

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2143/2018

Muhammad Aslam

Versus

Federation of Pakistan through Secretary, Cabinet Division and
others

Date of Hearing: 18.10.2018

Petitioner by: Ch. Muhammad Akram, Advocate

Respondents by: Mr. Shumayl Aziz, learned Assistant
Attorney-General.

Mr. S.M. Ibrahim Shah, Law Officer, PWD.

Mr. Ghulam Rasool Lashari, A.D. (Lit.)

Ministry of N.H.S.R.&C.

Mr. Abid Afridi, representative of the
Finance Division.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Aslam, who is serving as a Clerk (BPS-09) in Pak PWD, Islamabad, seeks a direction to the respondents to pay him an amount of Rs.4.2 million against his claim for the reimbursement of medical expenses incurred on his liver transplant surgery at a hospital in New Delhi, India.

2. Learned counsel for the petitioner submitted that on account of suffering from acute cirrhosis of the liver, the petitioner proceeded to the Apollo Hospital in New Delhi for liver transplantation; that in the year 2010, liver transplant facility was not available in Pakistan; that since the petitioner is not a man of means, he borrowed money and sold his property to finance his medical treatment; that the petitioner obtained N.O.C. from his employer so that he could proceed to India for his medical treatment; that after undergoing liver transplantation, the petitioner resumed his duties; and that since the petitioner had to proceed to India in an emergency, he was entitled to the reimbursement of all his medical expenses which came to Rs.4.2 million.

3. Learned counsel for the petitioner further submitted that as per reports published in the electronic and print media, the Government of Pakistan, had sanctioned huge amounts to

politicians, bureaucrats and judges for their medical treatment abroad; that Mr. Ansar Billah Khan, Deputy Chief (Mechanical) Pakistan Railway, had been sanctioned US \$ 60,000, whereas Mrs. Riffat Amjad, MNA, had been sanctioned US \$ 40,000 for liver transplant in foreign countries; and that the petitioner deserves to be reimbursed his medical expenses. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned Assistant Attorney-General submitted that the policy guidelines regarding medical treatment abroad for members of Parliament, Federal Government servants and employees of public sector corporations / Autonomous bodies under the control of the Federal Government are contained in the letter dated 14.01.1996, issued by the Ministry of Health (Government of Pakistan); that under the said policy, the maximum liability of the Federal Government in case of government servant is up to US \$ 15,000, and any expenditure beyond the said amount is the patient's responsibility; that medical treatment abroad is permissible for government servants only in those cases where treatment is not available in Pakistan; that a special medical board in the Ministry of Health is required to certify the necessity of medical treatment abroad; and that although an amount of Pounds Sterling 60,000 could be sanctioned for liver transplant, no reimbursement of expenditure was permissible where prior approval of the competent authority had not been obtained.

5. The learned Assistant Attorney-General further submitted that on 06.11.1996, the Federal Cabinet decided to withdraw the facility of medical treatment abroad at public expenditure; that on 24.02.1997, the Prime Minister decided to revoke the policy of arranging medical treatment abroad for public representatives/ government officers at State expense; that it was also decided that no exceptions could be made in this regard, and that the Ministry of Health would not process requests for medical treatment abroad at State expense; that in certain cases, summaries to the Prime

Minister for treatment abroad were being moved by the concerned Ministries/Divisions through the Ministry of National Health Services, Regulations and Coordination ("Ministry of N.H.S.R.&C.") and the Finance Division for the Prime Minister's approval on a case to case basis; and that the Ministry of N.H.S.R.&C. is to frame a policy on medical treatment abroad for government servants, etc.

6. He further submitted that the petitioner did not obtain sanction from the Ministry of Health prior to proceeding abroad for medical treatment; and that there is no legal infirmity in the petitioner's application for the reimbursement of his medical expenses being turned down. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

8. The record shows that on 25.01.1990, the petitioner was appointed as Accounts Clerk (BPS-05) in the Pakistan Public Works Department ("Pak P.W.D."). His medical reports show that he had chronic parenchymal liver decease. The medical report dated 09.09.2009, issued by Sheikh Zayed Post-Graduate Medical Institute, Lahore, shows that the petitioner was referred for assessment for liver transplant abroad as this facility was not available in Pakistan. Through letters dated 14.09.2009 and 15.09.2009, the petitioner's request for financial aid for liver transplant at Apollo Hospital, New Delhi, India, was forwarded by the Pak P.W.D. to the Ministry of Housing and Works so that approval of the Prime Minister could be obtained. The Ministry of Housing and Works, vide letter dated 12.11.2009, simply referred to the Ministry of Health's office memorandum dated 31.10.2009, and the matter rested there. The said office memorandum is not on the record.

9. Vide office memorandum dated 08.07.2010, the Ministry of Interior, granted N.O.C. for the petitioner's visit to India. Vide office order dated 23.07.2010, the Pak P.W.D. granted the petitioner *ex-*

Pakistan leave for a period of ninety days to enable him to proceed to India for his medical treatment. On 16.08.2010, the High Commission for Pakistan New Delhi, certified that the petitioner had proceeded to India along with his son who had donated a part of his liver to his father in order to save his life. The Pakistan High Commission had also conveyed its "*no objection*" for the proposed liver donation.

10. After successfully going through a liver transplant, the petitioner and his son returned to Pakistan on 06.10.2010. Thereafter, on 27.10.2010, the petitioner applied for the reimbursement of his medical expenses to the tune of Rs.41,77,000/-. The said application was turned down on the ground that the Ministry of Health had not granted the petitioner permission for treatment at Apollo Hospital New Delhi, due to a ban imposed by the Government of Pakistan. This is apparent from the letters dated 28.02.2011, 15.02.2011, 18.02.2011, 15.02.2011 and 08.02.2011 from Pak P.W.D. After waiting for more than four years, the petitioner submitted an appeal before the Prime Minister of Pakistan for the reimbursement of his medical expenses.

11. Admittedly, before proceeding to India, the petitioner had not been sanctioned medical treatment abroad at State expense. The petitioner had proceeded abroad after about ten months from when he first applied for financial aid for his treatment. The instant writ petition was filed more than seven years after the petitioner's request for the reimbursement of his medical expenses had been turned down. No explanation has been given by the learned counsel for the petitioner for the inordinate delay in approaching this Court.

12. Be that as it may, the policy guidelines regarding medical treatment abroad at State expense for members of Parliament, Federal Government servants and employees of public sector corporations / Autonomous bodies under the control of the Federal Government, is contained in the letter dated 14.01.1996, issued by the Ministry of Health (Government of Pakistan). The Ministry of Health has been succeeded by Ministry of N.H.S.R.&C.

13. As per the said policy guidelines, the special medical board at the Ministry of Health has to certify the necessity of medical treatment abroad. Medical treatment abroad is to be made available only for cases where treatment is not available within Pakistan and where there are reasonable chances of saving life. Under the said policy, the amount permissible for a liver transplant is Pound Sterling 60,000, fifty percent of which is to be borne by the Government. Paragraph-xiii of the said policy explicitly provides that no reimbursement of expenditure would be allowed where prior Government approval of the competent authority had not been obtained. Bills on account of treatment were to be paid by the concerned foreign missions directly to the hospitals concerned on the basis of actual hospital bills/vouchers.

14. Now, the position taken by the respondents, in their written comments, was that the Cabinet had, on 06.11.1996 decided *inter-alia* that *“the facility for medical treatment abroad at public expenditure should be withdrawn.”* Additionally, on 24.02.1997, the policy for arranging medical treatment abroad for public representatives/government officers at State expense was revoked by the then Prime Minister. It was also decided that no exceptions were to be made in this regard and that requests for treatment abroad at State expense would not be processed either by the Ministry of Health (Government of Pakistan) or by the Provincial Health Departments. For the purpose of clarity, the operative part of the letter dated 24.02.1997 from the Prime Minister’s Secretariat, is reproduced herein below:-

“The Prime Minister has been pleased to desire that the existing policy of arranging medical treatment abroad for public representatives / government officers at state expense will be revoked forthwith. As no exceptions are to be made in this regard, such requests will not be processed either by the Ministry of Health, Government of Pakistan or by the Provincial Health Departments.”

15. Despite the aforementioned decisions, the Finance Division (respondent No.4), in its report, submitted to this Court has pleaded *inter-alia* that “in certain cases the summaries to the Prime Minister for treatment abroad are being moved by the concerned

Ministries/Divisions through Ministry of National Health Service & Regulations and Finance Division for the approval of the Prime Minister on case to case basis.” The representatives of the Ministry of N.H.S.R.&C. as well as the Finance Division were at a total loss when asked as to whether after the revocation of the policy guidelines dated 14.01.1996, any Standing Operating Procedures (SOPs) or policy guidelines had been made for the grant of approvals for Parliamentarians or government officials, etc. for treatment abroad at State expense or the reimbursement for such treatment. In such a scenario, it appears that the discretion exercised by the Prime Minister in granting such approvals is unstructured, unbridled and unfettered. Where discretion is conferred on the executive, criteria or guidelines must be furnished for the exercise of that discretion. Discretion which is absolute, uncontrolled and without any guidelines can easily degenerate into arbitrariness. Where untrammelled discretion is bestowed or exercised by an authority, such discretion is bound to result in discrimination which is the negation and antithesis of the ideal of equality before law as enshrined in Article 25 of the Constitution. What is objectionable is that after the revocation of the policy guidelines dated 14.01.1996 by the Prime Minister, the exercise of uncontrolled discretion by him without any guidelines, whatsoever. Therefore, it is obligatory for the Ministry of N.H.S.R.&C to frame a clear and definite policy or make rules for the exercise of discretion whether or not to allow applications for the grant for medical treatment abroad at State expense.

16. After the above referred policy guidelines dated 14.01.1996 had been done away with by the Prime Minister through directive dated 24.02.1997, was it not imperative for there to be explicit rules or policy for sanctioning medical treatment abroad at State expense for Parliamentarians and government servants etc,. It is expected that rules in this regard would be framed at the earliest.

17. It has not been denied that after the Cabinet’s decision dated 06.11.1996 and the Prime Minister’s directive dated 24.02.1997,

huge amounts have been sanctioned for Parliamentarians and government servants, etc. for treatment abroad at State expense. For instance, Mr. Kanwar Khalid Younas, MNA, was sanctioned Pounds Sterling 100,000 on 05.09.2006 for comprehensive rehabilitation abroad on the recommendation of the Agha Khan University Hospital, Karachi; Mrs. Riffat Amjad, MNA, was sanctioned US \$ 40,000 on 29.09.2006 for liver transplant in China; Mr. Ansar Billah Khan, Deputy Chief (Mechanical) Pakistan Railway, was sanctioned US \$ 60,000 for liver transplant in China; Dr. Hamid Rauf, Pediatric Surgeon, NIHD Islamabad, was sanctioned US \$ 60,000 on 30.04.2007 for liver transplant in China; and the list goes on and on. The letter dated 12.01.2016 from the Ministry of N.H.S.R.&C. shows that even though the upper limit for a Parliamentarian's treatment abroad was US \$ 30,000, however, Mrs. Bushra Rehman, MNA, was paid US \$ 50,000 after endorsement of the Finance Division and approval of the then Prime Minister *"in relaxation of rules, as a special case."*

18. Is it not a complete travesty of justice that despite all this, the petitioner was informed by the Ministry of Health, vide letter dated 12.04.2011 that medical treatment abroad at public expense had been banned under the decision of the Federal Cabinet and the directive of the Prime Minister? If there was any such ban then why is it that sanction for treatment abroad at government expense was granted to so many Parliamentarians and government servants, whose list is annexed with the para-wise comments filed on behalf of the Ministry of N.H.S.R.&C.

19. The petitioner's liver transplant took place in the year 2010. The petitioner was not examined by the special medical board at the Ministry of Health prior to his operation abroad. He had not been sanctioned permission for treatment abroad at State expense before his operation abroad. The petitioner filed the instant petition more than nine years after his request for the reimbursement of his medical expenses had been finally turned down by the Ministry of Health, vide its letter dated 12.04.2011. Even after submitting a

belated appeal to the Prime Minister, the petitioner waited for almost two and a half years before filing the instant petition. Due to all these reasons, I am of the view that this petition merits dismissal. Accordingly, this petition is dismissed.

20. Before parting with this judgment, it may be observed that given the sanction granted to several Parliamentarians and government servants for liver transplant abroad at State expense despite the Federal Cabinet's decision dated 06.11.1996 and the Prime Minister's directive dated 24.02.1997, there is nothing preventing the Prime Minister from deciding the petitioner's appeal dated 16.09.2015 in accordance with the law.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*