



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7546 OF 2022

Anirudh Prataprai Nansi, a voluntary retired
Central Government employee (Pensioner)
Andheri (West), Mumbai. ... Petitioner

Versus

1. The Union of India, through the AS & DG,
Ministry of Health & Family Welfare, New Delhi
2. Additional Secretary and Director General
Ministry of Health & Family Welfare,
Central Government Health Scheme, New Delhi
3. Director, CGHS, New Delhi
4. Additional Director, CGHS(HQ), New Delhi
5. Additional Director, CGHS,
New Marine Lines, Mumbai – 400 020.
6. Additional Director (CGHS), R & H,
CGHS Bhawan, New Delhi – 110 011.
7. High Power Committee,
Nirman Bhavan, New Delhi – 110 011 ... Respondents

Mr. Prakash Shah, Senior Advocate a/w. Mr. Anil Balani, Mr. Durgaprasad Poojari, Mr. Jas Sanghavi, Mr. Priyasha Pawar. Mr. Vikas Poojary i/b. PDS Legal for the petitioner.

Mr. Y.R. Sharma a/w. Mr. Vinit Jain, Mr. Ashok Varma for the respondents.

CORAM:	G. S. KULKARNI & ADVAIT M. SETHNA, JJ.
RESERVED ON	24 January 2025
PRONOUNCED ON	6 June 2025

Judgment: (Per G.S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

Preface

2. The case is a peculiar case, namely, of a dispute arising from the reimbursement of expenditure incurred by the petitioner on a serious medical treatment of a “heart transplant”. This medical condition is certainly not a routine affair for the hospitals much less for the Central Government hospitals or those under the Central Government Health Scheme.

3. The petitioner is a senior citizen. He is a pensioner, who obtained a voluntary retirement from the post of Assistant Commissioner, Central Excise and Customs, Pune. This is the second occasion for the petitioner to approach this Court on the cause of action as pursued in this petition.

4. The issue which arises for consideration is whether in the inescapable and pressing situation the petitioner, having undergone a heart transplant at a private hospital, could the petitioner be denied and/or not given full reimbursement of the medical expenses incurred by him for such major treatment. The question is also as to whether the rigors of normal rule of medical reimbursement should make a way for the case to be considered as a special case, for grant of full reimbursement. This, more particularly, as a heart transplant surgery is not walk-in category of surgery. It

requires availability of the organ and the specialized transplant facilities and a team of experts to perform the surgery. This is certainly not available or feasible in many hospitals. Also a retired Central Government servant whether can be discouraged and/or forego and/or not have a heart transplant merely because he is likely to face financial difficulties for non-reimbursement of the expenditure which would be incurred, is also a question which needs to be pondered. More particularly considering such situations on the touchstone of the Constitutional guarantee of right to life, which includes right to health and certainly right to avail of treatment, necessary to save one's life.

5. On such preface, the substantive prayers as made in the petition need to be noted, which reads thus:

A. that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India directing the Respondents by themselves, their officers and subordinates their officers and subordinates to forthwith sanction and grant reimbursement of Rs. 22,08,440/ with interest thereon at the rate of 9% per cent per annum;

B. that this Hon'ble Court be pleased to issue a writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ or order or direction under Article 226 of the Constitution of India calling upon the records of the Petitioner's case and after going into the legality and validity thereof be pleased to quash and set aside:

i. purported rejection the claim of the Petitioner for full reimbursement of expenses incurred by the Petitioner towards heart transplant by the Respondent No. 5 vide her letter dated 13.04.2022 and

ii. Office Memorandum No. S.110011/23/2009-CGHS D.II/Hospital Cell (Part I) dated 28.08.2011 read with CGHS Mumbai Rates for Hospitals - 2010 (Updated on 14th May, 2021);

FACTS

6. The relevant facts are required to be noted:

The petitioner voluntarily retired from Central Excise and Customs, Pune, as an Assistant Commissioner in March 2008 and is receiving pension. He is based in Mumbai.

7. On 28 August 2011, Government of India, Ministry of Health and Family Welfare (for short “**MOHFW**”) notified a fresh empanelment of private hospitals and a corrected list of package rates applicable for empanelled hospitals under the Central Government Health Scheme (for short “**CGHS**”), Mumbai. The rates were subsequently updated on 14 May 2021. Thereafter, on 16 January 2013, MOHFW published guidelines and ceiling rates for liver transplant surgery for CGHS/Central Service (Medical Attendance) beneficiaries. Further by Office Memorandum dated 18 February 2015, rates of treatment procedures under CGHS were revised.

8. The petitioner was suffering from Cardiomyopathy since 2009. It is his case that on 3 October 2019, upon a significant deterioration in the Left Ventricle Ejaculation Function (LVEF), which declined to 12–15%, a team of doctors associated with Dr. Anvay Mulay, Heart Transplant Surgeon, advised the petitioner to undergo a heart transplant. The petitioner contends that, at the relevant time, neither Government Hospitals nor the CGHS-empanelled Super Speciality Hospital, namely Wockhardt Hospital situated at Mumbai Central, was performing heart

transplant surgeries.

9. Given the grave and critical nature of the petitioner's medical condition, and the lack of any CGHS empanelled hospitals having necessary license, approvals and expertise, the petitioner had no alternative, but to avail treatment at Sir H. N. Reliance Foundation Hospital. On 26 November 2020, Dr. P. J. Nathani, Professor and Head of Cardiology at Lokmanya Tilak Municipal Medical College and General Hospital, Mumbai, also opined and recommended cardiac (heart) transplantation to the petitioner as the necessary course of treatment. He was admitted at the H.N. Reliance Foundation hospital for a pre-transplant investigation known as "work-up".

10. In such circumstances, the petitioner addressed a letter dated 3 December 2020 to respondent no. 5 - Additional Director, CGHS Mumbai, recording that an estimate of Rs. 25,00,000/- was received by him towards the cost of heart transplant and requested a due consideration for such medical reimbursement. On the even date, the Chief Medical Officer Incharge, CGHS Mumbai, addressed a letter to the Medical Superintendent/Director, Empanelled or Non-Empanelled Hospital, providing the petitioner's details, stating that the petitioner was permitted to undergo the Indoor/OPD treatment. On such letter, an endorsement was made that treatment at a non-empanelled hospital could only be reimbursed at CGHS rates and the difference in cost would have to be borne by the petitioner. The endorsement reads thus:

“if treatment availed from Non-Empanelled hospital, reimbursement will be at CGHS rates and excess amount will be borne by the patient.”

11. Thereafter, considering the medical condition of the petitioner, on availability of a donor with a compatible heart, the petitioner successfully underwent heart transplant surgery at Sir H. N. Reliance Hospital on 8 December 2020. He was discharged from the hospital on 29 December 2020, expenditure for the heart transplant surgery as incurred by the petitioner was Rs. 29,96,020.35/- as clear from the bill issued by the hospital.

12. On 6 January 2021, as advised the petitioner addressed a letter to respondent no. 2 - Director General, CGHS New Delhi, requesting that higher CGHS rate for heart transplant surgeries fixed in the years 2010/2014 for other metropolitan cities at Rs. 3,17,400/- be made applicable to his case, in lieu of the rate of Rs. 79,000/- applicable to the beneficiaries in Mumbai under the 2010 CGHS notification. Pursuant thereto, on 7 January 2021, the petitioner submitted to the Wellness Centre, Oshiwara, Mumbai, a Medical Reimbursement Claim (MRC) along with the requisite documents, under cover of his letter dated 6 January 2021. After rectification of deficiencies, such claim was forwarded to CGHS Mumbai on 2 March 2021.

13. In the meantime, respondent no. 4 – Additional Director General, CGHS New Delhi, addressed a letter dated 27 January 2021 to respondent no. 5, seeking

clarification regarding CGHS rates applicable at Mumbai for heart transplant for the years 2002 and 2007. In response thereto, respondent no. 5 by his letter dated 3 March 2021 provided comparative rates of different cities such as CGHS Pune, CGHS Delhi, and AIIMS, stating that the petitioner had undergone a heart transplant surgery at H. N. Reliance Hospital, and the said hospital being a non-empanelled hospital, reimbursement can only be done as per 'CGHS Mumbai 2010 rate list', which was an amount of Rs. 69,000/-. However, in light of the significant disparity in the approved rates between Mumbai and other metropolitan cities, respondent no. 5 sought guidance from respondent no. 4 as to whether reimbursement could be considered at the rates applicable to the nearest CGHS city/Delhi rates.

14. The petitioner contends that vide letter dated 8 March 2021, the respondent no. 4 directed respondent no. 5 to grant reimbursement of the petitioner's claim as per existing CGHS rates for Mumbai, in fulfillment of conditions of Heart Transplant Surgery. Accordingly, the Medical Reimbursement Claim was entered in the system by CGHS, Mumbai on 30 March 2021.

15. To further his efforts to avail reimbursement of the medical expenditure, the petitioner filed an application dated 18 May 2021 under the Right to Information Act (RTI) seeking information regarding the expected timelines for disposal of reimbursement claim. The Central Public Information Officer, CGHS Mumbai

replied to the said RTI Application on 14 June 2021 stating that cases not requiring special approval should be settled within 30 days of submission of the medical claim at the CGHS Wellness Centre.

16. On such backdrop, the petitioner again made a representation dated 30 June 2021 to respondent no. 5 requesting that the petitioner's application for reimbursement of expenditure as incurred on petitioner's heart transplant be considered as a "special circumstance" and be placed before the High Power Committee (for short "**HPC**"). The petitioner further requested that the entire amount of Rs. 23,69,245/- (after deducting some amounts received) as incurred by him for such surgery be reimbursed in accordance with the Office Memorandum dated 6 June 2018. In the interregnum, the petitioner received a response to his RTI application from the Central Public Information Officer, Mumbai, dated 8 June 2021 informing the petitioner that the Wockhardt Hospital was issued a license to perform heart transplants on 13 April 2020.

17. The petitioner in an effort to avail of the information on availability of heart transplant facilities in the various hospitals being recognised by the CGHS, addressed multiple emails from the period August to September 2021. An email was also addressed to the CEO of Wockhardt Hospital, inquiring whether heart transplants were performed at this hospital, however, no response was received. Thereafter, on 14 August 2021, the petitioner addressed a letter to respondent no. 5, seeking an

amendment to the request made by him in his representation dated 30 June 2021. The petitioner contends that accordingly he submitted additional representation dated 28 August 2021 alongwith with supporting materials/evidences on 12 September 2021, to respondent no. 5, which included a copy of the RTI reply received by the petitioner from the EHS (Policy) Section, MOHFW, New Delhi, dated 11 August 2021, which clarified that no instructions were issued requiring the High Power Committee claims to be put up to the Non-HPC Committee before being submitted to the HPC.

18. The petitioner contends that the Chief Medical Officer Incharge, CGHS Mumbai by its email dated 21 September 2021, informed the petitioner of sanction of an amount of Rs. 1,60,805/- being approved towards the petitioner's claim, and forwarded the petitioner's case for reimbursement to Technical Standing Committee, Delhi on 17 September 2021. On the even day, petitioner submitted a letter to respondent no. 4 referring to his revised claim amount of Rs. 22,08,440/-.

19. The petitioner contends that numerous correspondences were exchanged between the petitioner and the CGHS Mumbai, wherein the petitioner repeatedly requested that his communications be forwarded to the Additional Director, CGHS New Delhi / respondent no. 4. Also, in and around October 2021, the petitioner addressed letters to respondent no. 4 forwarding medical certificates issued by Dr. Anvay Mulay (Cardiovascular and Thoracic & Heart Transplant Surgeon), Dr. Talha

Meeran (Cardiologist), and Dr. Yash Lokhandwala (DM, Cardiologist), all of whom opined that heart transplantation is performed only under special circumstances, and not as a routine procedure.

20. On such backdrop, the petitioner filed application under the RTI Act dated 29 November 2021 with the Central Public Information Officer, seeking the status of the petitioner's reimbursement claim. In response to which, on 15 December 2021, the Central Public Information Officer provided copies of the relevant notings, including a letter dated 30 November 2021 on respondent No.4, rejecting the petitioner's claim for full reimbursement. The said letter is required to be noted, which reads thus:

“F. No. 12011/02/2021-CGHS III
Government of India
Ministry of Health & Family Welfare
Directorate General of CGHS
CGHS III

Nirman Bhavan, New Delhi
Dated: /12/2021

To,
The Additional Director
Central Govt. Health Scheme
Old CGO Building, South Wing,
Ground Floor, 101, Maharashi Karve Road,
New Marine Lines, Mumbai – 400020.

Sub: Heart transplant surgery of Mr. Anirudh Prataprai Nansi, CGHS Card No. 6705885 for full reimbursement under relaxation of rules – reg.

Sir,
I am to refer to your letter No F No 4(IV)/18Genl (GS)/640/2021 dated 17.9.2021 in r/o Mr. Anirudh Prataprai Nansi, CGHS Card No. 6705885 regarding the subject mentioned above. In this regard, it is to inform you that the case has been examined in this **Ministry and after going through the**

documents attached at the file they have noted that the patient has undertaken elective treatment after prior permission from CGHS in which it was mentioned that the treatment can be availed in any CGHS approved centre and reimbursement shall be as per CGHS rates and the excess amount will be borne by the patient.

As the case does not fall under any criteria for full reimbursement under relaxation of rules. Hence, the case for full reimbursement is regretted.

Encl:- 'All relevant documents'

(Dr. Alka Ahuja)
Addl. DDG, CGHS (HQ)

Digitally signed by Alka Ahuja
Dt. 30-11-2021 18:03:15
Reason :Approved"

(emphasis supplied)

21. On 12 December 2021, the petitioner again made an application under the Right to Information Act seeking clarification as to whether the affiliated Wockhardt Hospital performs heart transplant, to which the Central Public Information Officer, CGHS, Mumbai, by its reply dated 27 December 2021 stated that "no Government hospitals have been issued a license to carry out heart transplant in Mumbai".

22. The petitioner being aggrieved by the rejection of his request for full reimbursement, filed in this Court Writ Petition No. 1377 of 2022 challenging the letter dated 30 November 2021 (supra) issued by respondent no. 4. In such Writ Petition, the respondents filed a reply affidavit stating that the claim of the petitioner is being placed before the High Power Committee. On such backdrop, this Court, by order dated 2 March 2022, disposed of the petition, recording the statement of the Advocates for the petitioner that the petitioner will appear before the High Power Committee on such date as High Power Committee fixes.

23. The petitioner by email dated 4 March 2022 forwarded a copy of the Order passed by this Court along with relevant documents to the respondents. Further follow-up steps were taken by the petitioner by addressing emails dated 7 March 2022 and 29 March 2022, requesting that a date for hearing before the High Power Committee be fixed. In response thereto, the petitioner received two emails from respondent no. 4 dated 29 March 2022; (at 1:58 p.m.) indicating that the case would be discussed by the High Power Committee on the following day, and another at 2:05 p.m. on the same day, recording that the matter was under active consideration. Despite such communications, no hearing was held, nor was any further response received by the petitioner.

24. Finally, respondent no. 5 addressed a letter dated 13 April 2022 to the petitioner purportedly conveying the decision of the High Power Committee *inter alia* recording that upon examining the technical details of the case, the Committee opined that grant of full reimbursement is not recommended as the treatment was undertaken by the petitioner at non-CGHS rates and the procedure was a planned, non-emergency surgery. It was further stated that reimbursement had already been processed in accordance with CGHS extant rules. The rejection letter is required to be noted which reads thus:

“To
Sh. Anirudh Prataprai Nansi,
To Highland Park, 1104, B wing,
Lockhandwala Complex, Andheri (W),

Date: 13/04/2022

Mumbai-400053.

Subject: - Heart transplant surgery of Mr. Anirudh -Pratapai Nansi, CGHS Card No.6705885 for full reimbursement under relaxation of rules-regarding.

Sir,

Kind reference is invited to the letter no.4(IV) 1/18Genl (GS)/640/2021 dated 17/09/2021 on the above mentioned subject.

In compliance with the order dated 02.03.2022 of the Hon'ble Bombay High Court, a High-Powered Committee (HPC) meeting was convened on 30.03.2022 under the chairmanship of The Professor of Excellence, Director General of health services in the Ministry.

After going into the technical details of the case, the Committee opined that the grant of full reimbursement is not recommended as the beneficiary was supposed to follow CGHS permitted rates, which was communicated to him vide letter No.3(i)1/02. Recog. Genl dated 03.12.2020. The Committee also observed that the procedure of heart transplantation was a planned surgery and not an emergency, and the reimbursement has been done as per CGHS extant rules and guidelines.

In this regard the decision of the HPC is being conveyed to you as per directives of the Hon'ble High Court.

(Dr. (Mrs.) Durriya M. Desai)
ADDITIONAL DIRECTOR
CGHS MUMBAI.”

(emphasis supplied)

25. The petitioner thereafter sought a copy of the minutes of the High Power Committee meeting held on 30 March 2022. Also by his letter dated 14 April 2022, the petitioner once again approached respondent no. 5, thereby requesting for a personal hearing to be granted to him by the HPC for reconsideration of the matter. As there was no response, the petitioner made an application under the RTI Act dated 21 April 2022, seeking a copy of the minutes of the HPC meeting as also the details of the Appellate Authority. In response thereto, the Central Public

Information Officer, CGHS Mumbai, vide letter dated 11 May 2022, provided copy of the minutes of the HPC meeting, wherein the factum of treatment i.e., the heart transplant was not disputed by the Committee. A copy of the same was later received by the petitioner. The minutes of the meeting of the HPC held on 30 March 2022 reads thus:

“Minutes of the meeting

Minutes of the meeting of HPC held on 30.03.2022 at 3.30 p.m. chaired by Prof. (Dr.) Rajiv Garg, Professor of Excellence, Director General of Health Services, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi in his chamber to consider the Heart Transplantation in r/o Anirudh Nansi (Court Verdict for quick closure).

Expert Opinion:-

After considering the appeal of Mr. Anirudh Prataprai Nansi and going into the technical details of the case the committee is of the opinion that grant of full reimbursement is not recommended as he was supposed to follow CGHS permitted rates, which were communicated to him vide letter no. 3(i)1/02.Recog.Geni dated 03.12.2020. It was observed that the procedure heart transplantation was a planned surgery and not emergency.

The HPC feels that the reimbursement has been done as per CGHS extant rules and guidelines.”

26. On such conspectus, the petitioner being aggrieved by the purported rejection of the petitioner’s application by respondent no. 7 – High Power Committee, of the petitioner’s claim for full reimbursement of expenses, incurred by the petitioner towards his heart transplant surgery, as communicated by respondent no. 5 – Additional Director, CGHS Mumbai to the petitioner vide letter dated 13 April 2022, the petitioner has filed the present petition praying for the reliefs as noted hereinabove.

Reply Affidavit on behalf of the Respondents

27. A reply affidavit of Dr. (Mrs.) D M Desai, Additional Director, CGHS Mumbai is filed on behalf of the respondents. The reply affidavit, at the outset, contends that the petitioner has an alternate remedy of approaching the Central Administrative Tribunal, Mumbai Bench under the provisions of the Administrative Tribunals Act, 1985. Hence, this petition be not entertained. It is next stated that the petitioner's demand for full reimbursement is an afterthought and a deviation from what was accepted by him before availing of medical treatment. It is contended that the petitioner was fully aware that treatment undertaken at a non-empanelled hospital would only be reimbursed at CGHS-approved rates and that any amount in excess thereof would be borne by him personally, as evident from the signed statement dated 3 December 2020 issued by the Chief Medical Officer, CGHS. In supporting such case, it is contended that the petitioner submitted an estimate of Rs. 25,00,000/- while seeking permission to avail treatment at a non-empanelled hospital, asserting that the petitioner accepted the terms of reimbursement at CGHS rates prior to the treatment. It is contended that however, the petitioner later on sought applicability of higher CGHS rates as applicable in other metropolitan cities, such as Delhi, and requested reimbursement at the rate of Rs. 3,17,400/-. It is thus stated that, having accepted the applicable terms, the petitioner cannot now seek full reimbursement. It is next stated that the petitioner had undergone elective treatment

after securing prior approval with full knowledge of the reimbursement terms, and hence, no case is made out for relaxation of the applicable rules.

28. It is next stated that the decision of the HPC rejecting the petitioner's claim was taken after following due procedure. It is stated that the HPC was duly constituted as per the prescribed norms and that the HPC after examining the medical records in the petitioner's case, concluded that the petitioner's claim for full reimbursement could not be granted. It is next stated that the High Power Committee functions in an administrative capacity and is not vested with judicial or quasi-judicial powers, hence, there is no provision for a personal hearing before the High Power Committee, nor has any such hearing was granted in previous cases. It is stated that the Committee takes all decisions solely on documentary medical records which are sufficient for the High Power Committee to take an appropriate decision and, hence, there is no necessity for a personal hearing. It is further stated that although heart transplant is an uncommon procedure, it is covered under the CGHS guidelines applicable to empanelled hospitals and therefore does not qualify as a "special case" for the purposes of relaxation of rules. On this contentions, it is contended that no interference is warranted with the decision of the HPC.

Rejoinder Affidavit of the Petitioner

29. There is a rejoinder affidavit filed by the petitioner disputing the respondents case. The petitioner denies the assertion that the relief sought, which is praying for a

direction of a medical reimbursement for heart transplant, constitutes a service matter falling within the jurisdiction of the Central Administrative Tribunal.

30. It is next stated that there is no rebuttal of the respondents to the petitioner's core grievance, namely, on the unreasonableness of CGHS rates, fixed for heart transplant procedures more particularly when compared to higher CGHS approved rates for other medical procedures of comparable or lesser complexity such as liver transplant, kidney transplant, ASD closure, Coronary Artery By Pass Graft Surgery (CABG) + IABP + VALVE, MVR, etc., as well as the discriminatory lower rates for city like Mumbai with other cities such as Pune, Hyderabad, Kolkata, Chennai, Bangalore etc. It is next contended that prior to submitting his claim for medical reimbursement, the petitioner informed the respondents of the estimated cost of Rs. 25,00,000/- towards heart transplant surgery proposed to be undertaken at Sir H.N. Reliance Hospital Mumbai. It is stated that while the petitioner initially accepted the reimbursement at CGHS rates applicable at that time, such acceptance was made under compulsion due to his urgent medical condition and it was only after his recovery further inquiries, he came to understand his entitlement under the Office Memorandum dated 6 June 2018.

31. It is stated that none of the CGHS-empanelled hospitals in Mumbai were authorised to perform heart transplant surgeries at the relevant time, hence, the contention of the respondents that the petitioner was aware and accepted treatment

only at CGHS-approved rates is without merit. The petitioner further states that he cannot be made to run to another State solely to avail of a heart transplant in a CGHS-empanelled hospital. The treatment undertaken was of a rare and emergent nature, and therefore qualifies as being under “special circumstances”. The denial of full reimbursement, despite the acknowledged absence of any empanelled facility in Mumbai, offering heart transplants, is stated to be arbitrary, unjust, and contrary to established policy.

Reasons and Conclusions

32. We have heard learned counsel for the parties. We have also perused the record. Having noted the facts in some detail and having considered the applicability of Office Memorandum dated 28 August 2011 and the impugned decision dated 13 April 2022 (supra), we are of the opinion that the impugned decision as taken by the High Power Committee denying the petitioner full reimbursement of the medical expenses incurred by the petitioner for the heart transplant on the ground that CGHS permitted rates are required to be followed, is not the correct and a legal stand of the respondents. Also the observation of the High Power Committee that the procedure of heart transplantation was a planned surgery and not an emergency, hence, the reimbursement has been done as per CGHS extant rules and guidelines, are the only reasons on which full reimbursement under relaxation of rules has been rejected.

33. We are not in agreement with such reasons which are set out in the communication dated 13 April 2022 for the reasons we discuss hereunder.

34. We find that vide Office Memorandum (OM) dated 28 August 2011, the respondent notified fresh empanelment of private hospitals and revised package rates applicable under CGHS, Mumbai and issued clarification in that regard. A corrected list of package rates applicable for empanelled hospitals under CGHS, Mumbai was enclosed to such OM. The hospitals, which were already empanelled or which were being empanelled under continuous empanelment scheme under CGHS, Mumbai were requested to take note of the corrected rates. It provided that the bills already cleared would not be reopened. The corrected list of package rates insofar as heart disease, which included heart transplant are required to be noted, which reads thus:

CGHS MUMBAI RATES FOR HOSPITALS – 2010 (Updated on 14 th May, 2021)				
S. No.	NAME OF INVESTIGATION TREATMENT PROCEDURE	Rate of NABH Hospital	Rate for Non NABH Hospital	Rate for Super Speciality Hospital
506	Double Valve Replacement (DVR)	178735	155422	
..	...			
..	...			
515	Gunshot injury	86250	75000	86250
516	Heart transplant	69000	60000	69000

35. The aforesaid Office Memorandum came to be revised by subsequent Office Memorandum dated 18 February 2015.

36. It appears that vide Office Memorandum dated 15 July 2014, the Government of India has provided for relaxation of procedures to be followed in considering requests for medical reimbursement claims in respect of CS(MA) beneficiaries. It is appropriate to note the contents of the Office Memorandum, which reads thus:

H. 11022/01/2014-MS
Government of India
Ministry of Health and Family Welfare
Department of Health & Family Welfare

.....

Nirman Bhawan, New Delhi
Dated 15th July, 2014.

OFFICE MEMORANDUM

Subject: Relaxation of procedures to be followed in considering requests for medical reimbursement claims in respect of CS (MA) beneficiaries.

Ministry of Health & Family Welfare received several representations from CGHS beneficiaries for issue of guidelines to be followed in considering requests for relaxation of procedures in considering requests for medical reimbursement over and above the approved rates. The matter was examined by the Ministry and Office Memorandum No. 4-18/2005-C&P (Vol-1 Pt.(1)) dated the 20th February, 2009 was issued prescribing the procedures and guidelines to be followed for consideration of requests received from CGHS beneficiaries seeking reimbursement of expenditure incurred on medical treatment over and above the approved rates. The requirement of essentiality certificate in respect of CGHS beneficiaries was also done away with.

However, no such guidelines were issued under CS(MA) Rules. In this regard Department related Parliamentary Standing Committee on Health and Family Welfare in the seventy first report impressed upon the Department to immediately address this issue and extend same facilities to those covered under CS(MA) Rules and to issue a fresh circular clarifying the procedures in this regard and dispelling misgivings, if any. Ministry was also in receipt of representation from several quarters in this regard.

2. The matter has been examined in consultation with Dte.GHS and it has been decided to revise the guidelines for reimbursement by the competent authority to issue guidelines under CS(MA), on similar pattern as under CGHS as per the following:

- (1) It has now been decided to do away with the procedure for verification of bills and issue of essentiality certificate by the treating doctor and the Medical Superintendent of the hospital. Ministries/Authorities concerned may verify and check the authenticity of the claims on the basis of the prescription slip and the diagnostic report submitted by the Government servant. In the event of any doubt, the concerned Ministry/Authority can always get verification done from the hospital concerned.
- (2) It is clarified that essentiality certificate/counter signature of treating doctor in a hospital would not, henceforth, be necessary. However, essentiality certificate would be required when the treatment is taken from an AMA on OPD basis.
- (3) All cases involving requests for relaxation of rules for reimbursement of full expenditure will henceforth be referred to the Technical Standing Committee, to be chaired by the DGHS/Spl. DGHS and Specialists of concerned subject as members. Addl. DDG (MG-Section), Dte. GHS shall be member secretary for organizing the meetings of Technical Standing Committee. If Technical Standing Committee recommends the relaxation of rules for permitting full reimbursement of expenditure incurred by the beneficiary, the full reimbursement may be allowed by the Secretary (Health & Family Welfare) in consultation with IFD. A check list for consideration of requests for reimbursement in excess of the approved rates may include:
 - a. **The treatment was obtained in a private hospital not empanelled under CS(MA)/ CGHS under emergency and the patient was admitted by others when the beneficiary was unconscious or severely incapacitated and was hospitalized for a prolonged period;**
 - b. The treatment was obtained in a private hospital not empanelled under CS(MA)/ CGHS under emergency and was admitted for prolonged period for treatment of Head injury, Coma, Septicemia, Multi-organ failure, etc.;
 - c. Treatment was obtained in a private hospital not empanelled under CS(MA)/ CGHS under emergency for treatment of advanced malignancy;
 - d. **Treatment was taken in a private hospital not empanelled under CS(MA)/ CGHS under emergency in higher type of accommodation as rooms as per his/her entitlement was not available during that period;**
 - e. Treatment was taken in higher type of accommodation under specific conditions for isolation of patients to avoid contacting infections,

- f. Treatment was obtained in private hospital not empanelled under CS(MA)/ CGHS under emergency while on official tour to another city;
 - g. Treatment was obtained in a private hospital not empanelled under CS(MA)/ CGHS under emergency when there is a strike in Govt. hospitals;
 - h. Approval for air-fare with or without attendant on the advice of treating doctor for treatment in another city even though he is not eligible for air travel/treatment facilities are available in city of residence and
 - i. **Any other special circumstances.**
4. The Office Memorandum is issued with the concurrence of IFD vide Dy.No.C-695 dated 07.07.2014.

(Arun Chowdhury)
Under Secretary to the Government of India.”

(emphasis supplied)

37. From the plain reading of the aforesaid Office Memorandum, it is clear that a provision is made for relaxation in reimbursement of the medical expenses incurred in special cases, in peculiar circumstances, as also in cases of emergency and other special circumstances. From the contents of the aforesaid Office Memorandum and even otherwise, we fail to understand as to how a requirement of heart transplant cannot be considered to be an extraordinary and not an emergent and inevitable surgery, as a heart transplant is required only when the heart is failing, the consequences of which are just to be imagined. As to what is the plight of the patient in such situation, would not require any elaboration. It is in these circumstances, the case of the petitioner ought to have been considered by the High Power Committee.

38. From the impugned decision, it appears to us that a narrow, pedantic and/or a too technical view has been taken by the HPC in rejecting the full medical reimbursement to the petitioner. We would not find that the petitioner's application for full medical reimbursement could not have been rejected on the ground that it was a planned surgery and/or merely because the rates being notified, the petitioner ought not to be granted any reimbursement.

39. Even assuming that the aforesaid Office Memorandum providing for relaxation of the conditions was not to be issued, it cannot be said that the respondents were powerless or would lack authority to consider special cases of reimbursements of medical expenses when the treatment received is of such serious nature, in considering applications of reimbursement in such category. These are all executive powers as conferred on the Central Government under the provisions of Article 73 of the Constitution, which are coterminous with the power to legislate. In the absence of any specific legislation, exercise of such power and more particularly for preservation of fundamental rights necessarily has a legitimate constitutional recognition.

40. It also cannot be that the rules governing reimbursement are sacrosanct and nothing outside the rules in exceptional/special cases and especially deserving cases, can be considered for reimbursement by the Central Government. It would not require elaboration that in such matters it is an accepted position that there is a free

play in the joints and such category of cases are required to be considered on their merits. A case to case legitimate decision protecting the fundamental rights is expected to be taken by the concerned officers. Such powers are conferred only to be utilized and more particularly when there is a need to exercise such powers not only to protect the fundamental rights but right to life and right to livelihood. Thus, apart from the Office Memorandum dated 15 July 2014 providing for relaxation, the High Power Committee even otherwise could exercise such powers of relaxation and in such deserving case, exercise its discretion to award full medical reimbursement.

41. The present case indisputedly is a case of heart transplant which by all standards is a serious ailment. Certainly, the surgery is one of urgency and critical importance, and could not have been postponed. It is a special circumstance. It is imperative that such surgeries are expedited in the interest of human life without an embargo of an expenditure which is secondary to human life.

42. The respondents have not come with a case that immediate transplant facility was available or the organ was available for transplant, in any of its empanelled or CGS hospitals. If that be the case, certainly it cannot be said that the petitioner undergoing a heart transplant at a private hospital, where the organ was available and which could be immediately transplanted without any waste of time, was not an emergent and / or wrong decision on the part of the petitioner, and/or nonetheless

despite such availability, he ought to have awaited for the heart transplant in the hospital which the CGHS authorities would intend. This would have brought about a situation of the petitioner requiring to unwarrantedly suffer an ordeal of a fruitless wait. The petitioner rightly preferred not to wait in such uncertainty and availed of the heart transplant at the private hospital.

43. In these circumstances, we are of the clear opinion that in a situation to save his life, the petitioner was certainly entitled to take a decision to have a heart transplant at a private hospital, in the absence of such facilities being readily / timely made available, in all the empanelled hospitals. Hence, the petitioner was required to be granted full reimbursement of all the expenditure, when such expenditure was not in dispute. Not granting full reimbursement, in these circumstances in our opinion, is not only violative of the fundamental rights but strikes at the very root, purpose and essence of these basic human rights as guaranteed by the Constitution, i.e., Right to Life under Article 21. It was this fundamental right which is being asserted by the petitioner when in such circumstances he demanded reimbursement of medical expenses, and for violation of these rights seeking a remedy to approach the writ Court, cannot be said to be any misconceived approach on the part of the petitioner, more particularly the respondent's accepting an earlier order passed by this Court on the writ petition filed by the petitioner.

44. It is in such circumstances, it was necessary for the High Power Committee to weigh the case of the petitioner with human sensitivity. However, the High Power Committee in its usual, routine and mundane method appears to have taken the impugned decision without hearing the petitioner, despite the clear orders of this Court in the prior proceedings filed by the petitioner.

45. We may also observe that although some medical facilities are available in CGHS hospitals, it is not possible that such specialized medical facilities are available. It is for such reason, necessarily treatment is required to be availed by such patients from private hospitals, for which reimbursement is sought from the Central Government. In such situation, the Central Government is under an obligatory position to grant reimbursement on case to case basis. It may be true that for certain ailments, rates are fixed, however, the health issues are such that there cannot be a straight jacket formula in arriving at the rates for reimbursement and in a given situation, the Competent officer or the HPC would be required to grant reimbursement considering the treatment as received by the patient/employee. In many of such reimbursements, there may not be any issue or dispute on the amount of reimbursement, however, this would not mean that in very peculiar, serious, specialized cases of medical treatment, the reimbursement needs to be only as per the rates which are pre-determined. This would be most unrealistic, unfair and discriminatory as in the present situation. Any employee, merely because he has retired, ought not to be differently treated when it comes to genuine and realistic

health expenditure. There is another aspect that the reimbursement rates are not revised from time to time in the absence of which, they are rendered unrealistic.

46. Thus, patients like the petitioner, who is a pensioner, cannot be deprived of benefits of medical reimbursement when he received treatment at private hospital, more particularly, when the petitioner's case is accepted as a genuine case, which in our opinion, was certainly of an urgent nature. In the present case, the respondents in no manner whatsoever dispute the treatment of the petitioner and the expenditure incurred. The respondents have all powers to examine the credentials of the applications and enquire about the genuineness of the claim. Thus, once the facts of the petitioner's case remained undisputed, i.e., when the medical treatment was not in dispute in the petitioner receiving specialized or urgent treatment and when the amount claimed by the petitioner is the actual expenditure incurred by him is also not in dispute, in these circumstances, to make the petitioner suffer for reimbursement, in our opinion, amounts to travesty of justice and a glaring violation of the fundamental rights guaranteed to a citizen who is the former employee of the Central Government. In such circumstances, in our opinion, the High Power Committee ought to have been humanely sensitive in dealing with the petitioner's case and ought not to have adopted a mechanical and a narrow-minded approach.

47. Thus, we have no manner of doubt that looked from any angle, the petition needs to eminently succeed. It is, accordingly, allowed in terms of prayer clauses (A)

and (B). Needful reimbursement be done to the petitioner within a period of four weeks from today.

48. Rule is made absolute in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)