai also avail of these facilities. The CGHS Scheme is operational as the Central Government does not have any hospitals under the CGHS Scheme Mumbai for the beneficiaries of the

scheme.

3 This Court by its order dated 16th December, 2009, pending the submission of the report of the Expert Committee had directed that CGHS beneficiaries in Mumbai may be allowed to get their treatment/test etc. in private hospitals/ diagnostic centre in the city of Mumbai and claim their reimbursement from their respective departments/Ministries/CGHS as the case may be subject to the condition that the reimbursement would be limited to CGHS rates of 2002. The Government has also issued a circular. That order is in force today.

4 Subsequent to that the report, on behalf of the Central Health Scheme, our attention is invited to various aspects. It is firstly pointed out that there is no proper justification for 50% escalation in the proposed rates for treatment in private hospitals by the committee. Rates of Insurances Companies are at par or lower than CGHS Rates of 2007. E tenders have been floated for 34 cities all over India. It is in final stage. An analysis of E tender submitted by more than 100 private hospitals show that out of 1260 procedures, for which rates were asked, about 772 procedures are the same as in 2007 list. Out of these 772 procedures the lowest for about 445 is the same as in 2007 and in about 201 rates have come down as compared to 2007 rates and only 116 procedures are rated higher than 2007 rates by

10-20% only. CGHS is ready to E tender separately for Mumbai. Hospitals should be asked to participate in E tender. It is also pointed out that Bill clearing agents are being appointed. Hospitals will directly submit bills on line to agencies. This will be first implemented at New Delhi. The Bank Guarantee is proposed to be reduced to Rs. 10 lacs. If the private hospitals remain adamant and demand exorbitant rates, CGHS will be forced to take stand that CGHS is not bound to provide treatment in private hospitals.

5. We had also asked the State of Maharashtra for copies of list of hospitals to whom the land is given by the Government and have availed of the concessional rates.

6 The CGHS scheme is not provided by the Government to its employees and pensioners as a bounty. The employees who are retired have to make a contribution. For in services employees it is in nature of a service condition and in so far as pensioners a terminal benefit to those who subscribe to CGHS scheme. As already pointed out in the City of Mumbai for 2 lacs employees there are hardly 2 private hospitals and one clinic.

7 We had issued notice to the organization of private hospitals and also asked them to participate in the scheme. Though in 2007 some had

participated, ultimately considering the rates they did not join the scheme. The Expert Committee in its report has taken the highest of the 2002 and 2007 rates. In most cases the 2002 rates are higher than 2007 rates. The Committee has taken the best of the two and has recommended 50% increase over the rates for reasons recorded in their report.

8 As pointed out earlier the Committee consist of 5 members out of which 3 are from hospitals run by the State Government/Local Authorities. The Committee has given reasons for its report.

9 Considering the statement made on behalf of the CGHS Authorities that they will be floating a new tender for Mumbai and considering the rates of 2002 and 2007, by interim measure we are issuing the following directions.

- (1) Wherever the Committee has taken the rates of 2002, instead of 50% hike there will be a hike of 25% over the rates of 2002.
- (2) Similarly where the Committee has taken the rates of 2007 there will be hike of 25% against the 50% proposed by the Committee.

10 The respondents accordingly to redraw the rates as fixed by the Expert Committee in terms of what is set out in this order and pay the

beneficiaries accordingly.

10 In so far as dental procedure are concerned, for the present we do not propose to consider the expanded entries as proposed by the committee.

We therefore with the above observations accept the report of the Committee. The rates would be applicable from the date of this order. Notice of Motion is disposed of accordingly.

(F.I. REBELLO, J.)

(A. A. SAYED, J.)

