JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1351 of 2018
Gul Muhammad
Versus
Chairman, F.B.R. and others

Dates of Hearing:	05.11.2020 & 25.01.2021
Petitioner by:	M/s Abdul Rahim Bhatti, Yaser Rahim Bhatti and Qaiser Rahim Bhatti, Advocates
Respondents by:	Mr. M.D. Shahzad and Ch. Talib Hussain, Advocates Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Mr. Majid Khan, A.D. (Legal), Ministry of N.H.S.R.&C.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Gul Muhammad, who is a retired Commissioner Income Tax, seeks a direction to the respondents to reimburse him for the expenses he incurred on his liver transplant in the People's Republic of China **("China")**.

2. The record shows that on 06.04.2008, the petitioner retired on attaining the age of superannuation after 27 years of service. During the last span of his service, he became a chronic patient of Hepatitis C and remained under treatment in different hospitals in Pakistan. On 13.08.2012, the Civil Surgeon at the Medical Centre for Federal Government Servants, Peshawar examined the petitioner and recommended him to undergo early liver transplant in a specialized centre. Before this, a private consultant gastroenterologist had also given the same recommendation to the petitioner after examining his blood tests and ultrasound report. Vide email dated 09.08.2012, a physician in China had informed the petitioner that the cost of the liver transplant procedure there would be US dollars 70,000.

3. On 16.08.2012, the petitioner applied to the Chairman, Federal Board of Revenue **("F.B.R.")**, to sanction US dollars 70,000 for his liver transplant in China. Vide letter dated 18.09.2012, the F.B.R. turned down the petitioner's said request on the ground that facilities

were available in Pakistan. The petitioner went to China and underwent a liver transplant at his own expense.

4. On 21.05.2016, the petitioner applied to the Chairman, F.B.R. for his medical expenses to be reimbursed to him. Vide letter dated 01.07.2016, the F.B.R. turned down the said request. The position taken by the F.B.R., in its letter dated 17.06.2016, is that payment for medical treatment abroad had been banned pursuant to a decision taken by the Cabinet on 06.11.1996.

5. On 28.08.2017, the petitioner again applied to the F.B.R. for reimbursement of US dollars 70,000 incurred by him on his liver transplant in China. In the said letter, the petitioner quoted cases where expenses incurred on medical treatment had been reimbursed by the Federal Government. Vide letter dated 24.08.2017, the F.B.R. informed the petitioner about the observations raised by the Finance Division on his application. Having not received any plausible response from the F.B.R., the petitioner filed the instant writ petition.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner's claim for reimbursement of the expenses incurred by him on his liver transplant in China is duly supported by receipts for such expenses; that the Government had adopted an arbitrary policy of pick and choose in reimbursing medical expenses to the applicants; that there are several instances of *ex post facto* approvals for reimbursement of medical expenses that have been granted; and that discriminatory treatment had been meted out to the petitioner by the respondents by not reimbursing his medical expenses. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, learned counsel for the F.B.R. submitted that on 06.11.1996, the Cabinet had decided that the facility of medical treatment abroad at public expenditure should be withdrawn; that on 24.02.1997, the Prime Minister revoked the policy of arranging medical treatment abroad for public representatives / government officers at State expense; that it was also decided that no exception would be made in this regard, and that the Ministry of Health, Government of Pakistan or the Provincial Health Departments should

not process requests for medical treatment abroad; and that due to the said decision, the petitioner's claim for reimbursement of US dollars 70,000 is not justified. Learned counsel for the F.B.R. prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

9. The matter regarding medical treatment abroad at State expense *inter alia* for Government servants came up for discussion before this Court in the case of Muhammad Aslam Vs. Federation of Pakistan (2019 PLC (C.S.) 652). For the sake of brevity, paragraphs 12 to 16 of the said judgment are reproduced herein below:-

> ***"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.***
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> ***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.***
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> ***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:-***
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> > ***"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 untrammeled 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."

(Emphasis added)

10. No heed has been paid by the Federal Government to the aforementioned observations of this Court in the said judgment. The fresh list of beneficiaries who were medically treated abroad with public funds shows that the unbridled discussion continues to be exercised by the Prime Minister.

11. After the *"Policy Regarding Medical Treatment Abroad,"* contained in the erstwhile Ministry of Health's letter No.F.8-16/93-MF.1 dated 14.01.1996 was done away with by the Prime Minister vide directive dated 24.02.1997, huge amounts have been paid to serving and retired Government servants as well as Parliamentarians for

medical treatment abroad. The Prime Minister's Secretariat has filed a list of 42 beneficiaries of public funds for their medical treatment abroad. The last sanction is stated to have been made on 17.11.2019 for an amount of US dollars 28,739.43 for the treatment of the coronary artery disease of the former Joint Secretary, Economic Affairs Division. Since 42 beneficiaries had been paid huge amounts from the exchequer for their medical treatment abroad after 24.02.1997, and since no steps whatsoever have been taken by the Federal Government to formulate a policy for medical treatment abroad at State expense for Government servants etc., this Court is left with no option but to hold that unless the Government decides to abide by its earlier decision to ban medical treatment at State expense for Government servants etc., henceforth guidance shall be taken by the Prime Minister from the *"Policy Regarding Medical Treatment Abroad,"* dated 14.01.1996 while deciding applications of the Government servants etc. for medical treatment abroad at State expense until a fresh policy on the subject is formulated by the Government. In holding so, reliance is placed on the law laid down by the Hon'ble Supreme Court in paragraph 33 of the judgment in the case of Tariq Aziz ud Din and others (2010 SCMR 1301), which is reproduced herein below:-

> ***"33. As it has, been observed, hereinabove, that on 23rd October, 1993, vide S.R.O. 1047 (I)/1993 in respect of promotion to BS-22 Rules were framed, but, subsequently the same were rescinded in the year, 1998. Although, these rules are no more in the statute books but the competent authority/Chief Executive while considering the promotions could have used them as guidelines to ensure just and fair and non-discriminatory treatment to the officers of BS-21 who had legitimate expectancy to be promoted to BS-22 as there is no question mark on their eligibility and it is also the case of the Federation itself that non promotion would not be tantamount to supersede them. However, in view of the statement of Mr. Abdul Hafeez Pirzada learned counsel for the Federation, referred to hereinabove regarding the framing of rules with retrospective effect, we observe that it would be in all fairness and to streamline the procedure of promotion to the selection grade from BS-21 to BS-22 and also to avoid unjustness, arbitrariness etc. the rules shall be framed by the competent authority as early as could be possible."***

12. Now, as regards the petitioner's claim for reimbursement of US dollars 70,000 which he claims to have incurred on his liver transplant procedure in China, in paragraph xiii of the *"Policy Regarding Medical Treatment Abroad,"* dated 14.01.1996, it is provided that

reimbursement of expenditure will not be allowed where prior government approval of the competent authority has not been obtained. Furthermore, the *"Guidelines for Submission and Scrutiny of the Medical Claims,"* issued by the erstwhile Ministry of Health on 16.03.2006, explicitly provide that expenses incurred on medical treatment abroad will not be reimbursable.

13. Since there is nothing on the record to show that the petitioner had obtained the prior sanction of the competent authority to proceed abroad for medical treatment, this Court cannot direct the respondents to process the petitioner's claim for reimbursement. Consequently, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 25/02/2021

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING