THE SUPREME COURT OF INDIA
(ORIGINAL CIVIL WRIT JURISDICTION)
Under Art 32 of the Constitution of India
Civil Writ Petition No of 2015
W.P.(C)No. of 2015

In the matter of:
SHIVA KANT JHA
J- 351 SFS SaritaVihar,
Mathura Road, New Delhi- 76 …. Petitioner-in-person

vs.

UNION OF INDIA
Through The Secretary,
Ministry of Health & Family Welfare,
Department of Health and Family Welfare,
Nirman Bhavan
New Delhi …. Respondents

WRIT PETITION UNDER ART. 32 OF THE CONSTITUTION OF INDIA

(Read with Art 142 of the Constitution of India)

[This Writ Petition under Article 32 of the Constitution of India invokes the Jurisdiction of the Hon'ble Supreme Court of India seeking redress of this Petitioner's grievances pertaining to certain omissions and commissions of the Government of India which are in conflict with the Constitution's provisions (including the Petitioner's Fundamental Rights), and are so arbitrary or unreasonable that no fair minded authority could ever have made them. The facts and the circumstances have compelled this Petitioner to supplicate before this Hon'ble Court several issues of great importance for this Petitioner in his late Seventies for the protection of his legally and constitutionally protected rights and his legally protected legitimate interests. This Petition is on the assumption that whilst in the matters of policy and efficiency the Government is the sole judge of its actions, the wielders of the power are responsible to a Court of Justice for the lawfulness of what they do, and of that the Court is the only Judge. This Writ Petition draws this Hon'ble Court's attention not only to the gross breaches and studied disregards of the CS (M A) Rules, 1944, and the rules framed under Article

77(3) of the Constitution[1], but it also invokes Articles 14 and 21 of the Constitution. This Petitioner adopts a broad spectrum in presenting his Case as, it is humbly stated, it is *adversarial* as (it presents this Petitioner's own case); and also *inquisitorial* (as it has an evident PIL dimension as it brings to the Hon'ble Court's notice the shabby treatment that the retired persons receive, in the evening of their life, from who had been their model employer). In short, this Petition would illustrate what someone had said: while persons laugh diversely, they suffer alike.]

To
The Hon'ble Chief Justice of India and
And His companion Justices of the
Hon'ble Supreme Court of India

This humble Petitioner through this Writ Petition:

MOST RESPECTFULLY SHOWETH:

1. That this humble Petitioner is a CGHS beneficiary in his late Seventies. He holds a CGHS Card No. 849831 (Pensioner) valid for whole life for medical treatment in Private Ward. He retired from the post of the Chief Commissioner of Income-tax- II Delhi on 31 March 1998. He is entitled to get 'comprehensive' medical treatment. His PAN is ACGPJ 5126 Q. This Writ Petition brings to the notice this Hon'ble Court the remissness and unfairness of the CGHS, an administrative organization under the control of the Ministry of Health & Family Welfare of the Government of India, so that the injustice done to him is undone. This Petitioner's Writ Petition is, it is humbly stated, both *adversarial* as it presents this Petitioner's own case; and also *inquisitorial* as it has a PIL dimension too for the weal of all retirees, like this humble self, who suffer with tongue-tied patience already

[1]The Government of India (Allocation of Business) Rules framed under Article 77 (3) of the Constitution.

noticed, with agony, by many of the High Courts[2], and also documented in the Report of the CAG on the Performance Audit of the Government of India No. 3 of 2010-11 in the Chapter on 'Reimbursement of Medical Claims to the Pensioners under CGHS'.[3] Personal and Public dimension so co-exist crying for Justice illustrating what someone said: while persons laugh diversely, they suffer alike. This Petitioner would refer to certain Case Studies recorded in the CAG's aforementioned Report, as these Case Studies come to this Petitioner's mind whenever he reflects over his own plight wrought by the said administrative remissness of the CGHS. In short, this Writ Petition belongs to the intersection of adversarial and representative litigation.

The Prelude and core facts

2. That the brief material **facts,** which constitute the factual backdrop to the issues raised in this Petition, are briefly set out thus to be developed later in this Writ Petition. This Petitioner submitted two sets of his Medical bills to the CGHS for reimbursement:

(a) One Bill, for the Petitioner's treatment done in November 2013 in the Emergency of the Fortis Escorts Hospital, New Delhi, for Rs.986343 for his cardiac ailments that drove him to undergo medico-surgical procedure involving the implant of CRT-D, a device that regulates the electrical impulses in the heart so that it does not fail, and if it fails (perish the thought) the implanted device, through immediate synchronization, saves it from fatal instant failure; and

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[2] Delhi H,C, in *Milap Singh's Case* [2005 (2) SLR 75], *Kishan Chand v. Govt. of N.C.T. &Ors* [2010 (169) DLT 32], *K.K. Kharabandavs The Union Of India &Ors* [MANU/DE/0294/2009W.P. (C) 6049/2005]; the Madras High Court in *C.Ganesh's Case*[2] [(2012) 5 Mad LJ 257]; the Jharkhand High Court in *Union of India v. Rameshwar Prasad* [(2013) 3 AIR Jhar R. 483.

[3] The CAG on the Performance Audit of the Govt. of India No. 3 of 2010-11 [**Annex P- 12**]

[**Annex P-2 pp' 115-140 of the W.P.]**

(b) Two Bills aggregating to Rs. 398097 for his Emergency treatment at the Jaslok Hospital, Mumbai, for the treatment of severe cerebral stroke and a paralytic attack making his right side non-functional, and substantially non-responsive.

[Annex P-4 & P.-5 at pp. 143-208]

3. That the fate of this Petitioner's claims stands explained by the core facts, as presented in the following table, showing the amounts already paid, and the amounts wrongfully denied even without hearing this Petitioner:

Bills submitted on	**Amounts of Paid**	**Amounts outstanding**
(a) Bill for treatment at the Escorts Heart Hospital, New Delhi, submitted on January 01, 2014 for Rs. 986343	Rs. 490000 paid on 31 March 2015	Rs. 496343
(b) Two Bills for treatment at Jaslok Hospital, Mumbai, submitted on July 19, 2014 for Rs. 398097	Rs, 94885 paid on 25 August 2014	Rs. 303212
	Amount wrongfully denied	Rs. 799555.

4. That the Bill at (a) was submitted to the Additional Director, CGHS, Central Zone, New Delhi, on 3 January 2014; whereas the Bills at (b) were submitted to that authority on November 19, 2014. To both the Hospitals, this Petitioner had to pay out of his resources, gathered from his savings and borrowings.

5. That the CGHS thought it fit and proper to pay only Rs. 94885 being just the one-fourth of the claim mentioned at (b) above. This Petitioner's claim was so curtailed without providing him reasons for doing so. No opportunity of being heard was granted to the Petitioner (despite the mandatory requirement under

the law to do so). This Petitioner's repeated requests[4] to let him know the reasons bore no fruit. Thus this Petitioner's claim for reimbursement of the medical expenditure (already incurred) is denied to the tune of Rs. Rs. 303212.

6. That this Petitioner's Bill mentioned at (a) *supra*, had a strange journey. The stages through which this Petitioner's claim moved in the CGHS, and the Ministry of Health and Family Welfare, are these:

(i) This Bill for reimbursement had been considered by the Technical Standing Committee in May 2014, and this Petitioner's claim was rejected without informing him of the reasons for rejection, and also without hearing him.

(ii) On his second knocking at the door of the authorities, his case was again considered by the Standing Committee on 10/07/2014, and was rejected on the ground that CRTD-D implant was not required.

(iii) Aggrieved by this order, this Petitioner knocked at the gate of authorities for the third time by submitting a Representation addressed to the Secretary, Ministry of Health & Family Welfare, to which the President of India had allotted the duty to provide health care facilities to the Central Government Servants under the Government of India (Allocation of Business) Rules, 1961. This Petitioner's Representation was considered again by the Standing Technical Committee in its meeting on 15/01/2015 only to be rejected for reasons that no "Prior approval for such device implants was not sought".

[Annex. P=6 at p. 209 of the W.P,]

(iv) This Petitioner made his fourth knock at the door of the authorities through his memorial addressed to the Director General of the CGHS. This Petitioner found that instead of allowing his full claim, the Government deposited direct in the Petitioner's Bank Account only Rs. 490000 (Rupees Four Lakhs and Ninety

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[4] (a) This Petitioner's letter addressed to the Additional Director, CGHS, Central Zone, ChitraguptaMarg, New Delhi receive on 21/ 1/ 2015 **[Annex P-7 at p. 213 of the W.P.]**

(b) This Petitioner's letter, dated March 4, 2015, addressed to the Director General, CGHS, New Delhi, with a copy to the Additional Director, CGHS, Central Zone, New Delhi, alongwith the earlier letter referred in the footnote 2(a) above. [vide **Annexure P-9 at p. 221 of the W.P.]** .

thousand). This Petitioner was never heard on any point, nor was any speaking order ever communicated to him.

[Annex P- 8 at p. 216 of the W.P.]

7. That the CGHS, as mentioned above, erred in treating this Petitioner's claim arbitrarily. The course adopted by the authorities is clearly in breach of the proviso to the Rule 3 of the CS (M A) Rules, 1944, and is also against established principles of fair play and natural justice which work with mandatory force whenever someone in authority decides against the interest of someone else.[5] All his efforts to get justice have failed. Hence this Petitioner has moved this Hon'ble Court under Article 32 of the Constitution of India so that not only he obtains justice for himself but also to submit before this Hon'ble Court the stories of the woes of the other retirees illustrated in the Cases studied by the CAG in its Report.

The Structure of this Writ Petition

8. That this WRIT PETITION is structured thus:

	Topic	**Pages (& paras)**
I	The Prelude, and core facts	3-6 (2-7)
II	On invoking the Jurisdiction under Art. 32	7-16 (9-12)
III	This Petitioner reasons illustrated in the CAG's his Report, esp. his Cases studied.	16-19 (11-12)
IV	The Ambit of the Duties of our Government and the Rights of the retired government servants	19-26 (13-18)
V	*Kuldip Singh v. Union of India* [JT 2002 (2) S C 506	26 (19)

[5] "In India a liberal interpretation of Articles 14 and 21 of the Constitution readily brings in the requirements of natural justice to administrative actions against a person. It has become an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice.... Justice G.P. Singh, *Principles of Statutory Interpretation* (11th ed,) p.436.

II

This Petitioner has no effective and adequate remedy for redressal of his grievance except this respectful petition to the Hon'ble Supreme Court invoking its Jurisdiction under Articles 32 and 142 of our Constitution

9. That on the proper construction of (a) the Constitutional duties cast on the Ministry of Health and Family Welfare under the Government of India (Allocation of Business) Rules, 1961 framed under Article 77(3) of the Constitution of India;[6] (b) the provisions the CS (M A) Rules,1944, read in the light of various recent judicial decisions; and (c) the Government's own policies

[6]"The Government of India (Allocation of Business) Rules, 1961 has entrusted the responsibility of providing medical care to the Central Government Servants, to the Department of Health and Family Welfare, Ministry of Health and Family Welfare. At Sr. No. 14 of the list of business allocated to the Department of Health and Family Welfare, it provides as under:-

"Concession of medical attendance and treatment for Central Government Servants other than (i) those in Railway Services (ii) those paid from Defence Service Estimates (iii) officers governed by the All India Services (Medical Attendance) Rules, 1954 and (iv) officers governed by the Medical Attendance Rules, 1956"

CGHS was constituted vide Ministry of Health's OM dated 1.5.1954. In accordance with para 6 of the said O.M., CGHS facilities are admissible to all the Central Government Servants who are paid their salary/ pension from the Civil Estimates of the Central Government. Central Government Health Scheme (CGHS) is a health scheme for serving / retired Central Government employees and their families. The scheme was started in 1954 in Delhi."

and admissions and rules, a retired government servant is entitled to 'comprehensive' and 'full treatment', and full reimbursement of the medical expenditure incurred. Besides, this Petitioner contends that his Fundamental Rights under Articles 14 and 21 have been violated in many ways to be stated later in this Writ Petition.

10. That the Petitioner supplicates before this Hon'ble Court to exercise its jurisdiction under Article 32 of the Constitution as this Petitioner has no effective alternative remedy that he can pursue. The Petitioner's following submissions deserve the Hon'ble Court's consideration.

(I) As the facts and the Grounds presented through this Writ Petition would show, the Government has ignored the Petitioner's Fundamental Rights under Articles 14 and 21 of our Constitution. The Government's omissions and commissions not only violate his Fundamental Rights, they are also in conflict with other constitutional provisions. Besides, they are grossly erroneous as they are arbitrary or unreasonable. Art. 32 confers a Fundamental Right on the individual, and imposes an obligation on the Supreme Court to provide an effective remedy to a person who brings to the notice of the Hon'ble Court such remissness seeking an effective remedy. Art. 32 provides a guaranteed remedy for the enforcement of the Fundamental Rights, and constitutes the Supreme Court as the "guarantor and protector of Fundamental Rights."

(II) This humble Petitioner has already incurred expenditure on his treatment mentioned in para 3 *supra*. This heavy expenditure, incurred on his treatment under Emergency conditions, depleted this Petitioner's resources, already meagre, leaving him in distress in the evening of his life. The Petitioner's conditions of health can be known on perusing his; 'Medical History' attached

with this W.P. as Annexure **P-10.** He needs money to meet the needs for his survival. If he moves the Administrative Tribunal, the delay in its disposal would make the Petitioner's quest futile. In all probability he may not see the end of a long litigious process in his lifetime (He is already in his late Seventies and in bad health)[7]. He would be grateful to this Hon'ble Court for an instant decision, whatever that may be considered fair and just, so that this Petitioner is saved from being wracked by the hazards of being tossed from forum to forum where delay is endemic. This Petitioner feels that he would not survive that long, and would not be able to suffer an expensive long-drawn nerve-wrecking litigation between the unequals.

(III) As this Petitioner has already incurred expenditure on his medical treatment, he is a victim of continuous unjust treatment both (a) through the delay in the Government's reimbursement of his Bills; and (b) through the unfair reduction of the claims (vide para 3 *supra*) that makes even the delayed decision so outrageous. This Petitioner submits that his case deserves an intervention by this Hon'ble Court to save him from an outrageous administrative arbitrariness.

(IV) Without robbing the submission just made of its inherent pathos and efficacy, this Petitioner would draw this Hon'ble Court's attention to the rationale for judicial intervention under Article 32 in Tax Cases as an apt analogy in support of his submission. The point that this Petitioner humbly

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[7] "The Comptroller and Auditor General of India in its recent report disclosed "considerable delays" in settlement of medical claims under the Central Government Health Scheme (CG-HS). "More the seriousness of the disease and amount involved, greater the delay in settlement," noted the CAG." http://archive.indianexpress.com/news/-cghs-delays-claims-/655703/

advances before this Hon'ble Court can be put forth thus [stated, of course, in the context of tax laws] by H. M, Seervai[8]

> "The question whether an alternative remedy is onerous arises most frequently in tax cases. Taxing statutes generally provide for appeals and revision, but they also generally provide that the tax demanded shall be paid or deposited, as a condition precedent to the right to appeal or to apply for revision. In such cases, the weight of authority is in favour of the view that the alternative remedies are not adequate and a petition under Art. 226 will be entertained notwithstanding such alternative remedies."

The principle on which the aforementioned view is founded is that the remedy is not adequate where the alternative remedy is onerous or burdensome.[9]

This Petitioner paid the whole amount to the Hospitals before getting his discharge. It is submitted that his conditions are more precarious than those of the companies which have to pay tax as conditions-precedent before pursuing their appeals. This Petitioner had to pay for remaining alive, and to get his discharge from the Emergency of the two hospitals. This Petitioner cannot be made worse off than a corporation whose writ petition under Article 32 of the Constitution of India is admitted because it deserves to be saved from the jeopardy of the payment of the disputed tax which is a condition precedent to any the appellate scrutiny.

(V) If this Petitioner were to seek remedy at the High Court or the Administrative Tribunal, he would be embarrassed to find his Fundamental Right of seeking justice under Article 32, itself a Fundamental Right, in effect,

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[8] *Constitutional Law of India* (4th ed.) p. 1604

[9] *HimmatlalHiralal Mehta v.. M.P.* AIR 1954 SC 403 [" before the appellant can avail of it (the remedy), he has *to deposit the whole amount of the tax*. Such a provision can hardly be described as *an adequate alternative remedy*". Also *Customs Collector,, Bombay v. Shantilal* AIR 1966 SC 187 , 202 (....the respondents had *no effective remedy* for they could not file and appeal without depositing ....the large ...penalty imposed on them.)

gone. If such a matter were to come to this Hon'ble Court after exhausting the remedies before the Central Administrative Tribunal and/ or the High Court, that would make not only the quest of the Petitioner futile because of delay and drudgery of long litigious process, the matter would come up before this Hon’ble Court not by invoking its jurisdiction under Art. 32 of the Constitution, but would be just a SLP against the order of the CAT, or the High Court. Such an approach would devalue the significance not only of the Fundamental Rights but of the Supreme Court itself. This could never have been the intention of the framers of the Constitution. The nature of the Supreme Court's jurisdiction under Article 32 was thus briefly stated by our Supreme Court in *Fertilizer Corporation Kamgarvs. Union Of India* AIR 1981 SC 344:

> "11. The jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated. A right without a remedy is a legal conundrum of a most grotesque kind. While the draft Article 25, which corresponds to Article 32, was being discussed in the Constituent Assembly, Dr. Ambedkar made a meaningful observation by saying:
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> > "If I was asked to name any particular article in this Constitution as the most important, an article without which this Constitution would be a nullity, I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance". (*Constituent Assembly Debates*, December 9, 1948, Vol. VII, p. 953).

(VI) . Over several years, several retired government servants, in their old age, have suffered, even died, aghast at the unfair treatment they got from the CGHS, and its controlling Ministry, the Ministry of Health and Family Welfare, in discharge of their DUTIES, to which this Petitioner would come later in other

Parts of this Writ Petition. The CAG's Performance Audit for 2010-11, to be referred in the Part III of this Petition, deserves to be kept in view in appreciating this Petitioner's submissions and Prayers. The most relevant portion in the CAG's Report pertains to 'Reimbursement of Medical Claims to the Pensioners under CGHS'.[10] The High Courts too have expressed their anguish again and again, but this Petitioner's Case would demonstrate that the authorities refuse to improve, and refuse to spare even old and ailing retirees from receiving their unkindest cut, and shabby indifference. This Petitioner believes that it is this Hon'ble Court's constitutional duty to examine their ways, and to command them to do their Duties with compassion. The relevance of my submissions thus made, deserve to be appreciated keeping in view the morbidity evident in the CAG's exposition and Cases studied synoptically presented in the aforementioned Report (vide Part III of this W.P. *infra)*.

(VII). The plight of the retired pensioners in their dealings with the CGHS, can be well comprehended from scores of the decisions of the High Courts, and the Central Administrative Tribunal. The point that this Petitioner underscores is well stated by the Hon'ble Delhi High Court in *Milap Singh's Case*[11] [2005 (2) SLR 75],

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[10]Report of the CAG on the Performance Audit of the Government of India No. 3 of 2010-11 : **[** 'Reimbursement of Medical Claims to the Pensioners under CGHS'.] [**ANNEX P-12**]

[11]At the outset of the Judgement the Hon'ble Court observed:

"This is one more case of a retired Government servant who has been refused reimbursement of the full medical expenses incurred by him despite numerous judgments on this issue. The respondents chose to act in complete violation of the principles of law laid down by various judgments negating the Central Government Health Scheme (hereinafter to be referred to as, `the CGHS'), which was propounded as a health facility scheme for 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, but the repeated cases which have come to the Court show every effort of the respondents to dilute the effect of the said Scheme. The respondents continue in their conduct,

Kishan Chand v. Govt. of N.C.T. &Ors [2010 (169) DLT 32], *K.K. Kharabanda vs. The Union Of India &Ors* [MANU/DE/0294/2009W.P. (C) 6049/2005]; the Hon'ble Madras High Court in *C.Ganesh's Case*[12] [(2012) 5 Mad LJ 257]; the Jharkhand High Court in *Union of India v. Rameshwar Prasad* [(2013) 3 AIR Jhar R. 483.

(VIII) This Petitioner submits that the issues raised in this Writ Petition are of great importance for retired persons most of them treated even in their families as hated burden. Their pang increases when their own Government, whose heat and burden they bore for decades, treats them so unfairly. The CAG's Report, above mentioned [**Annex P--12**], and the Case Studies (**Annex P-12 at pp. 250-**264**)** would show how their model employer allows the creation of conditions under which old age is made to totter for long striving to get their legitimate claims settled sans dignity as if they were a lot of vexing beggars trying to steal the resources of the Government!

(IX) The Writ Petitioner feels his grievance is not only against the Government's violations of/ or indifference to his Fundamental Rights under Articles 14, and 21, but also against the blatant breach of the mandatory

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which is contemptuous in character, by continuing to deny such claims despite clear law enunciated on this point."

[12] " A holistic, a humanitarian and pragmatic common sense approach should be the guiding factor in a pragmatic manner in honouring the medical reimbursement claim made by the Petitioner.....Although the Respondents harp on technicalities of rules while disallowing the portion of the claim made by the Petitioner, this Court comes to an inevitable conclusion that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred for the Respondents 2 to 5 cannot claim to have vested right in injustice being done to the Petitioner....." see paras 33 and 39 of [(2012) 5 Mad LJ 257]

requirements of compliance with the Rules of Natural Justice which, in effect, has been aptly considered by this Hon'ble Court as a mandatory requirement emanating from a liberal interpretation of Articles 14 and 21 of our Constitution[13] as "it has become an implied principle of the rule of law that any order having civil consequences. should be passed only after following the principles of natural justice"[14] This is so as this Hon'ble Court has held Article 14 to be the constitutional guardian of the principles of natural justice. This Petitioner submits that this Petitioner was never granted any opportunity of being heard, at any stage of administrative deliberations affecting his legitimate interests.

Exposition

The High Court of Jharkhand has quoted in the *Union of India vs. RameshwarPrasad*, the observation of the Hon'ble Delhi High Court in *Kishan Chand's Case*[2010 (169) DLT 32]:

> "It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical reimbursement to the petitioner forcing him to approach this Court."

(X). This Petitioner submits that in an analogous case this Hon'ble Court has already exercised its jurisdiction under Article 32 of the Constitution of India to provide an effective remedy in *Kuldip Singh v. Union of India* [JT 2002 (2) S C

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[13]*Union of India v. Tulsiram Patel* AIR 1985 SC 1416; *Olga Tellis v. Bombay Municipal Corp*. (1985) 3 SCC545, pp. 577-84

[14]*Raghunath Thakur v. Bihar* AIR 1989 SC 620 at p. 62

506]. That Writ Petition pertained to the Medical reimbursement claims of a retired Supreme Court Judge entitled under Section 23C of the Supreme Court Judges (Conditions of Service) Amendment Act, 1976, to the same medical benefits to which the retired officers of the Central Civil Services, Class I "are entitled under any rules and orders of the Central Government for the time being in force." On the said Writ Petition, it was clarified by the Government's counsel that "there is a power of relaxation contained in the said rule which would enable a CGHS card-holder to ask for relaxation on his getting treatment from a private hospital or a doctor. It is, therefore, not as if it is compulsory for the CGHS card-holder to invariably go only to a government hospital." [*Kuldip Singh v. Union of India,* para 5 of the judgement). [vide Part V of this W.P. para19 *infra*].

(XI) . It is most humbly submitted that the CGHS has outsourced its functions to others in cases of super-VIPs, thus discriminating *inter se* the retirees from one realm and those from the other even though they all are paid from the public fund of the Government of India.[15] The Government Servants, yet in active service, can somehow manage through their influence, contacts, pressure and persuasion. The ordinary retirees, like this humble Petitioner and the seven other souls whose plight has been studied in the 7 Cases portrayed by the CAG in his Report , are made to suffer for some time with tongue-tied patience, sometime by wasting time facing the administrative rigmarole, and then, when none comes

[15]The undersigned is also directed to state that CGHS guidelines currently provide for relaxation of guidelines to cover full reimbursement in individual cases depending upon merits of each case. In the case of Hon'ble Members of Parliament, the powers to relax the guidelines have been delegated to the Lok Sabha Secretariat and Rajya Sabha Secretariat respectively and in the case of Hon'ble Chief Justice of Supreme Court and Judges of the Supreme Court to the Secretary General of the Supreme Court. OFFICE MEMORANDUM Date the 20th February, 2009 (No: 4-18/2005-C&P [Vol. l – Pt. (l), Ministry of Health & F.W.]

to rescue, to the Tribunals and courts before accepting their lot wistfully. This distress becomes all the more agonizing when we know that if the retirees had ever been in some category of the super-VIPs, even the RTI is not good enough to provide access to their medical expenditure.[16] The effect of this short submission is to submit, with utmost fidelity and humility but with candour, that he is aggrieved by the violation of his Right to Equality as explained in *Hasia'sCase* (AIR 1981 SC 487), and prays before this Hon'ble Court for a remedy.

(XII).It is most humbly submitted that this Hon'ble Court may be pleased to exercise its Jurisdiction under Articles 32 and 142 of our Constitution so that this Petitioner's Fundamental Rights under Articles 14 and 21 are protected and promoted by reimbursing his medical expenditure, already incurred by him, under genuine emergency, and also something positive is done to improve the lot of similar other retirees whose plight has been so graphically portrayed by the CAG on 'Reimbursement of Medical Claims to the Pensioners under CGHS'.] [**ANNEX P-12**]

III

Many of the CAG's comments describe the grievances analogous to this Petitioner's

11. In the Chapter II of its Report, referred in Para 6 of Part II supra, the CAG commented on the state of affairs pertaining to 'Reimbursement of medical claims to the Pensioners under CGHS'. The facts of this Writ Petition illustrate the CAG's comments, and also illustrate the flawed approach of the authorities

[16]http://thewire.in/2015/07/02/judges-medical-expenses-will-not-be-disclosed-under-rti-says-sc-5337/

that has caused miscarriage of justice in this humble Petitioner's case. This Petitioner quotes its "Highlights and Recommendations" as these are relevant in most cases of the retired government servants to which category this humble Petitioner himself belongs. It is submitted that its perusal would not only help this Hon'ble Court to appreciate this Petitioner's grievance brought out through his Grounds, but it would also help the Hon'ble Court (a) to decide the issues raised in this Writ Petition; (b) to declare the norms from which our Government cannot depart; and (c) to suggest changes in the process and procedure of the functioning of the CGHS.

Under the caption of "**Highlights and Recommendations**" the said Report says:

"*The system of reimbursement of medical claims to the pensioners suffered from delays in their settlement by CGHS authorities. Further, the more serious the disease and the amount involved in the medical claim, greater were the delays faced by the pensioner.

(Paragraph 2.5.1)

*Time limit for settlement of medical claims was not prescribed by the CGHS. For medical claims exceeding Rs. 2 lakh, which were to be settled by Director (CGHS)/Ministry, one third of the 163 claims sample checked by audit were pending for an average period of two years and seven months. Average time taken for the remaining two third claims was one year and two months. For medical claims below Rs. 2 lakh, which were to be settled by Additional/Joint Directors of local CGHS covered cities, average time taken to settle the medical claims was six months.

(Paragraph 2.5.1.1 & 2.5.1.2)

*Out of 112 applications seeking permission for treatment for serious illnesses, test checked in audit 32 applications were pending in Director (CGHS) office/Ministry for an average period of two years.

(Paragraph 2.5.1.1.1(ii))

*Causes for delay in settlement of claims were indifferent handling of cases by CGHS authorities resulting in claims and files getting misplaced;

forwarding of claims by local CGHS offices seeking unnecessary clarifications; lack of effective initial scrutiny of claims leading to avoidable correspondence and inadequate monitoring and accountability.

(Paragraph 2.5.2.1. (ii), 2.5.2.2, 2.5.2.3 & 2.5.2.4)

*The effectiveness of the system of extension of credit facility by recognized private hospitals was hampered due to lack of awareness among pensioners about extension of credit facility and substantial reduction in the number of recognized private hospitals in recent years.

(Paragraph 2.5.3.1 & 2.5.3.2)

*The system did not afford adequate opportunity to the CGHS covered pensioners for registering their grievances/complaints as the grievance redress system was not functioning in five out of eight cities audited.

(Paragraph 2.5.5)

*The medical reimbursement procedures were not transparent. Except for Delhi, formal system was not in place in the audited CGHS covered cities for communicating the status of reimbursement of medical claims to the pensioners.

(Paragraph 2.5.7)

12. The CAG has drawn up, with evident anguish and amazement, the outcome of certain Case Studies which deserve to be noted as this Petitioner would refer to them as on many points they are relevant to his own Case. They, as a class, sail in the same boat. Some of these Case Studies are: vide **Annexure P-12 ---**

Cases studied by the CAG	**Lapses noticed**	**Pages in the CAG Report**	**The pages in this W.P.**
Case study - 1	Negligent handling of files leading to failure to grant permission to a pensioner, who died without getting the recommended treatment	At p. 49 of 'the CAG's the Report	250
Case Study 3	Unnecessary clarification leading to delay of more than four years	At p. 55 of the Report	256
Case Study 4	Lack of effective initial scrutiny and	At p. 55 of the Report	256-257

	delay in communication of requirement of documents led to pendency of a claim for more than eight years		
Case Study 6	Suspected use of extraneous favour in settlement of medical claim	At p. 61 of the Report	262
Case Study 7	Undue rejection of medical claim	At p.63	264

IV

The Ambit of the Constitutional and legal Duties of our Government, and the Rights of the retired government servants to the benefits of effective and comprehensive medical treatment at the cost of the Government.

(a)

13. That the Executive Power of the Union is vested in the President of India to be exercised by him either directly or through others subordinate to him *in accordance with the Constitution*.[17] In fact, the effect of the corpus of our Constitution, especially the catena of its Articles (viz. Articles 53, 73, 245, 246, 253, 265, 313, 363, 368, 372, and 375), is that all powers are under constitutional restraints. Art. 77 (3) of the Constitution of India empowers the President to "make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business. " The President of India has framed the Government of India (Allocation of Business) Rules, 1961.Its first Schedule specifies the 'departments', and its Second Schedule distributes subjects among the departments. One of the departments is the 'Department of Health and Family Welfare' under the Ministry of Health and Family Welfare'. Under the said Rules of Business, the President of India has assigned the subject pertaining to the Central Government Health Scheme (CGHS) to that Ministry. In the Annual

[17]Art. 53 of the Constitution of India.

Report 2013-2014 (Chapter 13) on the Department of Health and Family Welfare, the *raison d'tre* of the CGHS is thus stated:

> "The Government of India (Allocation of Business) Rules, 1961 has entrusted the responsibility of providing medical care to the Central Government Servants, to the Department of Health and Family Welfare, Ministry of Health and Family Welfare. At Sr. No. 14 of the list of business allocated to the Department of Health and Family Welfare, it provides as under:-
>
> > *"Concession of medical attendance and treatment for Central Government Servants* other than (i) those in Railway Services (ii) those paid from Defence Service Estimates (iii) officers governed by the All India Services (Medical Attendance) Rules, 1954 and (iv) officers governed by the Medical Attendance Rules, 1956*"*
>
> CGHS was constituted vide Ministry of Health's OM dated 1.5.1954. In accordance with para 6 of the said O.M. CGHS facilities are admissible to all the Central Government Servants who are paid their salary/ pension from the Civil Estimates of the Central Government. Central Government Health Scheme (CGHS) is a health scheme for serving / retired Central Government employees and their families. The scheme was started in 1954 in Delhi....." [**Annexure P-13**]

15. The submissions in the above paragraph underscore the following points to which this Petitioner would often refer in his Grounds of this Petition.

(i) The Government of India (Allocation of Business) Rules, 1961, has been framed by the President whose power is itself subject to constitutional restraints which, with the force of inevitability, travel down to all the authorities subordinate to him. In effect, the CGHS is bound to pay full respect to the Fundamental Rights of the persons for whose welfare duties have been cast on it the remit of which cannot be narrowed down, or modified to the detriment of the

beneficiaries by any administrative rules or circulars operative without statutory force.

(ii) The Government of India (Allocation of Business) Rules, 1961 provides that the concerned authorities are to provide to the specified beneficiaries "*Concession of medical attendance and treatment for Central Government Servants other than.....".* The *Concession* means, to quote from Black's *Law Dictionary* (7th ed.): "1. A government grant for specific privileges. 2, The voluntary yielding to a demand for the sake of a settlement." *Collins Cobuild English Dictionary* explains *concession* thus:

> "1. A concession is 1.1 something that you agree to do or let someone else do or have, especially in order to end an argument or conflict. e.g. *The Prime Minister had been urged to make a concession by the Irish government....Ending the dispute was worth any concession*. 1.2 special right or privilege that is given to someone, e.g. *Foreign oil companies were granted concessions.* "

(iii) This *concession is not gratis*; it is for the services already rendered. *The New Shorter Oxford Dictionary* has illustrated concession with a very revealing sentence by Hobbes: "The Right whereby the Kings did rule was founded in the very *concession* of the People." This *concession* had been granted to the king as he protected the peace of the realm for the benefit of the People conceding him the power. The government servants have *earned* their rights to get 'comprehensive' medical treatment free of charge not only in view of the duties cast under Government of India (Allocation of Business) Rules, 1961, but also in view of their Fundamental Rights which oblige all authorities to administer this concession fairly and adequately. Besides, this duty is cast on the Government in terms of the CS (MA) Attendance Rules 1944, and is also mandated by the judicially recognized doctrine of Legitimate Expectations.

(iv) The pre-condition for the retirees to avail the benefit of comprehensive medical treatment is that they must be the beneficiaries under the CGHS after complying with the threshold requirements the fulfillment of which is evidenced, in this Petitioner's Case, by his valid CGHS card for life. This Card has been granted after receiving one-time payment. The benefits that travel to the retirees under this Card, accrue to him on account of the services rendered by the retirees over all the years till their retirement, and also the auto-limitations to which all retirees are subject even after retirement.

(v) The President of India has granted powers to CGHS to provide services to the Central Government Servants by discharging the duties which the Government owes to them both under law and equity. On proper analysis, one can clearly see that the Right to obtain services inhere in the Government servants, and their correlative Duties are cast on the government. It follows from this that the persons under the incidence of duties (here the authorities) cannot subject the persons, in whom the correlative Rights inhere, to any vexatious, arbitrary or irrational treatment. This Petitioner would revisit the fascicules of such Rights and Duties later in the GROUNDS to be advanced in this Writ Petition.

(b)

Beneficiaries of the CGHS

16. The Central Govt. Health Scheme in India is comprehensive health care for the benefit of the CGHS Beneficiaries.[18] They include not only certain categories of the Central Government servants and pensioners but also the Members of Parliament, sitting and Ex-Judges of Supreme Court & High Courts, sitting and

[18]http://msotransparent.nic.in/cghsnew/index1.asp?linkid=4&langid=1

Ex-Members of Parliament, and the Freedom Fighters. Section 23C that was inserted in the Supreme Court Judges (Conditions of Service) Amendment Act, 1976, is also material as it confers on the retired Hon'ble Judges the same benefits to which the retired officers of the Central Civil Services, Class I "are entitled under any rules and orders of the Central Government for the time being in force." In this context a perusal of this Hon'ble Court's decision in *Kuldip Singh v. Union of India* [JT 2002 (2) S C 506] is worthwhile [discussed in para19*infra*].

(c)

Central Government Health Scheme [CGHS]/ Central Services (Medical Attendance) Rules, 1944 [(CS(MA) Rules]

17. This Petitioner believes that the entitlement of the retired Government officers to obtain 'comprehensive' medical benefit, at the cost of our Government, is derived from the following sources:

(i) The claim is supported by the Central Government Health Scheme [CGHS]/ Central Services (Medical Attendance) Rules, 1944 [referred hereinafter as the CS(MA) Rules] and also is in accordance with the norms and standard prescribed through Notifications/ Circulars/ Office Memoranda, and a number of judicial decisions. The Central Government Health Scheme [CGHS] and Central Services (Medical Attendance) Rules, 1944 [(CS (MA) Rules substantially intersect without being co-terminus.[19]

[19](a) "The applicant retired as a Chief Engineer (Civil) from Delhi Jal Board (DJB) on 30.09.2005. He is governed by Central Government Health Scheme [CGHS]/ Central Services (Medical Attendance) Rules, 1944 [(CS(MA) Rules] and is entitled for reimbursement of medical expenses in accordance with such Rules and Notifications/Circulars/Office Memorandums issued thereunder in terms of DJB Resolution No.227 dated 07.05.1999." *V.B. Jain v. Chief Executive Officer, Delhi Jal Board O.A.* No. 2954/2012, Reserved on : 22.05.2013 Pronounced on :25.07.2013 [Central Administrative Tribunal, Principal Bench, New Delhi]

(ii) The reach and content of the responsibilities and duties, cast under (i) above, are controlled and determined by the Constitutional obligations and restraints to which the Central Government is itself subject.

(iii) This Petitioner submits that he is not only entitled under each of the above mentioned sources, but also under the **Doctrine of Legitimate Expectations**. the reach of which has been thus stated by our Supreme Court in para 35 of *Confederation of Ex-Servicemen Association & Ors v. UOI & Ors* AIR 2006 SC 2945: to quote---

> "In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised."

(d)

Not only whilst in service, this Petitioner got, even after his retirement in 1998, almost full reimbursement of his Medical Bill for his treatment, got under Emergency, in 2001, at the Escorts Hospital, New Delhi. Apropos this Petitioner's Bill for his treatment at the Escorts Hospital (19/02/2001 to 26/02/2001}, the Government paid Rs 150860 by Cheque No 059584 dated 30.4.2001 against the

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(b) "The petitioner was an employee of the Government of NCT of Delhi as he retired from the post of a superintendent from the District Courts, Delhi on 31.5.1995.....On behalf of the respondent No.1 it is argued that the petitioner is governed by the CCS (Medical Attendance) Rules, 1944 of which Rule 8 states that the decision of the Government as to the Medical Attendance for treatment is final...." *Daljit Singh v. Govt of N.C.T. of Delhi* [2013 (999) DLT 24..

total claim of Rs. 150860 which was deposited in the Petitioner's S B A/C No 1150 at the Punjab National Bank at SaritaVihar on 15.5.2001. [more on this point in his self-drawn 'Medical History': **Annex P.- 10**]. It is submitted that these facts, mentioned in this Petitioner's Medical History, establish the following points:

(i) that the retired Civil Servants are entitled to become CGHS beneficiaries; (ii) that *Ex post facto* approval could be granted through a smooth procedure; (iii) that the CGHS functionaries, or its experts, did not hold an inquest over the decision of the treating doctors at the Escorts Heart Hospital when the medical treatment was under EMERGENCY; (iv) that as against the Bill for Rs, 153010, the CGHS passed it for Rs 150860, disallowing only Rs. 2160 (that could be the expenditure on the Attendant's food, or on impermissible telephone calls); and (v) that as the claim was almost wholly paid in 2001, it mattered little that no reason was communicated, or no opportunity of being heard was granted, as the reimbursement was almost the whole of the amount claimed.

(e)

This Petitioner questions administrative actions on the counts of Legality and Constitutionality alone

18. This Petitioner raises in this Writ Petition mainly *justiciable issues* amenable to Judicial Review. It questions the actions which offend fundamental rights, transgresses the administrative norms judicially settled as the binding norms governing administrative decisions. The Supreme Court has held that "any act of the repository of power, whether legislative or administrative or quasi judicial is open to challenge, if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land, or if it is so arbitrary or unreasonable that no fair minded authority could ever have made it"(*ShriSita Ram Sugar Co. Ltd. v. Union of India*, AIR 1990 SC 1277, 1297). The CGHS cannot ignore the conditionalities to which its powers are subject. This Petitioner adopts wholly the

following exposition of law stated by Shri V R Krishna Iyer in his *The Dialectics and Dynamics of Human Rights* (at pp.364-365):

> "There are situations where the rights of the citizens may be affected or where the very basic principles of constitutional governance are put in jeopardy. In such situations, judicial review will lie for it is the judiciary alone which can interpret the limits on the constitutional exercise of power by other constitutional functionaries within the limits of forbearance demanded by constitutional comity amongst institutions."

V

Legal Perspective already settled by this Hon'ble Court in *Kuldip Singh v. Union of India* [JT 2002 (2) S C 506].

19. The material facts, as stated in the Judgement, are these:

(i) This writ petition was filed by a retired judge of the Hon'ble Supreme Court, and it pertains to the availability of the medical facilities after retirement.

(ii). Section 23C of the Supreme Court Judges (Salaries and Conditions of Services) Act, 1958, refers to the medical facilities which are available to retired judges: to quote---

> "23C. Medical facilities for retired judges:
>
> Every retired judge shall, with effect from the date on which the Supreme Court Judges (Conditions of service) Amendment Act, 1976, receives the assent of the President, be entitled, for himself and his family, to the same facilities as respects medical treatment and on the same conditions as a retired officer of the central civil services class-I and his family, are entitled under any rules and orders of the central government for the time being in force."

(iii) The Petitioner sought a declaration to the effect that the proviso to Rule 5 All India Services (Medical Attendance) Rules, 1954, that provides "that the medical expenses shall be reimbursed on prescription of government doctors/hospitals or (registered medical) practitioners/private hospitals by the registry of the Supreme Court of India", should be made applicable to the retired judges of the Supreme Court, and the provisions of Section 23C of the Supreme

Court Judges (Salaries and Conditions of Services) Act, 1958 should be struck down.

(iv) The Writ Petition was disposed of in favour of the Petitioner on the strength of the statement of the Attorney General, made before the Hon'ble Court that, to quote from the Judgement,

> " according to the provisions of the central government health scheme rules... *there is a power of relaxation* contained in the said rule which would enable a CGHS card-holder to ask for relaxation on his getting treatment from a private hospital or a doctor. *It is, therefore, not as if it is compulsory for the CGHS card-holder to invariably go only to a government hospital*." (italics supplied)

VI

FACTS

This Petitioner's treatment in the Emergency of the Escorts Heart Institute, New Delhi, AND at the Jaslok Hospital, Mumbai

20. That this Petitioner had to undergo medical procedure and treatment at two hospitals in quick succession under Emergency conditions. These hospitals were (i) the Fortis Escorts Heart Institute & Research Centre, New Delhi. and (ii) the Jaslok Hospital, Mumbai. In this Part of this Writ Petition, this Petitioner states the facts of his case which would be developed later on Part VII that states the GROUNDS. Section 'A' deals with the treatment at the Escorts, whereas Section 'B' deals with his treatment at the Jaslok.

(A)

AT THE ESCORTS HEART INSTITUTE, NEW DELHI

(i) The admission, procedure and claim

21. That this Petitioner was admitted to the Escorts Heart Institute, New Delhi, in emergency condition on 11.11.2013 and underwent CRT-D procedure in the evening of 12.11.2013. His condition was serious. He was taken to the

Emergency of the Escorts Heart Institute by his daughter because it was the nearest medical centre, and, coincidentally, the doctors there knew this Petitioner's ailments and conditions of health. Dr. Ashok Seth, the chief cardiologist, had himself performed, on CGHS reference, an angioplasty on him in 1991, and thereafter had examined him over all the years. These facts are set forth in this Petitioner's self-drawn 'Medical History' attached as **Annexure P-10** of this W.P.

22. That this Petitioner was immediately admitted to the Emergency of the Hospital. He was investigated in accordance with the instructions of Dr. Ashok Seth and Dr. Aparna Jaswal. They decided that the Petitioner was a fit candidate for the CRT-D implant. And, hence, that device was implanted on him on 14.11.2013. Before that procedure, his Angiography was also done by Dr. Seth who himself, who supervised the implant if the CRT-D on 14.11.2013. The said surgical procedure involved the implant of COMBO DEVICE PROCEDURE: CRT-D (Protecta XT CRT-D) D354TRM with an advice to have a CARELINK FOR REMOTE MONITORING of the functioning of the device installed to warn against certain cardiac ailments, including heart failure.

23. That the cost of the treatment and procedure at the Hospital came to Rs. 1156293 from which was deducted a sum of Rs. 319950 as this sum was paid on behalf of this Petitioner by M/S Focus working as the TPA of the National Insurance Company Limited with which the Petitioner was insured under his Mediclaim Policy No. 354301/48/12/8500004297. This was done in accordance with the operative Government Instructions on "Payment / Reimbursement of medical expenses to the Central Government pensioners from two sources viz., from the Insurance Companies and the CGHS" (O.M. No. S. 11011/4/2003-CGHS (P), dated the 19th February, 2009) [**Annex** *P- 14* (d) at p. 276 of the W.P. **].** Hence, the net Bill came to Rs. 836343 which the Petitioner paid at the time of

discharge by Cheque No. 313281 dated Nov. 14, 2013 drawn on the Corporation Bank, Sarita Vihar, Mathura Road, and New Delhii-76. Further**,** as advised in the Discharge Summary, the device of CARELINK FOR REMOTE MONOTERING was installed at Petitioner's place by the medical equipments supplier for Rs 150000/ which sum the Petitioner paid by Cheque No. 313282 dated Nov. 18, 2013 drawn on the Corporation Bank, Sarita Vihar, Mathura Road, and New Delhii-76. Its original Bill and Receipt were submitted to the CGHS on January 3, 2014 (addressed to the Additional Director, CGHS, Central Zone, and Chitragupta Road, New Delhi 55). Thus the total net claim payable by the CGHS to this Petitioner came to Rs. 986343 (Rupees Nine Lakhs Eighty-six thousand and Forty-three only).

Exposition

The components of the Escorts Hospital's Bill, and the net amount that this Petitioner had to pay before his discharge from the Escorts Hospital, are set out in the Bill raised by the said Hospital, which can be summarized as under:

(a) Cost of the Device Rs 1075100

(b) Device implant procedure & other charges Rs 81193

Total of (a) and (b) Rs 1156293

Less paid by the Mediclaim Rs. 319950

Net payable by the Patient Rs 836343

To this amount of Rs 836343 is added the Price of the Carelink, purchased on the doctor's instruction in the Discharge Summary, at Rs. 150000

Hence the NET CLAIM made at **Rs. 986343**

(ii) Specific Request to consider the Petitioner's claim by relaxing the Rules

24. That this Petitioner, in his forwarding letter, under which the said Bill had been submitted on January 3, 2014, had requested the CGHS to allow his claim:

> "for reimbursement of medical expenses incurred on account of the treatment in medical emergency at a private hospital; and/or (ii) to the Government's power to relax the rigour of the CS (MA) Rules, 1944."

(iii) The Diagnosis and medical decision in the Emergency of the Escorts Hospital

25. That the facts, hereinafter mentioned as pertaining to the procedure and treatment at the Escorts are drawn, are drawn from, as mentioned in para 6 *supra*, of this W.P. from (a) the Discharge Summary, and this Petitioner's letter forwarding his claim to the CGHS [**Annex. P-2];** (b) the Petitioner's Representation addressed to the Secretary, Ministry of Health & Family Welfare **[Annex. P--6];** (c) the Petitioner's Memorial addressed to the Director General of the CGHS [vide **Annexure P- 8**], and his 'Medical History' which the cardiologists, at the Escorts, knew over all the years after 1991 when he had been referred by the CGHS to the Escorts Hospital for cardiac angiography and angioplasty [vide **Annexure P-10**]. For the sake of brevity only the material points and facts relevant to the present claim have been drawn up in the following paragraphs.

26. That the Discharge Summary, dated 14/11/2013, issued by the Escorts Hospital mentions History of Patient Illness' in these words:

> "The patient is hypertensive, non-diabetic with positive family history of ischaemic heart disease. He is a known case of coronary artery disease, old ASMI (1989), PTCA with stent to RCA &LCx (1989), PTCA with stent to LCx (1992), PTCA with stent to RCA (2001). He was brought to emergency with complaints of breathlessness at rest, syncope (1 episode) & ghabrahat. He was admitted to FEHI for further management."

It mentions that this Petitioner suffered from the 'complaints of breathlessness at rest, syncope (1 episode) & ghabrahat.

Exposition

'Syncope' is explained at http://www.medicinenet.com/script/main/art.asp?articlekey=5612 to mean: **"Syncope:** Partial or complete loss of consciousness with interruption of awareness of oneself '

and one's surroundings.", and its effect is disorientation of mind with a measure of non-responsiveness to stimuli, The Essentiality Certificate issued by the Hospital runs thus:

> " This is to certify that Mr. S. K. Jha (IPD) No - 00026353) is a patient of mine and was brought to emergency with complaints of breathlessness on 11.11.2013 and was underwent angiography on 12.11.2013 which revealed diffused disease in LAD 50% - 60% and then CRTD was implanted."

27. That when the Standing Technical Committee, in its meeting held on 10.07.2014, rejected this Petitioner/s claim, it, in effect, rejected the decision of the eminent doctors of the Escorts Hospital (the team headed by Dr. Ashok Seth[20]), to implant CRT-D. Neither this Petitioner was required to put forth his case, nor the eminent doctors were heard in support of their decision to implant CRT-D. In response to this arbitrary act of the Technical Sanding Committee of the CGHS, this Petitioner requested Dr. Ashok Seth to issue a clarificatory Certificate in support of what they did when this Petitioner had been taken to the Emergency of the Escorts Hospital. This Petitioner quoted that Certificate in his Representation addressed to the Secretary, Ministry of Health and Family Welfare **[Annexure P- 6]** explaining his case, and how the CGHS decision not to allow his claim was unfair, unjust, and arbitrary. This Certificate, dated 22nd July 2014, by Dr. Ashok Seth runs as under:

> "This is to certify that Mr. S.K. Jha, FEHI No. 26353 is a known case of coronary artery disease with severe LV dysfunction. His LVEF is 25-30%. He has been in NYHA Class II-III. His ECG has revealed progressive intra ventricular

[20] Padam Bhushan Dr. Ashok Seth, FRCP, FACC, FESC, FSCAI, FCSI, D. Sc. (Honoris Causa), D.Litt. (Honoris Causa). Dr. Ashok Seth is currently Chairman of Fortis Escorts Heart Institute, New Delhi and Head, Cardiology Council of Fortis Group of Hospitals.

> dyssynchrony and atrio ventricular dyssynchrony. His ECG in Feb 2012 revealed QRSD>110 m sec and PR interval of 280 m sec. The ECG of September 2013 revealed widened QRS duration and a PR>360 m sec with increased atrio-ventricular dyssynchrony. In view of the above, CAD, severe LV dysfunction, documented QRSD>120 m sec and progressively worsening first degree heart block, he was advised to undergo CRT-D implantation which was further advised by three different Electrophysiologists from different hospitals".

The last line refers to the views of the 3 distinguished doctors advising the implant of the CRTD on the Petitioner: they were (i) Padma Shree Dr. Balbir Singh[21], Chairman of Electrophysiologist and Pacing at Medanta Heart Institute, Gurgaon; (ii) Dr. Aparna Jaswal[22] , a distinguished doctor at the Escorts Heart Hospital; and (iii) Dr. T. S. Kler, Executive Director of Department of Cardiology, Director of Cardiac Arrhythmia Services Fortis Escorts Heart Institute & Research Centre.

28. As the Standing Technical Committee had rejected, on 10.07.2014 this Petitioner's claim on the ground that QRSD reading was 114 MS on 11.11.2013, this Petitioner underscored the fallacy of the that decision by pointing out that the said Committee erred by taking into cognizance only one reading of QRS, dated 11.11.2013, whereas a number of QRS readings had been done prior to that date , and, also subsequently. This Petitioner submitted these facts in his Memorial addressed to the Additional Secretary and Director General CGHS, Ministry of

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[21]PadmashriDr. Balbir Singh is a prominent Cardiologist; renowned both nationally and internationally. Is a specialist in coronary angioplasty, electrophysiology, radiofrequency ablation for arrhythmias, pacemakers, devices to treat to heart failure. Is on the advisory panel of several international societies.

[22] Dr Aparna Jaswal is an acknowledged expert in the field of cardiac pacing and electrophysiology including catheter RF ablation of complex arrhythmias

Health & Family Welfare **[Annexure P-8].** The relevant portion of the Representation is quoted hereunder:

"3. The Standing Technical Committee in his Meeting held on 10.07.2014 (F/C) rejected the claim of CRT-D on the ground that QRSD reading was 114 MS on 11.11.2013 and the patient did not require CRT-D as significantly prolonged duration was not indicated. Subsequently, a review application was filed to Secretary Health on 28/07/2014 who directed Standing Technical Committee again to look into the case. The review application strongly contested the findings of the Standing Technical Committee on the ground that the committee took cognizance of only one reading of QRS dated 11. 11.2013, whereas a number of QRS reading done previously and subsequently after implantation were completely ignored the details of which are given in [thus], the reading of QRS on various dates are given below:-

Date	QRS Reading
14.09.2013	122
17.09.2013	123
11.11.2013	114
12.11.2013	218
13.11.2013	164
14.11.2013	123

These readings prima facie establish that readings of QRSD during September-November-13 were above 120, which is one of the norms for implant. Therefore, relying on just one reading which was also close to the norm, goes against medical norms and common sense. Besides, there were various other factors which supplemented the recommendations of leading doctors to arrive at the decision to implant CRTD."

In the said Memorial addressed to the DG(CGHS), this Petitioner had also submitted on two more points:

(a) that this Petitioner had been taken to the hospital under 'medical emergency' forced by circumstances beyond his control [see para 4 at p. 218 of this W.P.], and

(b) that the adverse decision on this Petitioner's claim had been taken by the Technical Standing Committee by ignoring the norms of Natural Justice [see page219 of this W.P.].

29. That these rounds of the rejection of this Petitioner's claim could have been avoided, and this Petitioner could have been spared of the resultant drudgery and distress:

(a) if the CGHS would have made an 'effective initial scrutiny of claims'[23] to call upon this Petitioner to furnish more information pertaining to this Petitioner's QRS at the threshold stage itself; or

(b) if an opportunity of being heard would have been granted to this Petitioner to present his case right before deciding against him. .

30. That the doctors had taken a holistic view of the Patient under their care by taking into accounts numerous factors which included not only the above profile of the QRSD, but also the sharply declining Ejection Factor of the heart, and his earlier medical records. Factual details that led to the decision to implant CRTD on this Petitioner have been set forth in this Petitioner's 'Medical History', **Annexure P-10** , esp. its Part 'B; which deals with "Decision to implant CRTD", "Decline of the E. F, and the interstitial suggestions", " What the ECG spoke", and "The decision that led to implant the CRT-D".

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[23]The CAG comments: "CGHS has provided a check list of documents to be submitted by the pensioner along with the medical claim. In many cases, claims submitted by pensioners were not checked by the CGHS officials responsible for receiving them to ascertain whether all relevant documents were attached with the claims" [see the page from its *Report* at p. 240 of this W.P.].

31. That this Petitioner has submitted in paragraph 26 *supra* that, in the Discharge Summary, dated 14/11/2013, itself the doctors, at the Escorts Heart Hospital, had mentioned that this Petitioner was:

> " **brought** to emergency with complaints of breathlessness at rest, syncope (1 episode) & ghabrahat. He was admitted to FEHI for further management." (emphasis supplied)

The "Syncope" had struck the Petitioner twice: (i) when it necessitated the treatment in the Emergency of the Escorts Heart Hospital in November 2013, and (ii) also when it struck him again in April. 2014 when an Ambulance had carried him to the Jaslok Hospital, Mumbai, after the onset of, to quote from the Discharge Summary issued by the Jaslok Hospital at Mumbai, the conditions of "post stroke seizure/vasovagal syncope with postural hypotension with hyponatremia." "Syncope" means " Partial or complete loss of consciousness".

32. That the implant of the CRT-D device was done after full deliberations at the Escorts Heart Hospital where, as the Patient's self-written 'Medical History' would show, this Patient's conditions of health were known to the doctors.

33. That the CRT-D is a well-known cardiac resynchronization device used in cardiac resynchronization therapy (CRT) that resynchronizes the contractions of the heart's ventricles by sending tiny electrical impulses to the heart muscle, which can help the heart pump blood throughout the body more efficiently. It does the function of defibrillators also. The CRT-D 'quickly terminates an abnormally fast, life-threatening heart rhythm. One may need this implant if one suffers from heart failure, or if one "previously had or (is) at risk for having ventricular tachycardia (VT) or ventricular fibrillation (VF)" making heart to beat too fast, or if one has already a damaged heart on account of heart attack in the past. The

holistic medical decision was based on the conditions of this Petitioner's health as revealed by the volumes of well preserved documents which the doctors, at the Escorts Hospital, had perused for their information.

34. This Petitioner believes that the doctors, who took medical decision on November 12, 2013 to implant CRT-D, whilst this Petitioner was admitted in the Emergency of the Escorts Heart Hospital, acted in accordance with the grammar of medical decision-making, quoted in the **Ground 19** below. This Petitioner respectfully submits that he could not have evaluated the medical decision of his doctors when he was himself a mere clod of flesh and bone. It is his Destiny that kept him alive for more time to hold this inquest on the acts of the CGHS the lurid story of whose unkindness to the retirees has been told so graphically by the CAG in the Audit Report mentioned in para12 of this W.P[24]**.[Annex P- 12]**.

B

This Petitioner's treatment at JASLOK Hospital, Mumbai

35. This Petitioner left for Mumbai by the Air India (AI) - 863 Flight on Wednesday 30 April 2014 to see his second daughter residing in the Central Government Colony at Napean Sea Road, Mumbai. On the very evening of the day this Petitioner reached there, at about 8 p.m., he suffered a massive brain stroke that made him senseless, and he fell down with his right side paralysed. His wife, his second daughter, and his son-in-law rushed to this Petitioner's room, to find him senseless, and lying flat on the floor. As this Petitioner's condition was serious, and was fast deteriorating, they called an ambulance[25] that carried him post-haste to the nearest Jaslok Hospital at Dr G. Deshmukh Marg, Mumbai, at a distance of about 5 minutes car-drive from my daughter's residence. At the

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[24]Report of the CAG on the Performance Audit of the Government of India No. 3 of 2010-11 : ['Reimbursement of Medical Claims to the Pensioners under CGHS'.[**Annex P- 12**].

[25]vide the Bill No ALS-22-1674 dated 1/5/2014 issued by Ambulance Access For All.

hospital, the Petitioner received treatment from May 1, 2014 to May 17 the details whereof are set forth in the 2 Discharge Summaries issued by the Hospital.

[Annexures P- 4 &5]

36. When this Petitioner was admitted at the Hospital, his son-in-law Shri Prawin Kumar [working in Mumbai as the Commissioner of Income-tax (Appeals), wrote, a letter dated May 2, 2014, to the Addl. Director, CGHS at Mumbai[26] (with a copy to the Addl. Director, CGHS, New Delhi[27]: to quote from the letter---

> '"As required under Central Government Health Scheme and the attendant rules, this is to hereby intimate you that Shiri Shiva Kant Jha (retired CCIT, New Delhi) was on a personal visit to Mumbai on 30.04.2014 and in the intervening night between 30th April, 2014 and 1st May, 2014, he had a fall due to sudden cardiac cum cerebral condition which necessitated his urgent hospitalization in Jaslok Hospital, Peddar Road, Mumbai vide IP No. 423364 dated 01.05.2014. He was carried by his daughter and the undersigned in an ambulance called from 1298 ambulance service and was immediately scanned for any brain infarction."

37. This Petitioner underwent treatment at the Jaslok Hospital form May 1 to May 17. The treatment at hospital was for two terms [one form 1/5/2014 to 7/5/2014 and the second was 7/5/2014 to 17/5/2014]. The first term was on emergency as already mentioned. The second term began, again on emergency, within two hours of the end of the first term. The certificates issued by the treating doctor, Padma Shri Dr A. B. Mehta, the Director of Cardiology, runs as under:

> "This is certify that Mr. S. K. Jha is a known case of Hypertension/ IHD with severe LV dysfunction / post CRT-D implanted in 2013, recent history of Atrial Fibrillation, was admitted on 1/5/14 with history of fall and acute onset right side Hemiparesis and discharged on 7/5/14 morning. Patient was re-admitted on 7/5/14 afternoon in emergency basis with post stroke seizure/vasovagal syncope with postural hypotension with

[26] Addl. Director (CGHS), 101, Maharishi Karve Road, Mumbai-400020.

[27] C/o. Prawin Kumar, B-5, Hyderabad Estate, Nepean Sea Road, Mumbai-400006.

hyponatremia. Patient was treated accordingly and discharged on 17/5/2014" [emphasis supplied]

38. That this Petitioner was discharged on 17/5/2014 but was required to undergo Physiotherapy treatment for a few more months to get over the morbid effect of paralysis. He underwent Physiotherapy in Mumbai, for some time. He could come to New Delhi only on 3/7/2014. He is getting even now his Physiotherapy treatment at the Pushpanjali Hospital, Ghaziabad, on CGHS reference. .

39. This Petitioner submitted two Bills for the reimbursement of the expenditure on his treatment at the Jaslok Hospital, Mumbai thatthis Petitionerhad already paid before getting his discharge from the hospital. The Bills together were for Rs. 398097. They were submitted to the CGHS on July 19, 2014. Their relevant details are stated thus:

Bill date	**Emergency treatment at**	**Period of treatment**	**Amount of the medical reimbursement claimed**
19 July 2014	Jaslok Hospital & Research Centre, Mumbai	1 May 2014 to 7 May 2014	Rs. 164487
19 July 2014	Jaslok Hospital & Research Centre, Mumbai	7 May 2014 to 17 May 2014	Rs. 233610

Even after a lapse of much time, this Petitioner got no information from the CGHS. He was worried. He discovered, on getting his Bank Pass-book updated (A/C No. 0600/CLSB/01/010024 with the Corporation Bank, SaritaVihar, New Delhi-76), that two deposits on 25 August 2014 were made in his bank account on account of payments made by the CGHS through NEFT: these were as under:

Date	Entry in the Passbook	Credit

25/08/2014	NEFT from MHFW PAYMENT A C Ref : BARBC14237300177 Dt:25 SI:000052 Orgn : BARBOSERDEL	53056
25/08/2014	NEFT from MHFW PAYMENT A C Ref : BARBC14237300178 Dt:25 SI:000053 Orgn : BARBOSERDEL	41829

As this Petitioner had given this Bank Account No. in his Claim Papers, and as he had been told that as and when claims were passed for payment, the sums would be directly deposited into this Petitioner's said bank account, this Petitioner inferred that the aforementioned credits related to his said two medical claims for reimbursement of the medical expenditure incurred by him at the Jaslok Hospital, Mumbai . But to this Petitioner it was not clear whether they pertained to one bill, or both the bills, or to both in some proportion.

40. This Petitioner wrote to the Additional Director, CGHS seeking clarifications but they did not reply to this Petitioner's queries. This Petitioner had not received any query on any point from the CGHS, nor did the CGHS authorities hear him on any point apropos the matters pertaining this Petitioner's claims. This Petitioner, per his letter dated 20/1/2015, wrote to the Additional Director, CGHS a letter, received in his office on 21/1/2015, communicating to him the following:

" As I have the right to know how my medical bills were treated, processed, and the amounts payable have been worked out, I request you to let me have comprehensive and documented information on the following points:

1. The orders (along with reasons) passed on my aforesaid two bills. at their stages of scrutiny and processing, at your end, after the submission of my said bills.

2. Details to show how the individual items of claims in the aforementioned two bills have been treated individually to see how and why and where they differ so widely from the figures claimed in the bills. You are requested to furnish appropriate details, with reasons, which led you to dispose of the bills

aggregating to Rs. 398097/- by paying only Rs. 94885 (being Rs. 53056 + 41829).

3. When you answer the point 2 above, please mention your basis/ground/reason for so doing so that I may feel assured that I have been fairly treated, and no injustice has been done to me and the rule of low has not subverted.

4. Please let me know the chronology of events pertaining to the said two bills. with reasonable details so that I am convinced that justice has been done to me.

I am aggrieved by the way my medical claims have been processed. hence I request you to supply me information on the aforesaid points at the earliest. If I do not get information on the aforementioned points in within 15 days, of the receipt of this letter by you, I would be constrained to feel that you have decided not to respond to my letter, and you want me to explore whatever other remedied are available to me."

[Annexure P-7]

41. That on March 4, 2015, this Petitioner again addressed a letter to the Director General, CGHS, New Delhi, with a copy to the Addl. Director, CGHS, Central Zone, N.D. reiterating this Petitioner's aforementioned prayer. He enclosed with this letter a copy of his earlier letter. The last two paragraphs of that letter are quoted ran thus:

" In this connection, I submit that the right approach of the authorities examining medical reimbursement claim, has been set forth by various courts from time to time.[28] But I trust the sense of justice of our own Government that I served for more than 3 decades to earn this CGHS benefit in the evening of my life.

In case I am not lucky to get your indulgence for the redressal of my grievance, please direct the appropriate authority to reply to my aforementioned letter so that I may decide how to respond to the problem I am driven to face in the December of my life after more than 3 decades of service. An early response is solicited."

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[28]Milap Singh's Case 2005 (2) SLR 75 Allowing the claim fully, the Court observed:
"This is one more case of a retired Government servant who has been refused reimbursement of the full medical expenses incurred by him despite numerous judgments on this issue.."

But the CGHS has not responded to the request. This sort of indifference is shocking for a retiree in his evening of his life (he is in his Seventies). This sort of indifference shows heartlessness on the part of the authorities exercising power coupled with public duty.

VII

This Petitioner was admitted and treated under Genuine Emergency even as per the existing CGHS Circular

42. For that the impugned orders made by the CGHS and the Ministry of Health & F.W. are not in conformity even with the Governments own decisions circulated under:

(a) No. 4-18/2005- C&P [Vol. -Pt. (I)] of the Ministry of Health and Family Welfare CGHS (P) Division, dated 20th Feb., 2009; and

(b) No. H. 11022/01/2014-MS of Ministry of Health and Family Welfare dated 15th July, 2014

[The aforesaid Circulars are marked **Annex P-14** to this W.P.]

The first pertains to the benefits granted to the CGHS beneficiaries, and the second is to grant the same benefits to the CS (MA) Rules beneficiaries illustrating that the content of the (a) is reiterated in (b) showing that the Government's position has remained the same over the period this Petitioner had his treatment at the hospitals. This Petitioner is, it is submitted, is entitled get the benefits in terms of the aforementioned Instructions/ Circulars.

Exposition

The aforementioned Instructions/ Circulars purport to issue certain guidelines to be followed in considering requests for relaxation of procedures in considering requests for medical reimbursement. They contemplate “relaxation of rules” for reimbursement of full expenditure. They prescribed a "check list for consideration of requests for reimbursement in excess of the approved rates". They include various situations some of which, relevant in this Petitioner's case, are these:--

a. The treatment was obtained in a private hospital not empanelled hospital 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 non-empanelled hospital under emergency and was admitted for prolonged period for treatment of Head injury, Coma, Septicemia, Multi-organ failure, etc.;

C Any other special circumstances.

VIII

Core Points under dispute before this Hon'ble Court

That this Writ Petition presents the following **core points** for consideration before this Hon'ble Court for resolving the ISSUES presented in this Writ Petition. .

43. The core points in this Writ Petition can be stated thus:

(i) The amounts paid and payable to this Petitioner are stated as follows:

Bills submitted on (i)	**Amounts of Paid (jj)**	**Amounts outstanding (jjj)**
(a) Bill for treatment at the Escorts Heart Hospital, New Delhi, submitted on January 01, 2014 for Rs. 986343	Rs. 490000 paid on 31 March 2015	Rs. 496343
(b) Two Bills for treatment at Jaslok Hospital, Mumbai, submitted on July 19, 2014 for Rs. 398097	Rs, 94885 paid on 25 August 2014	Rs. 303212
	Amount wrongfully denied	Rs. 799555.

(a). Apropos this Petitioner's Bill for Reimbursement of expenditure on medical treatment at the Escorts Heart Hospital, the CGHS has paid only Rs 490000 on 31 March 2015 thereby denying the rightful claim of Rs. 496343; and

(b) Apropos this Petitioner's Bills for Reimbursement of expenditure on medical treatment at the Jaslok Hospital. Mumbai., the CGHS has paid Rs 94885 on 25 August 2014 thereby denying the rightful claim of Rs. 303212.

(c) Apropos the Bills at (a) and (b), the claim yet not paid comes to Rs 799555 (Seven lakhs ninety-nine thousand, five hundred and fifty five).

(ii) The amounts paid on the above Bills establish the following points with the force of logical inevitability:

(1) The CGHS is satisfied that the treatments at the Escorts Heart Hospital, New Delhi, and at the Jaslok Hospital were given under *genuine emergency* (otherwise even the part payments could not have been made);

(2) The CGHS, by paying Rs490000/- towards the reimbursement of the Petitioner's claim of Rs. 986343, has admitted the propriety of the implant of the CRT-D as done in the Emergency of the Escorts Hospital; [The claim for Rs 986343, pertaining to this Petitioner's treatment at the Escorts Heart Hospital, was worked out by the Petitioner on facts stated in para 23 of this Writ Petition].

(3) The partial payments on this Petitioner's Bills for reimbursement of expenditure establish that the Government has already exercised its discretion to relax the rigours of the Rules, and has considered the Petitioner's treatment under emergency GENUINE. This Petitioner is amazed to find that the full effect was not given to this decision by allowing full claims made by this Petitioner. Only partial relaxation of the Rules is evidently arbitrary and irrational, more so when neither this Petitioner was heard, nor any order was communicated to him stating reasons for such decision.

IX

ISSUES PRESENTED

44. That the Grounds taken in this Writ Petition relate to the ISSUES broadly summarised as under:

Number	**ISSUES apropos which Grounds are**	

	advanced	
A	Apropos ISSUE 1: Emergency & concomitant issues	Grounds 1 to 9
B	*Ex post facto* sanction and the Relaxation of Rules: Power when coupled with duty	Grounds 10 to 12
C	The Ambit of Relaxation of procedure under Emergency: Government's existing Instructions	Grounds 13 to 16
D	Apropos the implant of CRT-D, and the reimbursement of its cost	Grounds 17-28
E	Apropos the Carelink monitoring system: its justification	Grounds 29
F	Treatment at the Jaslok Hospital under the stress of stroke and paralysis	Grounds 30-32
G	. Breach of the Rules of Natural Justice in arbitrarily disposing of all the claims for reimbursement of expenditure already incurred	Grounds 33-38
H	Apropos the rating of the CGHS Rates, & an attempt to unstring the 'CGHS Packet Rates'	Grounds 39-45
I	Apropos this Petitioner's entitlement to higher standard of treatment	Grounds 46-47
J	Apropos the Petitioner's entitlement to 'Comprehensive treatment' and 'full reimbursement'	Grounds 48-49
K	Apropos the Constitutional Grounds	Grounds 50-53
L	The Doctrine of legitimate expectation	Grounds 54
M	The denial of claims is arbitrary, unreasonable, and offends Article 14 of the Constitution	Ground 55
N	Two decisions of the Hon'ble Supreme Court	Ground 56
O	The impropriety of the impugned decisions become shocking when read in the light of the CAG Report	Grounds 57-58

X

45.GROUNDS

(A). Apropos ISSUE 1: Emergency

Ground 1. For that the CGHS erred in not appreciating fully that this Petitioner had been taken, in November 2013, to the Escorts Hospital at New Delhi, and was again shifted, in May 2014, to the Jaslok Hospital, Mumbai, when he was facing critical medical emergency. Medical emergency is either *genuine* or *fake.* As the CGHS has now accepted that this Petitioner had undergone his treatment under genuine Medical Emergency, then the CGHS was duty bound to reimburse fully the expenditure already incurred on his treatment at the two distinguished hospitals.

Exposition

This Petitioner had been admitted. in November 2013, at the Emergency of the Escorts Hospital at New Delhi for the treatment of his cardiac problems, and again he was admitted, in April-May 2014 at the Emergency of the Jaslok Hospital, Mumbai, when he was struck with cerebral stroke and paralysis. Facts are set forth in Part VI of this W.P., and also in this Petitioner's 'Medical History' attached as **Annexure P-10**'. The Doctors had perused the comprehensively documented this Petitioner's 'Shadow Medical file' that ran into 313 pages.

On being admitted to the Emergency of the Escorts Hospital, the doctors took holistic account of the Petitioner's ailments, and summarized his Discharge Summary, dated 14/11/2013: to quote --

> "The patient is hypertensive, non-diabetic with positive family history of ischaemic heart disease. He is a known case of coronary artery disease, old ASMI (1989), PTCA with stent to RCA &LCx (1989), PTCA with stent to LCx (1992), PTCA with stent to RCA (2001). He was **brought** to emergency with complaints of breathlessness at rest, syncope (1 episode) & ghabrahat. He was admitted to FEHI for further management."

General medical assessment that led the doctors to implant CRT-D on the Petitioner was precisely stated by Dr. Ashok Seth which this Petitioner had quoted in his Representation to the Secretary, Ministry of Health & F.W; to quote ---:

> "This is to certify that Mr. S.K. Jha, FEHI No. 26353 is a known case of coronary artery disease with severe LV dysfunction. His LVEF is 25-30%. He has been in NYHA Class II-III. His ECG has revealed progressive intra ventricular dyssynchrony and atrioventricular dyssynchrony. His ECG in Feb 2012 revealed QRSD>110 m sec and PR interval of 280 m sec. The ECG of September 2013 revealed widened QRS duration and a PR>360 m sec with increased atrio ventricular dyssynchrony. In view of the above, CAD, severe LV dysfunction, documented QRSD>120 m sec and progressively worsening first degree heart block, he was advised to undergo CRT-D implantation which was further advised by three different Electrophysiologists from different hospitals

This Petitioner was again taken to the Jaslok Hospital under medical emergency, and underwent treatment there from May 1 to May 17. What led him to be shifted to the Hospital in an Ambulance is stated in Part VI (paras 35 -41), and again in his 'Medical History' at **Annexure P-10 .** The certificate issued by Padmashri Dr A. B. Mehta, the Director of Cardiology at the Jaslok Hospital, explained the his patient's status and conditions thus:

> "This is certify that Mr. S. K. Jha is a known case of Hypertension/ IHD with severe LV dysfunction / post CRT-D implanted in 2013, recent history of Atrial Fibrillation, was admitted on 1/5/14 with history of fall and acute onset right side *Hemiparesis* and discharged on 7/5/14 morning. Patient was re-admitted on 7/5/14 afternoon in emergency basis with post stroke seizure/vasovagal *syncope* with postural hypotension with hyponatremia. Patient was treated accordingly and discharged on 17/5/2014."

Ground 2. For that nowhere the CGHS has held that the conditions, under which this Petitioner got treatment at those two hospitals, were NOT GENUINE. The Proviso to Rule 3(2) of the CS (MA) Rules 1944 contemplates the rejection of claim if the authorities are "not satisfied with its genuineness". 'Genuineness' means 'not spurious, or counterfeit'. Both the facts, (i) that the admission to these two Hospitals was under medical emergency, and (ii) that that medical emergency

was genuine, are now admitted by the CGHS itself. Both the inferences are proved by the inevitable logic of probability as the CGHS has made partial payments towards the Medical Bills pertaining to the Petitioner's medical expenditure already incurred.

Ground 3. For that the CGHS erred in not appreciating, and giving full effect to the operative norms governing treatment provided under medical emergency. The provisions authorizing treatment even at the private non-empannelled hospital exist both under the CS (MA) Rules 1944, and under the CGHS/ Government instructions.[29] Rule 6 of the CS (MA) Rules 1944 provides it. The effect of the existing Government decisions has been thus stated in Appendix VIII (Reimbursement in Relaxation of Rules in Emergent Cases') to Swamy's *Compilation of Medical Attendance Rules* at page 297:

> "(1) *Circumstances to justify treatment in private medical institutions.* In emergent cases involving accidents, serious nature of disease etc., the person/ persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognized hospital is available nearer than the private hospital. The Controlling Authority / Department will decide on merits the case whether it was a case of real emergency necessitating admission in a private institution. If the Controlling Authorities/ Departments have any doubt, they may make a reference to the Director-General of Health Services for opinion."
>
> "(2). A point has been raised whether a patient can be transferred from the private hospital to a Government/ recognised hospital after the emergency is over for obtaining further treatment. *It is clarified that the patient while he is in a private hospital should act according to the advice of the hospital authorities*. He should

[29] No. 4-18;2005- C&P [Vol. -Pt. (I)] of the Ministry of Health and Family Welfare CGHS (P) Division, dated 20th Feb., 2009, reiterated by a Circular No. H. 11022/01/2014-MS of Ministry of Health and Family Welfare dated 15th July, 2014. providing guidelines to be followed in considering requests for relaxation of procedures in *considering requests for medical reimbursement over and above the approved rates.*

get his discharge from the hospital only when the hospital authorities discharge him." (italics supplied)

Ground 4. For thatthe Government erred in not appreciating how reasonable men behave under the **duress of circumstances** beyond their control. How one is expected to respond in such situations, has been well portrayed by the Hon'ble Delhi High Court in *UoI vsJ.P.Singh*[30]: to quote---

"14. In our opinion the answer, commonsense tells us, is that in case of emergency, there being no time to comply with the procedures of the policy, it would be open to the beneficiary to avail medical facility at any notified hospital. *It is settled law that the doctrine of necessity comes into play where there is no express legal rule on the subject and there is a compelling urgency*. The doctrine of necessity requires a commensurate response to a situation so that normalcy can be restored....*In the context of a heart problem, the doctrine of necessity would require the patient to be rushed to the nearest hospital without any loss of time so that the patient can be rescued*. " [paras 14 &15]

To the same effect is the observation by the Delhi High Court in *Narendra Pal Singh vs. Union of India & O*rs [1999 (79) DLT 358 para 3]:

"3. The petitioner has admittedly suffered the ailment and required urgent and immediate treatment in an emergency. The plea of the Government that he has not taken prior sanction for treatment in non-C.G.H.S. Hospital is clearly erroneous and cannot be entertained. 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. It is always open for the Government to grant *ex-post facto* sanction subject to verification of the claim which has not been denied in the present case. Reference may be made to the judgment of the Supreme Court reported as *Surjit Singh Vs. State of Punjab and others*....."-

[30]2010 LIC 3383

Exposition

'Duress of Circumstances is an exonerating factor even in Criminal Jurisprudence. This Petitioner quotes hereunder a few lines from J.C. Smith's *Justification and Excuse in the Criminal Law* stated[31]in the context of the *Willer's Case* (1986) 83 Cr. App.R. 222 C.A.

Ground 5. For that the CGHS, and the authorities in the Ministry of Health & Family Welfare erred in not appreciating that in case of genuine emergency, "the Doctrine of Necessity comes into play where there is no express legal rule on the subject and there is a compelling urgency", and there are understandable reasons for the non-existence of pre-fabricated rules of procedure.[32]It was well said by Arthur C. Clarke: "Training was one thing, reality another, and no one could be sure that the ancient human instincts of self-preservation would not take over in an emergency." In *Kishan Chand's Case*[2010 (169) DLT 32] the Hon'ble Delhi High Court has quoted with approval *Narendra Pal Singh v. Union of India*(1999) DLT358, wherein the Court had held that a Government was obliged to grant *ex-post facto* sanction in case an employee requires a specialty treatment and there is a nature of emergency involved." It was aptly observed: " Now, when would ill luck strike a person? Nobody can predict." "Training was one thing, reality

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[31]"The appellant relied on *Willer*, by which the Court of Appeal held that they were bound in relation to duress; but, this time, the court, unlike the court in *Willer*, was clearly aware that it was not concerned with the defence of duress in its traditional sense. It was convenient, Woolf L.J. said, to refer to the defence raised as "duress of circumstances"; and this he rightly treated as a variety of necessity. Like duress by threats, the defence was to be available only when the defendant could be said to be acting in order to avoid the imminent danger of death or serious injury." (at page. 85-86)

[32] "It is also not in dispute that various instructions have been issued under the scheme from time to time..... But, what should happen in the case of emergency? Neither a policy nor a circular has been shown to us which deals with the said situation. .... Now, when would ill luck strike a person? Nobody can predict." *UoI vs. J.P.Singh (* 2010 LIC 3383 *)*

another, and no one could be sure that the ancient human instincts of self-preservation would not take over in an emergency.”

Exposition

It is most respectfully submitted that the Government erred in not appreciating that in case of genuine emergency "the Doctrine of Necessity comes into play where there is no express legal rule on the subject[33] and there is a compelling urgency", and there are understandable reasons for the non-existence of pre-fabricated rules of procedure.[34] If patients or their benefactors lie, they become guilty of fraud and cheating for which remedies are provided in the Rules of Conduct, and under Criminal Law. If the doctors are at fault, the Government/CGHS can report to the Ethics Committee of the hospital concerned, or can even take actions under various Sections of the Medical Council Act, 1956, or can even initiate a wide range of administrative actions through the Medical Council. The affairs pertaining both the Medical Council of India and the Central Councils of Health and Family Welfare, have been entrusted to the Ministry of Health & Family Welfare under the Government of India (Allocation of Business) Rules, 1961.

It is an arbitrary and unreasonable act not to reimburse medical expenditure incurred at a hospital done under emergency conditions when the doctors are themselves accountableto the Indian Medical Council Act 1956, for their professional conduct. The Section 20A of the said Act provides: "The Council may prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners ." The Central Government holds control over the Medical Council through its power under Section 20 of the said Act in many ways including the grant of a commission of inquiry to a body of 3 persons one of whom is to be a Judge of the High Court. Besides, the Council also possesses a role, per Section 33 (m), in the framing of Regulations prescribing "the standards of professional conduct and....code of ethics to be observed by medical practitioners.";.

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[33] "It is also not in dispute that various instructions have been issued under the scheme from time to time..... But, what should happen in the case of emergency? Neither a policy nor a circular has been shown to us which deals with the said situation." (*UoI v . J.P.Singh)'*

[34] "It is also not in dispute that various instructions have been issued under the scheme from time to time..... But, what should happen in the case of emergency? Neither a policy nor a circular has been shown to us which deals with the said situation. .... Now, when would ill luck strike a person? Nobody can predict." (*UoI vs. J.P.Singh).*

Critical conditions do not brook DELAY. The CAG Report (referred to in para.6.*supra*) mentions, at its page 49, a telling Case study No. 7: how :"Negligent handling of files leading to failure to grant permission to a pensioner, who died without getting the recommended treatment". This Petitioner must thank God that none of his benefactors thought of waiting and waiting for APPROVAL by the CGHS otherwise the CAG could even find this man's story a good stuff for one more Case Study: how one more lamb was sacrificed under unreasonable and arbitrary procedural rigmarole in the office of the so-called model employer.

Ground 6. For that the authorities deciding this Petitioner's claims for reimbursement of the expenditure already incurred, failed to appreciate that this Petitioner (then a patient in the ICU of the Emergency of the hospitals) had been hurled by his destiny into the circumstances wherein he had ceased to be his own decision-maker. He had no option but to toss under his shifting conditions obeying his doctors on all points. It is the possibility of this sort of the plight of patients in acute emergency that the Government had instructed, as quoted in Ground 3*supra*. “It is clarified that the patient while he is in a private hospital should act according to the advice of the hospital authorities. He should get his discharge from the hospital only when the hospital authorities discharge him."

Ground 7. For that the CGHS and the authorities of the Ministry of Health erred in not giving full effect to the **Doctrine of Necessity** that operates in Emergency. This norm operates with greater fidelity where a Patient is CARRIED to the Emergency of a hospital, and is not himself in a position to take decision. Once such a person is taken to some hospital, it is for the hospital to attend to him in accordance with the norms of medical ethics.

Exposition

Doctrine of Necessity that operates in Emergency is often aptly called ‘choice *of evils' or 'duress of circumstances'. The principle at work is precisely* Bracton's maxim, 'that which is otherwise not lawful is made lawful by necessity'

Ground 8. For that under the conditions of genuine EMERGENCY, the distinction between 'authorized' or unauthorized' hospitals ceases to be relevant, because by allowing the possibility of medical treatment at any of the nearest hospital, the Government has, by express implication, recognized that in emergency situations the routine administrative instructions do not apply. In *UoI vs. J.P.Singh*, the Hon'ble Delhi High Court observed*:*

> *"It is also not in dispute that various instructions have* been issued under the scheme from time to time..... But, what should happen in the case of emergency? Neither a policy nor a circular has been shown to us which deals with the said situation. .... Now, when would ill luck strike a person? Nobody can predict." [2010 LIC 3383 para 4-5]

Ground 9. For not to appreciate the constraints of the crushing circumstances under which one gasps in an emergency, is not fair. And when genuine emergency exists, full effect should be given to it by relaxing all procedural constraints. It is well appreciated by this Hon'ble Court when observed in *State of Punjab and Others v. Ram Lubhaya Bagga* AIR 1998 SC 1703 para 17:

> " Some of the serious diseases do not knock or warn through bell giving them time. Emergency cases require immediate treatment and if with a view to comply with procedure one has to wait then it could be fatal. One may not in such cases live, if such a procedure is strictly followed."

(B). *Ex post facto sanction* and the *Relaxation of the Rules*

Ex post facto sanction and the Relaxation of the Rules and administrative instructions coming in the way of the fair and just decision

Ground 10. For that the CGHS and the authorities of the Ministry of Health were duty-bound to grant an *ex post facto* approval to the treatment done under

Emergency, and/or to relax the Rules and the administrative instructions wholly so that the full claim is reimbursed.

Exposition

The Central Administrative Tribunal has observed in one of its orders:

> "The Government was obliged to grant *ex post facto* sanction in case an employee requires a speciality treatment and there is a nature of emergency involved. In such a situation, treatment in a non-recognized hospital and non-observance of prescribed procedure and incurring expenditure in excess of CGHS package/approved rates have to be condoned." [*V. B. Jain's Case*[35]]

In *Narendra Pal Singh v. Union of India*[(1999) DLT 358, para5] the Hon'ble Delhi High Court mandated the grant of an *ex post facto* sanction where the treatment was taken it an emergency situation:

> "The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds."

Ground 11. For that the CGHS and the authorities of the Ministry of Health & Family Planning failed to consider this Petitioner's request for relaxation Rules specifically made in the forwarding letter, dated January 3, 2014, submitting this Petitioner's Bill for the Reimbursement of the expenditure on treatment at the Escorts Heart Hospital. This Petitioner had requested:

> "for reimbursement of medical expenses incurred on account of the treatment in medical emergency at a private hospital; and/or (ii) to the Government's power to relax the rigour of the CS (MA) Rules, 1944."

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[35] *V.B. Jain v. Chief Executive Officer, Delhi Jal Board* O.A. No. 2954/2012, Reserved on : 22.05.2013 Pronounced on :25.07.2013 [Central Administrative Tribunal, Principal Bench, New Delhi]

Facts crying for the exercise of the power to relax the rules and procedure for doing justice in this Petitioner's case were comprehensively set out in the forwarding letters submitting the Bills for treatment at the Jaslok Hospital.

Exposition

The Hon'ble Courts have already declared the guiding norms to be adopted by the CGHS in deciding the cases of the disbursement of medical claims: to quote some of the observations --

" A holistic, a humanitarian and pragmatic common sense approach should be the guiding factor in a pragmatic manner in honouring the medical reimbursement claim made by the Petitioner. ..... The health and strength of the Petitioner is a part and parcel of the right to life, which floats from Article 21 of the Constitution." [*C.Ganesh v. The Central Administrative Tribunal, Chennai Bench represented by its Registrar,* (2012) 5 Mad LJ 257 paras 33 and 36].

"22 When a Government employee puts forth a bona fide claim for reimbursement of his medical bill, it should not be taken lightly and the approach of the Government in such matters should be justice oriented. Such claims should be treated in a humanitarian manner keeping in mind the totality of circumstances." [*K.K. Kharbanda vs. The Union Of India &Ors* MANU/DE/0294/2009, para 22].

Ground 12. For that the CGHS and the authorities of the Ministry of Health & Family Planning failed to appreciate that the power to relax a Rule that causes hardship, is a Constitutional duty. When the Central Government is satisfied that the operation of any rule regulating the conditions of service of Union Government servants ‘‘causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary, for dealing with the case in a just and equitable manner." It is well settled that an authority which is competent to frame

a rule is also competent to interpret it, undo it, amend it and relax it. With this Power goes Duty.

(C)The ambit of Relaxation of procedure for Treatment under Emergency as clarified under the Government's operative Instructions/ Circulars

Ground 13. For that the impugned orders made by the CGHS and the Ministry of Health & F.W. are not in conformity with the Government's own decisions circulated under No. 4-18;2005- C&P [Vol. -Pt. (I)] of the Ministry of Health and Family Welfare CGHS (P) Division, dated 20th Feb., 2009, reiterated by a Circular No. H. 11022/01/2014-MS of Ministry of Health and Family Welfare dated 15thJuly, 2014. providing guidelines to be followed in considering requests for relaxation of procedures in considering requests for medical reimbursement over and above the approved rates. They prescribe a "check list for consideration of requests for reimbursement in excess of the approved rates": the considerations prescribed include the following relevant to this Petitioner's claims under dispute:

a. The treatment was obtained in a private hospital not empanelled hospital under emergency and 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 emergency and was admitted for prolonged period for treatment of Head injury, Coma, Septicemia, Multi-organ failure, etc.;

c. Any other special circumstances.

[Annexures P-14 (a) & (b) at pp. 269- 273]

Ground 14. For that the authorities failed to appreciate that the medical conditions of this Petitioner, whilst admitted at the Escorts Hospital, Delhi, and at the Jaslok

Hospital, Mumbai, were precisely those considered as the adequate reasons for treatment under emergency for which the Government provided for the relaxation of the procedure, and authorized full payment towards the expenditure incurred on medical treatment. This Petitioner had been taken to the Emergency of the Escorts Hospital by his daughter: to quote from the Essentiality Certificate issued by the said Hospital:

> " This is to certify that Mr. S. K. Jha (IPD) No - 00026353) is a patient of mine and was brought to emergency**....."**

And at the Jaslok Hospital, Mumbai, he was carried to the Emergency on an ambulance [vide the Bill No ALS-22-1674 dated 1/5/2014 issued by Ambulance Access For All].

Ground 15. For that the authorities failed to appreciate that this Petitioner had been taken to the Hospitals when he was himself comatose. At the Escorts Hospital, the doctors took note of the Petitioner's medical history[36]and subjected him to a life-saving procedure by implanting the device of the CRT-D to save him from heart failure which could extinguish this Petitioner's life any moment. At the Jaslok Hospital, he was brought to the hospital just after suffering a stroke and

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[36] "The patient is hypertensive, non-diabetic with positive family history of ischaemic heart disease. He is a known case of coronary artery disease, old ASMI (1989), PTCA with stent to RCA &LCx (1989), PTCA with stent to LCx (1992), PTCA with stent to RCA (2001). He was brought to emergency with complaints of breathlessness at rest, syncope (1 episode) &ghabrahat. He was admitted to FEHI for further management." Discharge Summary, dated 14/11/2013, The Doctors had perused the comprehensively documented this Petitioner's 'Shadow Medical file' that ran into 313 pages.

paralysis. What was done to him at the Jaslok Hospital is thus described by Padmashri Dr A.B. Mehta who led the team of cardiologists and neurologists:

> "This is certify that Mr. S. K. Jha is a known case of Hypertension/ IHD with severe LV dysfunction / post CRT-D implanted in 2013, recent history of Atrial Fibrillation, was admitted on 1/5/14 with history of fall and acute onset right side Hemiparesis and discharged on 7/5/14 morning. Patient was re-admitted on 7/5/14 afternoon in emergency basis with post stroke seizure/vasovagal syncope with postural hypotension with hyponatremia. Patient was treated accordingly and discharged on 17/5/2014"

Ground 16. For that the doctors, both at the Escorts Hospital, New Delhi, and the Jaslok Hospital, Mumbai, took note of the medical history of this Petitioner over all the years after 1989 when he had suffered his first Heart Attack, and was treated at the Apollo Hospital, Madras on the CGHS reference. This Petitioner has maintained all his Medical Papers from 1989 onwards. The Doctors, at the Escorts Heart Hospital, had perused the comprehensively documented this Petitioner's 'Shadow Medical file' that ran into 313 pages summarized in his 'Medical History' [**Annex P-10**]. But this Petitioner was denied an opportunity to place those medical papers for consideration by the CGHS authorities as they never granted an opportunity of being heard violating the Article 14 of the Constitution.

(D) Apropos the implant of CRT-D
On the Matters pertaining to the treatment at the Escorts Heart Hospital, New Delhi where the device of CRT-D was implanted

Ground 17. For that the CGHS erred in not reimbursing for the cost of the medical treatment, in the emergency conditions, at the Escorts Heart Hospital that had led to the implant of the CRT-D. As submitted in para 27 of this Writ Petition, this Petitioner had been considered a candidate for the CRT-D by 4 eminent doctors: they were (i) Padmabhushan Dr. Ashok Seth, (ii) Dr. Aparna Jaswal, (iii) Padma

Shree Dr. Balbir Singh and (iii) Dr. T. S. Kler who was the first to implant, in April 2002 , the Combo Device (Combination of ICD & Biventricular pacemaker) in South East Asia. The CGHS failed to consider what was prudent in appreciating the medical decision in emergency conditions. The Hon'ble Delhi High Court had well said in *UoI vs J.P.Singh*[37]:

> "This plea is negated by us for the reason once a patient, and that too in a critical condition, is in the hands of an expert doctor, what medical treatment has to be given is a decision of the doctor concerned."

And there exists Government instructions how a patient is expected to behave once he is admitted to the hospital under some medical emergency: to quote from Swamy's *Compilation of Medical Attendance Rules* at page 297 referred in Ground 3 *supra*:

> "(2). A point has been raised whether a patient can be transferred from the private hospital to a Government/ recognised hospital after the emergency is over for obtaining further treatment. It is clarified that the patient while he is in a private hospital should act according to the advice of the hospital authorities. He should get his discharge from the hospital only when the hospital authorities discharge him."

Exposition

Historical Perspective

The Standing Technical Committee of the CGHS, in its Meeting, held on 10.07.2014, had rejected the decision of this Petitioner's doctors to implant CRT-D on the only ground that QRSD reading was 114 MS on 11.11.2013 and, for that reason alone, the patient did not require CRT-D as significantly prolonged duration was not indicated. Neither this Petitioner was required to put forth his case, nor the eminent doctors were heard in support of their decision to implant CRT-D.

In response to this arbitrary act of the Technical Sanding Committee of the CGHS, this Petitioner requested Dr. Ashok Seth to issue a clarificatory Certificate in support of what they had done when this Petitioner had been taken to the Emergency of the Escorts Hospital. His

[37] *UoI vs.J.P.Singh* 2010 LIC 3383

detailed clarificatory Certificate was quoted in this Petitioner's 'Representation' addressed to the Secretary, Ministry of Health and Family Welfare **[Annexure P-6]** explaining his case, and showing how the CGHS decision not to allow his claim was unfair, unjust, and arbitrary. This Certificate, dated 22nd July 2014 from Dr. Ashok Seth is placed at page 139 of this W.P.

If this Petitioner would have been granted an opportunity of being heard, he would have submitted before the Standing Committee:

(a) that this Petitioner had sent to the CGHS at Pandara Park his Escorts Bill along with all ECG and other reports, but such papers were returned back as unless required such papers were not to be submitted with the Bill to which was annexed the Discharge Summary. Whilst all such papers were brought back, one ECG report of 11.11.2013 remained to be removed, and it got transmitted upwards to come to the notice of the Standing Committee. Similar ECG Reports and other reports pertaining to the treatment at Jaslok, Mumbai, were not filed with the Bills, and the Bill was processed without them. This mistake could have been corrected if this Petitioner would have been granted an opportunity under the Rule 3 of the CS (MA) Rules 1944, or under the principles of Fair Play recognised under the administrative law..

(b) that this Petitioner's long history of cardiac illness from 1989, when he had his first Heart Attack necessitating a surgical procedure of Angioplasty at the Apollo Hospital, Madras, was not in the consciousness of the authorities and the technical advisors of the CGHS. The state of the Petitioner's health and his long medical history is summarised in the **Annexure P-10** ('My Medical History'). The doctors who decided to implant CRT-D had treated this Petitioner over all the years after 1992, and had before them the records of all the ECG changes, and of gradual declining Ejection Factor of this Petitioner's heart. The facts set forth in Part VI of this Writ Petition, and in the **Annexure P-10** to this Writ Petition, went unnoticed by the authorities of the CGHS.

Ground 18. For that the CGHS / Government erred in questioning the doctors' decision, in discharge of their medical duty, taken on the holistic view of the

Patient's conditions. If any authority doubted their medical decision, the only right course would have been:

(a) to ask the Patient (here Petitioner) to produce all his medical papers for assessing the propriety of the medical decision under the stress of emergency; or

(b) to request the doctors who had taken the decision to implant the device of the CRT-D to explain their grounds for the decision.

Thus this Petitioner has become a victim of gross administrative remissness on account of not granting an opportunity in terms of the Proviso to the Rule 3 of the CS (MA) Rules 1944, and deciding adversely in utter violation of the Rule of Natural Justice that emanates from the Article 14 of our Constitution.

Ground 19. For that impugned decision is unreasonable, unfair, and arbitrary as it violates the very grammar of medical decision-making. The doctors who had decided to implant CRT-D on this Petitioner had perused several medical files of this Petitioner, and had adopted a holistic view of their Patient's conditions in arriving at their medical decision. The CGHS had before it only the papers and materials specifically required by the prescribed Claim Form. Neither the Claim Section of the CGHS (under duty to scrutinize the claim papers), nor the Technical Standing Committee of the CGHS(that kept on just rejecting this Petitioner's claim), nor the supervisory and the appellate authorities[viz. the Additional Director (CZ) , the Director General of the CGHS, the Secretary to the Ministry of Health & F.W.] ever raised any query, or sought information on any point, or or granted any opportunity of being heard before taking the impugned decisions. ,

<u>Exposition</u>

It is submitted that the impugned decisions contravene the very grammar of medical decision-making the core guiding norms are thus stated in authoritative texts:

(i) "Heisenberg said, 'we cannot know the present in all detail. For that reason everything observed is a selection from a plenitude of possibilities and a limitation on what is possible in the future."[38]

(ii) "Science is a very human form of knowledge. We are always at the brink of the known, we always feel forward for what is to be hoped. Every judgment in science stands on the edge of error, and is personal. Science is a tribute to what we can know although we are fallible."[39]

(iii) "Despite this expectation, conflicts of medical opinion in court are common, perhaps because the human body and its ailments are less controlled by rule than is the law." *The Encyclopedia Britannica* Vol 7 p. 1000 [15th ed.] under the heading. 'Medical Jurisprudence'.

(iv) This is illustrated in this Petitioner's case by the mistake of banking only on QRSD on a day only forgetting that in any decision-making, medical or economic, or this or that, the governing norm has to be : "The whole is more than the sum of its parts."[40] Hence the right approach is to adopt a holistic and broad-spectrum approach.

Ground 20. For that on the date of implant, i.e. 11 November 2013, the CGHS had not prescribed any ceiling on the cost payable for the implant of the COMBO'S DEVICE PROCEDURE: CRT-D. Under such circumstances the CGHS was bound to pay whatever was the cost of that Device and procedure, at the market rate as on 11 November 2013, the day when this device had been implanted on this Petitioner.

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[38]J. Brownowski, *TheAscent of Man* p. 261.

[39]J. Brownowski, *The Ascent of Man* p. 374.

[40] J Bronowski, *ibid*

This plea is supported by the following two points:

(i) as the treatment and the implant had been done under EMERGENCY, and this Petitioner had been "brought" to the hospital when the Petitioner was not his own decision-maker, and had no option to go by the doctors' instruction, Justice requires that the full payment be made of the medical expenditure incurred under emergency; and

(ii) as this is the effect of the reasonable construction of the then existing Circular: viz. O. M. [F.No. 2- 1/2012/CGHS/VC/C/CGHS(P) of 1/10/2012 being 'Clarification regarding admissible/ non-admissible items under CGHS' that says, in para 3, the following {see at p. 285 of this W.P.:

"Cost of implants/ stents/ grafts is reimbursable in addition to package rates as per CGHS ceiling rates for implants/ stents/ grafts or as per actual, in case there is no CGHS prescribed ceiling rate."

[vide **Annex P-14 (g)** at page 285 of this W.P.]

Ground 21. For that the CGHS has erred in reimbursing to this Petitioner the cost of the device only at Rs 490000 when this Petitioner had to pay to the Escorts Hospital the cost of the device at Rs. 1075100, which was enhanced by the cost of the procedure. They missed to notice that the Discharge Summary had stated in capital letter: COMBO'S DEVICE PROCEDURE : CRT-D (Protecta XT CRT-D) D354TRM done on 12/11/2013 for which the CGHS had not framed CEILING RATE on the date the device was implanted on this Petitioner. At that time the cost of the device, at the Medanta Hospital, recognized by the CGHS, had been quoted at Rs, 865545 being the aggregate of :

COMBO's Device Procedure	Rs 55545/
Cost of the Device	Rs 800000/
Misc.	Rs 10000

[vide Annex P- 3' at page 142 of this W.P.]

Ground 22. For that the cost of the CRT-D deserves to be reimbursed. The CGHS had not fixed its ceiling rate on the date of implant, i.e. on 12 November 2013. This Petitioner had got a quotation from the **Medanta Hospital** showing that as on 21 September 2013, its cost for the CGHS beneficiary was Rs 800000/ [vide **Annexure P-3 at p. 142 of the W.P.]**. The **Medanta Hospital** is recognized by CGHS for the treatment of cardiac ailments. The CGHS should have reimbursed the Petitioner at the open market rate, or, at least, as quoted at the Medanta Hospital, adding to that the cost of procedure.

Exposition

The following 3 points deserve to be kept in view:

(i) that the CGHS must pay the price of the device that the doctors planted on this Petitioner in medical emergency the genuineness of which is now admitted by the CGHS itself;

(ii) that the CGHS has found this Petitioner's claims so justified that it has already relaxed the rules of procedure to grant the claim but has acted arbitrarily and unfairly by not granting the full claim;

(iii) Any decision as to the cost of the device, taken by the CGHS must be based on the facts as operative on the day of implant, i.e. 12 November 2013 when the CRT-D had been implanted on this Petitioner. And as the Medanta Hospital is a CGHS recognised hospital for the treatment of cardiac ailments, the rate quoted by it as the cost for implant on a CGHS beneficiary, deserved to be treated as the cost reimbursable to this Petitioner

Ground 23. For that the CGHS erred in not reimbursing at the market rate, or at the aforementioned rate quoted by the CGHS empanelled Medanta Hospital, as the Government was duty bound to do, in view of the fact that at the material time the CGHS had not fixed the ceiling rate for the CRT-D implant.

Exposition

That our Government had not fixed the rate of the CRT-D implant when this Petitioner was subjected to the CRT-D implant procedure is proved by the effect of the following facts: There is a detailed list of permissible procedures in the Appendix to the O.M. No. S 110011/23/2009-CGHS D.II dated 28/8/2011, but this does not refer to the procedure pertaining to the CRT-D implant,[41](vide **W.P. page 261**.).

Ground 24. For that there was no ceiling rate, prescribed by the CGHS, for CRT-D implant as on the date this Petitioner had undergone the CRT-D procedure. This was natural as the CRT-D did not exist then. It was a new device and the CGHS was yet to respond to it for understandable reasons.

Exposition

(a). " Cardiac resynchronization therapy (CRT) ... is a new treatment modality for CHF that may relieve symptoms, improve patient quality of life, and prevent re-hospitalization In August 2001, the US Food and Drug Administration (FDA) approved the use of CRT in heart failure treatment. "[42][**vide page 281 of this W.P**.]

(b) "MARKETING HISTORY Medtronic CRT-D devices are marketed in over 50 countries throughout the world. Medtronic first received FDA approval for CRT-D devices on June 26, 2002 under PMA P010031. The U.S. Food and Drug Administration (FDA) approval history for the most recent Medtronic CRT-D devices is provided in Table 1 below….."[43]

(c) The Discharge Summary of this Petitioner's treatment at the Escorts Heart Hospital clearly mentions; "COMBO DEVICE PROCEDURE: CRT-D (2014Prorecta XT CRT-D) D354 TRM done on 12/11/2013."

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[41]http://msotransparent.nic.in/writereaddata/cghsdata/mainlinkfile/File407.pdf

[42]Dr. Aparna Jaswal , "CRT AND COMBO DEVICES WHO NEEDS THEM AND WHEN" http://www.apiindia.org/pdf/medicine_update_2010/cardiology_21.pdf

[43]http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/CirculatorySystemDevicesPanel/UCM281504.pdf

The short point, relevant to the present context, is that the CGHS had not fixed any ceiling price for the implant of the CRT-D device, so, to say the obvious, the CGHS should have paid the Petitioner as charged by the Escorts Heart Hospital for the implant on 12/11/2013.

The CGHS has fixed rate for the CRT-D only on July 22, 2014. i.e after 251days of the said implant on 12/11/2013. It was sought to be so done by O. M. (No: 12034/02/2014/Misc/-CGHS D.III of July 22, 2014) [vide **Annex P-14** © at page 274 of this W.P.] But it cannot deprive the Petitioner of his right to get full reimbursement of the cost of the CRT-D as per market rate. To give effect to the O.M. of 22 July 2014 on the date of the implant retrospectively would be not only *ultra vires* but also against all canons of compassion, equity and welfare measures

Ground 25. For that the reference to the ceiling rate of the 'Combo Device (CRT-D) in the O.M. of 22 July 2014 [**Annex P-14** '© at page 274 of this W.P.], is not relevant in this Petitioner's case; and if it has conditioned the mind of the decision-makers in deciding this Petitioner's claim, the questioned decisions deserve appropriate correction for the following reasons:

(a) That this O.M. cannot be relied on as it cannot be given a retrospective effect. It cannot deprive the Petitioner of his right to get full reimbursement of the cost of the CRT-D as per market rate. The O.M. of 22 July 2014 cannot be given any retro-operation to the date this Petitioner underwent the CRT-D procedure at the Escorts Heart Hospital.

(b) That the rationale for the issue of this O.M. of 22 July 2014 is patently wrong [it mentions: "while the ceiling rates for coronary stents have been revised from time to time separately the rates and guidelines for pacemakers, Rotablator and AICD were not revised"]. It is factually wrong to say that the CGHS had any ceiling rate for CRT-D ,pre-existing on the date of the issue of this O.M. that could have suffered any revision. Revision is permissible only of that what already existed. What did not exist could only be prescribed prospectively.

(c)That, assuming that the said O.M. of 22 July 2014 was treated as the guiding factor, it is submitted that the view is grossly erroneous because , so far this Petitioner’s claim is concerned, the clock stopped on the day the CRT-D was implanted on him, i.e. on 12/ 11/ 2013. This Petitioner is, at present, not concerned with the correctness or propriety of the O.M. after it came into effect.

Exposition

This Ground is just to forestall the Government's plea, if at all advanced, that the grant of Rs 490000 on the Bill for treatment at the Escorts Heart Hospital, was guided by the Government's Office Memorandum (No: 12034/02/2014/Misc/-CGHS D.III of July 22, 2014): vide **Annexure P-14 (c) .** As before this O.M., there was no ceiling rate prescribed by the CGHS, this Circular, to say the obvious, could only prescribe, not *revise*, the ceiling rate for the CRT-D implant, and this act cannot be retro-active. .

The Discharge Summary had stated in capital letter: "COMBO'S DEVICE PROCEDURE : CRT-D (Protecta XT CRT-D) D354TRM was implanted on this Petitioner on 12/11/2013. It was this Office Memorandum of July 22, 2014 that prescribed the ceiling cost of *Combo Device (CRT-D)* at Rs 490000/ [precisely the amount that has been reimbursed to this Petitioner on his Bill for treatment at the Escorts Heart Hospital]. Assuming the fact like that, it baffles understanding why nothing was paid for the procedure at the Hospital, not even reasons were shown to support this denial.

Ground 26. For that the CGHS failed in realising that the treating doctors could not have gone for a cheaper device leaving the implant of the appropriate device to be installed later after obtaining the approval of the CGHS. It is submitted that an adoption of that course would have gone against the doctors' duty to treat his patient " in a humanitarian manner keeping in mind the totality of circumstances"[44] by adopting a " holistic, a humanitarian and pragmatic common sense approach"[45], would have gone against Medical Ethics.

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[44]*K.K. Kharbandavs The Union Of India &Ors* W.P. (C) 6049/2005 Judgment delivered on: 23.03.2009

[45][*C.Ganesh v. The Central Administrative Tribunal, Chennai Bench represented by its Registrar,* Madras H C Dated: 27.09.2011 W.P.No.11583 of 2011]

Exposition

It unreasonable to think that the doctors would have planted some different machine of lesser price, leaving their patient to get the appropriate device implanted later in some government hospital when the CGHS would choose to accord approval (which, as the CAG's Case Study No 6 and 7 show, may not come in the patient's lifetime). It is submitted that this sort of approach is cruel to the most patients. In*UoI vs. J.P.Singh* [2010 LIC 3383 para 17], the Delhi High Court had observed:

> "17. It is urged by learned counsel for the petitioner that the actual grievance of the petitioner is not that the respondent rushed his wife to Apollo Hospital but to the fact that a permanent pacing was done. Counsel states that the objection of the petitioner is to the fact that temporary pacing ought to have been got done for the reason it costs less money and thereafter permission ought to have been taken for implanting a permanent pacemaker and for which the competent authority would have seen whether the said procedure could be performed at a Government hospital, where we presume it would have cost less.
>
> 18. This plea is negated by us for the reason once a patient, and that too in a critical condition, is in the hands of an expert doctor, what medical treatment has to be given is a decision of the doctor concerned.
>
> 19. It cannot be lost sight of the fact that the wife of the respondent required a pacemaker to be inserted. Everybody knows that intervention into the body causes distress and therefore it is not advisable to repeatedly resort to such procedures which require an intervention into body. The medical papers of the wife of the respondent shows that she was 62 years of age as on the date when she underwent the interventional surgery of implanting a pacemaker and thus it is quite obvious that the specialist doctor thought that rather than resorting to a temporary pace-making, it would be better if permanent pace-making was resorted to."

The implant of the CRT-D is a painful process involving a measure of risk. One feels heavy pressure while the device is being implanted. The doctor makes a small cut in the upper chest to locates a vein through which leads are guided down the vein to the heart to stabilise them in the position to deliver energy to the heart. The doctor plugs the leads into the CRT-D

which, then, is lodged in a pocket by separating the skin from its underlying tissue. When the procedure is done, the incision is closed. A man of 77, with a long history of cardiac ailments could not be subjected to the implant of some cheaper device leaving the option to implant CRT-D, or its any other variants, to some later time when the approval from the CGHS would choose to grant a prior approval! l. One shudders to read the Case Study 1, 3, 4, 6 and 7 in the CAG's Report already referred in para 12 of this W.P. (at pp. 18-19). [**see. Annex P- 12].**

Ground 27. For that, without prejudice to the above Grounds, it is submitted that neither the CGHS nor the Ministry of Health & F.W. can abdicate its reasonable duty to the beneficiaries of the CGHS to provide the benefit of health care as it is available at any point of time in this evolving phase of fast changing medical technology of which one of the latest achievements is this Cardiac resynchronization therapy (CRT) with an implantable cardiac defibrillator (ICD). It is a new device with new potentialities on account of its therapeutic novelty. It would be unfair to use the administrative power to deprive the patients of the advancing medical technology available in our own country at the hospitals under the control and supervision of the Medical Council of India, a statutory body over which the Ministry of Health & F.W. wields power in terms of the Government of India (Allocation of Business) Rules, 1961, framed under Article 77(3) of the Constitution of India.

Exposition

Our approach should be what Judge Manfred Lachs of the International Court of Justice said:[46]

> "Whenever law is confronted with facts of nature or technology, its solution must rely on criteria derived from them. For law is intended to resolve problems posed by such facts and it is herein that the link between law and the realities of life is manifest. It is not

[46] *In the North Se Continental Shelf Case* ICJ 1969, 3 at 222.

legal theory which provides answers to such problems; all it does is to select and adapt the one which best serves its purposes, and integrate it within the framework of law[47]."

It would also arbitrary and unreasonable to lose sight of the pragmatics of medical expenditure in our market-driven economy with frequent innovations in the sphere of life-saving devices, and the galloping price rise of the medical devices and medicines.

Ground 28. For that the CGHS has erred in not realizing that treatment at a hospital under 'Medical Emergency' has its own grammar that puts both the doctors and patients under a set of unalienable duties. The doctors are supposed to be true to their professional ethics, and are supposed to treat their patients with all their professional competence and the latest advances in medical technology.[48] And the duty of the patients is to act as medically advised by his doctors till they are discharged. This effect emerges even from the existing Government instructions quoted in Ground 3 *supra*.

Exposition

If patients or their benefactors lie, they become guilty of fraud and cheating for which remedies are provided in the Rules of Conduct, and under Criminal Law. If the doctors are at fault, the Government/CGHS can report to the Ethics Committee of the hospital concerned, or can even take actions under various Sections of the Medical Council Act, 1956, or can even initiate a wide range of administrative actions through the Medical Council. The affairs pertaining both the Medical Council of India and the Central Councils of Health and Family Welfare, have been entrusted to the Ministry of Health & Family Welfare under the Government of India (Allocation of Business) Rules, 1961

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[47] J.G Starke's *Introduction to International Law*, 10th ed. P. 178

[48] The International Code of Medical Ethics, developed and promulgated by the World Medical Association shortly after World War II, provides in part for the following:
A doctor must always maintain the highest standards of professional conduct.
A doctor must practice his profession uninfluenced by motives of profit....
A doctor must always bear in mind the obligation of preserving human life....
A doctor shall preserve absolute secrecy on all he knows about his patient because of the confidence entrusted in him. *Encyclopedia Britannica*, Vol.23p. 823

(E) Apropos the installation of the Carelink monitoring system

Ground 29. For that the CGHS and the authorities of the Ministry of Health & Family Planning erred in not reimbursing to this Petitioner the cost of the CARELINK FOR REMOTE MONITORING which this Petitioner got installed by his bedside for the continuous monitoring of the device implanted, and his cardiac conditions. As this was done under the advice of the doctor who implanted the CRT-D on the Petitioner, and it was advised in the Discharge Summary itself, this Petitioner considered it prudent to get it installed [its Receipt of purchase and installation is placed at 141 of this W.P.], The authorities have simply ignored this claim without writing a word what led them ignore this claim, and without hearing this Petitioner on its relevance and need. .

Exposition

The justification for the installation of the CARELINK FOR REMOTE MONITERING is thus stated at the Website of the *Medtronic*: to quote---

> " The Medtronic CareLink Network ensures timely identification of clinically important issues, such as asymptomatic atrial fibrillation or device integrity issues."[49]

The CRT-D has an internal monitoring device inside so that the doctor implanting it can track the patient's heart rhythm and heart function. In case of anything going wrong, automatic transmission of that data electronically from the device to a computer server so that the doctor can monitor the patient's conditions.

This Petitioner found CARELINK useful several times. To illustrate one such experience. On March 8, 2015 he felt some distress in his cardiac region. He transmitted his cardiac waves through the Carelink which were captured by his monitoring cardiologist, Dr. Aparna Jaswal, instantly. She reviewed them and this Petitioner got a message on his mobile 9811194697 telling him "not to worry as she found, no distressing signal so alarming as to call for any instant action."

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[49] http://www.medtronic.com/patients/heart-failure/device/cardiac-resynchronization-therapy-defibrillators/carelink/

(F) Treatment at the Jaslok Hospital
On the Matters pertaining to the treatment at the Jaslok Hospital, Mumbai whereat this Petitioner was treated under emergency on being struck by a stroke and paralysis

Ground 30. For that the CGHS and the authorities of the Ministry of Health & Family Planning erred in not passing the entire amount of the Medical Bills (aggregating to Rs 398097/ which this Petitioner had submitted to the CGHS under a forwarding letter addressed to the Additional Director, CGHS (CZ), Chitragupta Road, New Delhi for this Petitioner's treatment under an acute emergency at the Jaslok Hospital, Mumbai, vide Part VI of this Writ Petition, and the Petitioner's 'Medical History' at **Annexure P-10**.

Ground 31. For that the CGHS/ Government paid to this Petitioner only Rs. 94885 directly in his bank account as against the total claims aggregating to Rs. 398097. Neither was this Petitioner heard, nor were reasons stated for which the amount of the claims were slashed down so drastically. The Bills had been submitted to the CGHS on July 19, 2014. On discovering that only the one-fourth of the claim was directly credited his bank account through NEFT, this Petitioner sought details by requesting through a letter dated 20/01/2015 addressed to the Additional Director. CGHS. As he did not respond to this Petitioner's request to let him know the reasons for reducing the amount of the Bills, the Petitioner wrote a letter to the Director-General, CGHS on March 4, 2015, with a copy to the Additional Director, CGHS, Central Zone. For long they did not even reply.

[Annex P-9 at p. 221 of the W.P.]

Ground 32. For that the CGHS/ Government erred in not reimbursing the entire claim relating to expenditure at the Jaslok Hospital,

(a) where this Petitioner had been admitted for medical treatment under grave and genuine emergency;

(b) where he had been carried under conditions when his consciousness was substantially impaired on account of a stroke and a cruel onset of paralysis;

(c) where the maximum that was humanly possible was an information of the morbid event necessitating this Petitioner's treatment at the Emergency of the Jaslok Hospital, and this was done by the Petitioner's son-in-law who sent information about this Petitioner's illness to the CGHS both at Mumbai and Delhi (vide para. 36 *supr*a); and

(d) where he had no option but get tossed under the circumstances in accordance with the decision of the Hospital which, under the stress of that sort of emergency, could neither be influenced nor moderated by the rules and instructions of the CGHS. "Such claims should be treated in a humanitarian manner keeping in mind the totality of circumstances." [to quote from *K.K. Kharbanda vs The Union Of India &Ors* (MANU/DE/0294/2009). .

(G) Breach of the Rules of Natural Justice

Ground 33. For that the CGHS erred in deciding the issues pertaining to this Petitioner's Medical Bills for reimbursement of medical expenditure in total contravention of the Rules of Natural Justice mandated for compliance both by the Proviso to Rule 3 of the CS (MA) Rules 1944, and by Article 14 of the Constitution of India. All the decisions which this Petitioner has impugned in this Writ Petition were taken without informing the Petitioner what stood against this Petitioner's claims, and without seeking from him any clarification on any point. In short, the decisions, against which this Petitioner is aggrieved, were wholly arbitrary and irrational, and deserve to be set aside, and the Respondents deserve to be mandamussed to honour this humble Petitioner's Bills in full.

Exposition

This lapse on the part of the CGHS and the Ministry of Health & F.W. had been drawn by this Petitioner repeatedly through his Representations and Memorials. In his Representation, dated July 28, 2014, addressed to the Secretary, Ministry of Health & F.W. this Petitioner had submitted:

> "It needs to be emphasized that the CGHS Experts took such a drastic view without offering any opportunity to me personally to explain the facts of the case. Nor did they call the experts in question who did the procedure to hear their point of view as to why they decided to implant CRT-D. Any fair and transparent decision making process implies giving full opportunity to the affected party or persons in question to submit material facts and relevant documents, before arriving at any conclusion. It was all the more necessary as the decision of STC cast doubts on the professional competence and judgement of treating / operating Doctors who are well renowned and leading practitioners in this field." **[Annex P- 6]**

Yet the authorities never chose to grant an opportunity to this Petitioner to explain his case by submitting his medical papers as required by the Rules of Natural Justice. Some of the situations, under which the Rule of *Audi alterampartem* stands violated, are thus summarized in *Union v. T R Verma*[50] per Venkatarama Aiyar J.:

> "Stating it broadly and without intending it to be exhaustive… rule of natural justice require that a party should have the opportunity of addressing all relevant evidence on which he relies, that the evidence of the opponent should be taken into account in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

"Even God himself did not pass sentence upon Adam before he was called upon to make his defence."

If the Rules of Natural Justice would have been followed by the authorities whose decisions are challenged in this Writ Petition, even this Petitioner's grievance against the patent BIAS would have gone. Without hearing this Petitioner, the Technical Standing Committee kept on repeating its erroneous decisions several times, demonstrating gross stock-responses and

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50. AIR 1957 SC 882.

inhibitions suggesting Bias at work. The words of Justice Frankfurter come to mind: "It has not been unknown that judges persist in error to avoid giving the appearance of weakness and vacillation"[*Craig v Harne*(331 US 367,392 (1947]. This sad syndrome is most alarming when it sets in an administrative process. .

This non-compliance with the Rules of Natural Justice not only goes against the proviso to Rule 3 of the CS (MA) Rules 1944, it also negates the Article 14 of our Constitution as these rules governing administrative decisions emanate from our Fundamental Rights. It is worthwhile to quote from Justice G.P. Singh's *Principles of Statutory Interpretation* (11th ed,) p.436:

> "In India a liberal interpretation of Articles 14 and 21 of the Constitution readily brings in the requirements of natural justice to administrative actions against a person. It has become an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. Further, in India the State and every public authority or instrumentality of the State must act reasonably in public interest and fairly for these requirements have also been spelled out of Article 14 and the concept of rule of law. Article 14 is said to be the constitutional guardian of principles of natural justice."

Ground 34. For that the CGHS and the authorities of the Ministry of Health & Family Planning erred in NOT complying with the Rules of Natural Justice not by oversight, or mistake but deliberately suggesting gross BIAS at work. The text of the CS (MA) Rules 1944, as we get on the website of the Ministry of Health and Family Welfare, has omitted the Proviso to the Rule 3 of the CS (MA) Rules 1944: vide the text as it is at http://www.mohfw.nic.in/index1.php?lang=1&level=1&sublinkid=1872&lid=1704 and again at http://www.mohfw.nic.in/showfile.php?lid=1782.

True, the text on the internet, bears in its title the expression 'in brief' but that does not lessen the sinister effect of the omission of the Proviso to the Rule 3 of the CS (MA) Rules 1944. This omission might have misled the CGHS and the authorities

of the Ministry of Health to believe that they were under no duty to hear this Petitioner, or even to communicate reasons seeking response before arriving at adverse decision against the claimants. Such an omission cannot be a mere mistake.

Exposition

BIAS at work is evident also from the way the Standing Technical Committee usurped the role of the Central Government to which duties have been entrusted under the Government of India (Allocation of Business) Rules, 1961, framed under Article 77(3) of the Constitution of India. This Petitioner had submitted in his Memorial to the Director General, CGHS the following:

"I may be recalled that I had submitted my application dated 28.07.2014 to Secretary, M/o Health and Family Welfare who is the final approval authority. The Standing Technical Committee is only the recommending body and final authority to approve is Ministry of Health. " **[Annex P- 8 para 7 at p. 219 of this W.P].**

Ground 35. For that the CS (MA) Rules, 1944, framed in the pre-Constitution era, have continued to remain in force under Article 313 of our Constitution , in so far as they are not inconsistent with the provisions of our Constitution. But in view of Section 21 of the General Clauses Act, it is competent for the President to amend or vary the Rules made by him without offending the Fundamental Rights of the Government servants under yoke, or those retired. In case it is found that the said 'Proviso' has been removed through an amendment brought out in the text of the Rules, then this Petitioner would seek the leave of this Hon'ble Court submit that such an amendment is itself invalid as such an amendment would be in violation Article 14 of the Constitution the effect of which was well stated thus by this Hon'ble Court in *Ajay Hasia v. Khalid Mujib* Sehravardi (AIR1981 SC 487):

" Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is

an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

Ground 36. For that so long as the Rules framed are not duly amended, they are binding on the Government; and all the donees of the Government's powers in the discharge of their public duties[including those entrusted to them by the President of India in terms of the Government of India (Allocation of Business) Rules, 1961, framed under Article 77(3) of the Constitution of India]. Besides, the presence of the doctored text put in the Public domain is in itself an ample evidence of BIAS at work for which responsibility deserves to be fixed, and the effect of this remissness is to be weighed on the impugned decisions.

Exposition

The course of events, as stated, clearly shows that the CGHS acted with Bias that in itself is enough for this Hon'ble Court to intervene to do justice to this suppliant Petitioner. Bias means an operative prejudice, whether conscious or unconscious, as result of some preconceived opinion or predisposition, in relation to a party or an issue. A decision which is a result of bias is a nullity and the trial is "Coram non judice". The Apex Court has discovered a new category of bias arising from unreasonable obstinacy. This fact stands illustrated (a) by the repeated rejections of the Petitioner's claims; and (b) by, even on being convinced by the genuineness of the claims and the compelling circumstances of this Petitioner, the grant of only a part of the whole claim.

Ground 37. For that on discovering that only the one-fourth of the claim was directly credited to this Petitioner's bank account through NEFT, this Petitioner sought details by requesting through a letter dated 20/01/2015 addressed to the Additional Director. CGHS. As he did not get any response to this, the Petitioner wrote a letter to the Director-General, CGHS on March 4, 2015, with a copy to the Additional Director, CGHS, Central Zone [**Annex P-9**]. For long this Petitioner did not get a reply. After a long lapse of time this Petitioner received, on

30/5/2015 a letter [P-482/CGHS/R&H/CZ/2734 dated 20/5/2015] informing this Petitioner no more than what the routine bank entries had already indicated, and which this Petitioner had himself written to the CGHS. It simply said [vide **Annexure P- 11 at p. 238 of the W.P.**]:

> "Reference your representation dated 20th January, 2015, regarding settlement of two medical claim bills amounting to Rs 164487 and Rs. 233610. In this regard, it is to inform you that your claims have already been reimbursed as per CGHS Rates Details are as under:

S. No.	Claim No	Claim Amount	Amount Reimbursed
1	295/2014/del/cz/d2/P-481	Rs. 164487	Rs. 41289
2	294/2014/del/cz/d2/P-481	Rs. 233610	Rs 53056

Ground 38. For that the CGHS and the authorities of the Ministry of Health & Family Planning erred in not communicating this Petitioner 'REASONS' for reducing the amounts claimed so drastically, their impugned decision is blameworthy and not capable of being sustained both in terms of the Administrative Law and the Constitutional Law. What has been communicated in the letter dated 20/5/2015 is open to serious objections on many counts including these:

(a) the adverse decision by the CGHS cannot be justified when the impugned decision was taken *ex parte* in the utter breach of Natural Justice;

(b) the impugned decision is blameworthy as it does not spell out reasons, and this Petitioner is under no duty to imagine the possible reasons in support of what the authorities might have in their mind; and .

(c) this impugned decision is on account of the ignorance of the Authorities as they have chosen to forget that under grave Emergency no Rules, not even those pertaining to 'Rates', can apply. This Petitioner would not gaze crystal in support of what has been done by the them. But the letter, dated 20/5/2015, informing this Petitioner makes a cryptic reference to the CGHS RATES as the ground for slashing down this Petitioner's claim:

> "Reference your representation dated 20th January, 2015, regarding settlement of two medical claim bills amounting to Rs 164487 and Rs. 233610. In this regard , it is to inform you that your claims have already been reimbursed as per CGHS Rates. "

As this cannot be the right reason for paying no more than the one-fourth of the rightful claim, this Petitioner asserts against this view in the next Ground.

(H) Apropos the rating the CGHS Rates, and the unstringing the 'CGHS Packet Rates'

Ground 39. For that when one is compelled to undergo treatment under acute emergency, when one has ceased to be one's own decision-maker, and is shifted to the hospital by others by calling Ambulance, one cannot be denied the benefit of 'comprehensive treatment' and 'full payment' of the claims on routine grounds. This Petitioner's Jaslok's Discharge Summary, dated 7/5/2014 mentions that he had been taken to the Hospital when (i) he had already suffered an episode of sudden fall, (ii) and was not able to walk; and (iii) was not even able to communicate with the persons around since the episode of fall, Their examination showed: to quote from the Discharge Summary dated 7/5/2014: "Patient is not oriented to time, place and person". When he was carried to the Emergency at the Jaslok on 7/5/2014, only after 4 hours of his first discharge, the doctors described his conditions thus stated in the Discharge Summary dated 17/5/2014:

> "Now admitted with c/o Episode of unresponsiveness when eating at home; along with stiffening (tonic posturing) of limbs, uprolling of eyes,

> frothing form mouth and involuntary passing of urine. Patient was unconscious for 1- 2 min, recovered on its own f/b confusion for 2-3 minutes f//b weakness and sleepiness."

This Petitioner underwent his treatment at the Emergency in such conditions. It is submitted that his circumstances entitled him to get full reimbursement of his medical claims as any contrary view would be arbitrary and unfair, and would show a disregard for the judicially accepted Doctrine of Necessity. It is said:

"Nothing is more active than thought, for it travels over the universe and nothing s stronger than necessity for all must submit to it."

Exposition

The law on the point is thus summarized by the Jharkhand High Court in *Union of India v. Rameshwar Prasad* [(2013) 3 AIR Jhar R. 483]: to quote--

> " It is also submitted that there is scheme know as CGHS Scheme. The respondent was entitled to Rs. 100/- per month for the purpose of medical facilities. The respondent was resident of the area covered by the CGHS Scheme. It is also submitted that the respondent when was taking benefit of Rs. 100/- per month, then he was not entitled to any other medical reimbursement. Learned counsel for the respondent/applicant submitted that various High Courts have already decided the issue which includes the issue involving the claim of employee who was getting benefit of Rs. 100/- per month and in that case the Division Bench of the Rajasthan High Court in the case of *Bodu Ram Jat Vs State of Rajasthan and Ors*. reported in *2006 (5) SLR 705* held that such benefit is given for routine medical treatment and it has nothing to do with serious aliment and technicalities should not have been applied by the respondents. "

What may have some justification in normal moments may become wholly irrelevant in the moments perceived critical by the doctors treating patients under the emergency conditions. Besides, whatever is done in such situations by the qualified doctors legally authorised to practice in the hospitals licensed to function as hospitals, deserve to be respected even by our Government..

Ground 40. For that the issue of " whether the Government is bound by the package rates and cannot disburse amounts in excess of such approved rates has arisen for consideration in *V.K. Gupta v. Union of India*, 97 (2002) DLT 337, *M.G. Mahindru v. Union of India*, 92 (2001) DLT 59; and *P.N. Chopra's* case (2004 (111) DLT 190) where the Court expressly rejected similar defences and directed full reimbursement. In *P.N. Chopra's case [*2004 (111) DLT 190], the decision in *Ram LubhayaBagga's case* [(1998) 4 SCC 117] was considered; nevertheless a direction to make **full** payment was issued. And in *Milap Singh's Case* [2004 (113) DLT 91], the Delhi High Court observed:

> "10. In *M.G. Mahindru v. Union of India & Anr*. (2001) DLT 59, it has been held that full reimbursement of medical expenses to a speciality hospital, which is on an approved list of CGHS, cannot be denied to a retired Government servant.
>
> 11. It has to be appreciated that in cases of emergency like that in the present case, *ex post facto* sanction can always be granted for specialised treatment. In fact, there is no real dispute in this behalf and the only issue is to the extent of the reimbursement made by the CGHS.
>
> 12. In *State of Punjab & Ors. v. Mohan Lal Jindal* (2001)9SCC217 , the stand of the Government in refusing to reimburse the in-patient charges for the treatment in the said Hospital was rejected and the Government was held to be under a constitutional obligation to reimburse the expenses since the right to health is an integral to the right to life."

Ground 41. For that the CGHS Rates are the prefabricated norms which become otiose and irrelevant when applied to the medical treatment undergone under Emergency. What is reasonable in normal conditions may not be reasonable under an emergency. 'Necessity's sharp pinch' overrides the norms operative in normal times. It is this wisdom on which the Rajasthan High Court decided *Bodu Ram Jat vs. State of Rajasthan and Ors*. reported in *2006 (5) SLR 705*recognizing two categories of 'medical treatment' : one where the medical benefit is given for

routine medical treatment; and the other where the medical benefit is for serious aliment. The said High Court held that " technicalities should not have been applied by the respondents". .

Ground 42. For that it would be arbitrary and unreasonable to impose ceiling limit on the amount to be reimbursed where the Government admits that the treatment was taken under Emergency. Once the fact of treatment under emergency is beyond doubt, there is no option but to reimburse the entire claim pertaining to the medical treatment. It would be unfair to permit treatment, under an emergency. at the nearest hospital well equipped to handle the medical emergency, and yet to subject that treatment to the pre-fabricated rules created to govern non-emergency situations.

Ground 43. For that the effect of the administrative rules and instructions prescribing ceiling on the permissible expenditure on treatment under emergency deserves to be considered to notice its arbitrariness, and unfairness. In deciding the issues raised in this Writ Petition, this Hon'ble Court may consider the practical consequences of whatever solutions are considered fair and just. The CGHS beneficiaries have reasons to harbour worst apprehensions. If the reasons communicated to this Petitioner for slashing down his Jaslok treatment claim are accepted, then situations would emerge to quench all hopes for the retirees in distress: as (a) they would either be denied medical remedy with all sad consequences for them to face, or (b) they would be detained by the hospital as a hostage till they arrange money to pay for the medical expenditure by adopting any means, fair or foul.

Exposition

Sydney Smith had well said:

> "The only way to make the mass of mankind see the beauty of justice, is by showing them, in pretty plain terms, the consequences of injustice."

And in *Pemsel's Case*[51], Lord Reid said that it was relevant to consider the **practical effect** in arriving at a judicial decision..

Ground 44. For that the reason for slashing down this Petitioner's claims is irrational and arbitrary. The authority has not referred to the CGHS Instructions which warrant the conclusion in support of what the CGHS has done. Are the retirees required to keep on perusing the CGHS instructions all through the years they live? This Petitioner retired in 1998. Should he remain on perpetual quest to find out what is being done under the opaque system in exercise of administrative power? Should he first go round and round the administrative rungs to know this or that when he himself is caught under the cleft of a medical emergency? It is submitted that these rhetorical questions demand a positive answer : under such situations the administrative instructions prescribing the Rates, or Package Rates do not apply.

Ground 45. For that the situations of grave medical emergency constitute a segment wherein claims are to be considered in a different perspective. It comes as a sudden stroke demanding immediate response. The situation is worse, where the person subject to that distress, is not in a position to take any decision because of his disorientation caused by stroke, or a paralytic attack, or any traumatic concussion. It is precisely to respond to such situations that the there exists no pre-fabricated rates of such treatment. Even the CGHS must have felt that treatment under such emergencies cannot be regulated through the instructions which are

[51](1891) A.C. 531

relevant to regulate treatment under normal situations. This Ground is cognate to Ground 4 under which the apt observations have been made quoting observations by the Hon'ble Delhi High Court in *UoI vs J.P.Singh*[52] and *Narendra Pal Singh vs. Union of India &O*rs [1999 (79) DLT 358]:

(I) Apropos this Petitioner's entitlement to higher standard of treatment. The Status of the Petitioner has some bearing on the standard of treatment he is entitled, and on the quantum of his claims admissible.

Ground 46. For that this Petitioner's CGHS Card, which he holds after his retirement, mentions that he is entitled to medical treatment in a ' Private Ward'. The Rule 2(h) (iv) of the CS (MA) Rules, 1944, underscores the factor of the Patient's STATUS, as it says: " such accommodation as is ordinarily provided in the hospital and is suited to his status". Rule 2 (a), which defines "Authorized Medical Attendant", takes into account the STATUS of the patients. The Note 1 at page 7 of Swamy's *Compilation of Medical Attendance Rules* explains its effect when it says: "To determine the status of an officer, actual pay he is drawing at the time he falls ill should be taken into account." This explains the purpose of the requirement, in the CGHS Claim Form, to mention the gross amount of pension payable to the pensioner.

Ground 47. For that the CGHS erred in not realizing that this Petitioner was entitled to be treated at a Super Speciality hospital and was entitled to a Private Ward. The Escorts Heart Hospital is a well-known super-speciality hospital. The Jaslok Hospital is also a Super Speciality hospital, that continued to be for long on the CGHS list of the recognized hospitals.[53] The National Accreditation for

[52]2010 LIC 3383

[53]http://msotransparent.nic.in/writereaddata/cghsdata/mainlinkfile/File433.pdf

Hospitals and Healthcare Providers has granted the Jaslok Hospital a Certificate of Accreditation.[54] When someone is normally entitled to medical treatment in super-speciality hospital (as this Petitioner was), he should have been granted, if at all at the CGHS rates, at the rates prescribed for super-speciality hospital. This accords with the view of the Delhi High Court in *Jai Pal Aggarwal vs. Union Of India*[55][MANU/DE/2861/2013 (in the last paragraph)] :

> "In my view, the only logical interpretation which can be given to clause 10 of the OM dated 17.8.2010 is that if a government servant or a government pensioner holding a CGHS card takes treatment in emergency in a non-empanelled private hospital, he is entitled to reimbursement at the rates prescribed by CGHS for hospitals which are at par with the hospitals in which the treatment is taken. In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition. Clause 10 of the OM dated 17.8.2010 deals only with the cases where a card holder on account of some emergent medical requirement has to go to a non-empanelled hospital. There is no logical reason for not reimbursing him as per package rates approved by CGHS for its empanelled hospitals if the treatment is taken in a hospital, which is qualified and eligible for being empanelled as a super-speciality hospital though they were not actually empanelled with CGHS. Any other interpretation would result in a situation where CGHS card holder, despite needing immediate medical treatment will either not be able to take treatment in a nearby hospital or he will have to bear the cost of such treatment from his own pocket though he may nor may not be in a position to afford that treatment. "

Also at http://jaslokhospital.net/

[54] http://jaslokhospital.net/Certifications/M-74

[55]http://indiankanoon.org/doc/36884670/

But it is submitted that this Ground is without prejudice to his core submission that unless the CGHS can prove the treatment under emergency "fake" or "non-genuine", the full claim has to be allowed. Our Government has ample powers to take punitive actions against the patients, the doctors and the hospital as have been in this Petitioner's 'Exposition' under Ground 5.

(J) Apropos 'Comprehensive treatment' & Full Reimbursement of the claim

Ground 48. For that this Petitioner is entitled to 'comprehensive treatment' and 'full reimbursement' of his claim. The Website of the Ministry of Health & Family Welfare aptly mentions:

> "The Central Government Health Scheme" (CGHS) provides comprehensive health care facilities for the Central Govt. Employees and pensioners and their dependents residing in CGHS covered cities.[56]

Collins Cobuild English Language Dictionary defines 'comprehensive' to mean "something that is comprehensive includes everything that is essential or necessary, e.g. Linda received comprehensive training after joining the firm. Here is a comprehensive list of all the items in stock. "

Exposition

K.K. Kharbanda vs The Union Of India &Ors [W.P. (C) 6049/2005]: in the Judgment delivered on: 23.03.2009, the Delhi High Court, after examining the various provisions of the CS (MA) Rules, 1944, observes: to quote--

> "12. At this juncture, it would be worthwhile to reproduce the Rule 3 of CS (MA) Rules, 1944, which are as under:.....
>
> 13. On perusal of the CS (MA) Rules, 1944, it is manifest that no ceiling limit has been imposed by the Government under the said Rules." (italics supplied)

[56] http:// msotransparent.nic.in/cghsnew

Ground 49. For that the CGHS and the authorities of the Ministry of Health & Family Planning have failed to consider the following well-settled propositions, drawn from the Provisions of the CS (MA) Rules 1944, and also from those emanating from the Constitutional DUTIES cast by the President on the CGHS in terms of the Government of India (Allocation of Business) Rules, 1961, framed under Article 77(3) of the Constitution of India:

(i). It has been judicially established that the Rule 6 of the CS (MA) Rules, 1944. there is no ceiling limit or restriction to the reimbursement of expenses actually incurred as medical expenses either for the retired or yet to retire employees ;

(ii) As the ambit of DUTIES cast on the Ministry of Health and Family Welfare under the Government of India (Allocation of Business) Rules, 1961 framed under Article 77(3) of the Constitution of India, are widely worded, without a word of restriction, even for the CGHS beneficiaries there can be no ceiling limit or restriction to the reimbursement of expenses actually incurred as medical expenses.

(iii) The CS (MA) Rules 1944 had been framed, under the Government of India Act, 1935 to operate as law with statutory force, in exercise of powers under Section 266 (3) the Act. Article 313 of our Constitution of India provides for 'Transitional provision' requiring that "all the laws in force immediately before the commencement of this Constitution and applicable to public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union.....shall continue in force so far as consistent with the provisions of this Constitution," These Duties are to be discharged in accordance with the constitutionally prescribed Restraints, and constitutionally mandated Duties.

(iv) The provisions of the CS (MA) Rules 1944 admit of "Generic interpretation " or " flexible interpretation".[57]so that these Rules are also made to implement our Constitution's commands sought to be implemented through the Government of India (Allocation of Business) Rules, 1961 framed under Article 77(3) of the Constitution of India. Both can easily co-exist and be in synergic harmony if the beneficiaries are allowed to be entitled to all the medical benefits granted to the 2 sub-sets (those in service, and those retired) so that the whole can feel obliged to the model employer. Whilst every government servant plans for bad days, none can get ready to meet the medical expenditure that may not be enough if he sells himself on the mart.

(v) The CGHS Rates have to be realistic in response to the fast changing technology in this globalised world to which we belong, and their rising prices which the Govt. employees cannot afford. The CGHS Rates cannot be a Procrustean bed where administrative instructions have the effect of denying the benefits to the ailing employees who for decades bear the heat and burden of the administration. Besides, through administrative decisions and O.M.s limitations on reimbursement cannot be made to such a degree that it may become wholly unrealistic. To do so would be unrealistic, arbitrary, and violative of Article 14 of our Constitution.

(vi) To deny the full expenditure for treatment obtained under emergency conditions would be cruel and inhuman. When someone is sentenced to death by the Court of Law, the person bids adieu to the world with malice towards none.

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[57]H. M. Seervai, *Constitutional Law* Vol. 1 page 176 para 2.8 Dr. Wynes ' phrase "generic interpretation" clearly brings out the true nature of this principle of interpretation. He wrote: "....'generic interpretation'.....asserts no more than that new developments of the same subject and new means of executing an unchanging power do arise from time to time and are capable of control and exercise by the appropriate organ to which the power has been committed ....while the power remains the same, its extent and ambit may grow with the progress of history. "

But when a person dies as he cannot afford medical expenditure (because neither he can afford it, nor the persons for whom his whole working life was sacrificed is kind enough to come to his succour, the resulting situation is both ghastly and bizarre constituting an affront to our Constitution. In *Pemsel's Case*[58], Lord Reid said that it was relevant to consider the **practical effect** in arriving at a judicial decision..

(vii) The gems of the right ideas to govern the approach of the CGHS scintillate in many judicial dicta a few of them are briefly culled out here:

(a) " A holistic, a humanitarian and pragmatic common sense approach should be the guiding factor in a pragmatic manner in honouring the medical reimbursement claim made by the Petitioner....." *C.Ganesh's Case* [W.P.No.11583 of 2011

(b) "Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical reimbursement to the petitioner forcing him to approach this Court."*Kishan Chand v. Govt. of N.C.T. &Ors*[2010 (169) DLT 32].

(c)"22 When a Government employee puts forth a bona fide claim for reimbursement of his medical bill, it should not be taken lightly and the approach of the Government in such matters should be justice oriented. Such claims should be treated in a humanitarian manner keeping in mind the totality of circumstances." [*K.K. Kharbanda vs The Union Of India &Ors* [MANU/DE/0294/2009].

(K) Apropos Constitutional Grounds

Ground 50. For that the CGHS and the other authorities of the Ministry of Health &F.W. have wrongfully ignored this Petitioner's Right to Life by the drastic and arbitrary reduction of the amounts of this Petitioner's claim. Not only

[58](1891) A.C. 531

this Petitioner had to disgorge a very heavy sum to the hospitals before getting his discharge, his resources to maintain himself in his late 70s of his life have been substantially depleted.

Exposition

In *State of Punjab &Ors. v. Mohan Lal Jindal*, (2001) 9 SCC 217 : JT 1997 (1) S.C. 416, the Government was held to be under a constitutional obligation to reimburse the expenses since the right to health is an integral to the right to life. Similar is the effect of the Delhi High Court's observations in *K.K. Kharbanda vs the Union Of India &Ors* [MANU/DE/0294/2009] based on several decisions of the Supreme Court of India. This Hon'ble Court in *Vincent v. UoI* (1987) 2 SCR 468 at 478 considered Right to health a right enshrined in the Right to Life under Art 21. The Court observed:

> "As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution-makers envisaged."

Ground 51. For that the CGHS and the other authorities of the Ministry of Health &F.W. have wrongfully ignored this Petitioner's Fundamental Rights under Articles 14 and 21 of the Constitution by denying to this Petitioner the Right to be Heard thereby denying the benefit of the operation of the rules of Natural Justice that governs all decisions made under Administrative Law. Both the CS (MA) Rules, 1944, and the Articles 14 and 21 command the authorities not to take decisions adverse to someone without hearing him after having shown the cause for such actions. In deciding this Petitioner's Case, these norms have been ignored deliberately as the authorities have convinced themselves that they are under no such duty as is evident from 2 things viz.:

(i) the fact that all the impugned decisions were made without hearing this Petitioner in utter breach of the Rules of Natural Justice; and

(ii) the wrongful omission of the Proviso to the Rule 3 of the CS (MA) Rules, 1944, as it is seen on its text on the Website of the Ministry of Health.

Exposition

"In India a liberal interpretation of Articles 14 and 21 of the Constitution readily brings in the requirements of natural justice to administrative actions against a person. It has become an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice.."

Justice G.P. Singh's *Principles of Statutory Interpretation* (11th ed,) p.436

Ground 52. For that this Petitioner is aggrieved with the authorities as they have arbitrarily reduced the sums payable to him by way of the reimbursement of medical expenditure already incurred under emergency. This arbitrariness on their part has done great injustice to this Petitioner as this has violated this Petitioner's Right under Article 14 of the Constitution of India. The Hon'ble Court may keep in mind this Petitioner's submission in para 10 (11) *supra*. Whatever is arbitrary is violative of Article 14 of the Constitution of India,

Exposition

Our Supreme Court expounded *Ajay Hasia v. Khalid Mujib* S*ehravardi* (AIR 1981 SC 487) what is known as the New Doctrine of Art 14 in these words:

" It was for the first time in *E. P. Ayyappa v. State of Tamil Nadu*, (1974) 2 SCR 348: (AIR 1974 SC 555), that *this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness…*".

" Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of *equality or non-arbitrariness pervades Article 14* like a brooding omnipresence."

Ground 53. For that this Petitioner is aggrieved with the authorities as they have not exercised their discretion fairly as they did not appreciate the conditions under

which this Petitioner was placed when he suffered his agonizing cardiac complications, cerebral stroke, and right side paralysis. Such decisions are also tainted with other gross defects, like illegality, irrationality and procedural impropriety.

Exposition

When any thing is left to any person, Judge or magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin' s *Law Dictionary*) In its ordinary meaning the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty of power of acting without other control than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary).

[*Pratap Singh (Pensioner) vs. Director* 2007 (2)SLJ 185 CAT]

(L) The Doctrine of legitimate expectation

Ground 54. For that the authorities, who decided these impugned decisions, failed to appreciate that this Petitioner was entitled to the benefit even under the **Doctrine of Legitimate Expectations**. the reach of which has been thus stated by our Supreme Court in para 35 of *Confederation of Ex-Servicemen Association & Ors v. UOI & Ors* AIR 2006 SC 2945: to quote---

> " In such cases , therefore , the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised."

(M) Aprops the taint of arbitrariness and unreasonableness of the impugned decisions

Ground 55. For that the authorities failed to discharge their duties fairly causing grave injustice to this Petitioner. When the Bill mentioned in paragraph 6 was rejected twice by the Standing Committee of the CGHS, this Petitioner submitted a Representation to the Ministry of Health & F.W. , and again a Memorial to the Director General of the CGHS for redressal of his grievance, but they failed to discharge their duties as the supervisory and appellate authorities which roles they were required to play under the existing administrative procedure, and also as required both by the Proviso to the Rule 3 of the CS (MA) Rules 1944 and the norms of Natural Justice. If they would have acted fairly, the Standing Committee would not have stuck to its erroneous views later on found by them themselves as erroneous. The Standing Committee was only a recommending body, the final order could be of the Central Government alone. It was also the duty of the appellate authorities to set right the wrong done by the Standing Committee as the Central Government, as the appellate authority, had full powers to consider this Petitioner's claims overriding the views of the Standing Committee. This power accrued to the Central Government by virtue of its being both the supervisory and appellate authority. As an appellate authority, it could examine issues afresh, and could have set aside the erroneous decisions sparing this Petitioner from this vexation of litigation,

Exposition

The Supreme Court observed in *Jute Corpn v CIT* [187 ITR 688] that in the absence of any statutory provision ..., the general principle relating to the amplitude of the appellate authority's power being coterminous with that of the initial authority should normally be applicable.

Ground 56. (N) This impugned decisions go counter not only to the observations of the Constitution Bench in *Conf. of Ex-servicemen Association* (AIR 2006 SC 2945 paras 13 & 32) but also to the decisions of this Hon'ble Court in:

(a) *State of Punjab and Others v. Ram Lubhaya Bagga,* AIR 1998 SC 1703

(A) Material Points in *Bagga's Case*; (B) Material points in this Petitioner's Case

The nature of Fundamental Rights available for invocation	**The trajectory of the Petitioner's grievance**	**Constraints of resources of the State if relevant, and to what extent**	**The Govt's policy: the extent of its relevance**	**Whether a case of Emergency or not**
(A) Articles 21 and 47 of the Constitution.	(A) The grievance was against the Government's policy	(A) The Right is to be balanced with the need, equity and the resources available"[59]	(A) The Govt's policy was to allow in accordance with the advice issued by the District/ State	(A) In para 39 of *Bagga's Case*, the heart attack case was considered good for dispensing with the normal

[59] *P.N. Chopra vs. Union of India*, 111 (2004) DLT 190. the decision in *Ram LubhayaBagga's case* had been considered; nevertheless a direction to make full payment was issued. *I.C. Sindhwani v. Uo*I, the Hon'ble Delhi High Court observed:

" The issue of whether the Government is bound by "the package rates" and cannot disbursement amounts in excess of such "approved" rates has arisen for consideration; in V.K. Gupta vs. Union of India, 97(2002) DLT 337, *M.G. Mahindra Vs. Union of India*, 92(2001) DLT 59; and *P.N. Chopra's case* (supra) the Court expressly rejected similar defences and directed full reimbursement. In P.N. Chopra's case, the decision in *Ram LubhayaBagga's case* (supra) was considered; nevertheless a direction to make full payment was issued. I am in complete agreement with the reasoning in those cases.".

124 (2005) DLT 513

			Medical Board	rates of the AIIMS, and directed was for payment the amount actually charged..[60]
(B) Invocation to Articles 14. and 21. Discharge of duties under the Rules of Government of India (Allocation of Business) Rules Also invocation to Articles 309 & 313	(B) This Petitioner questions the administrative actions on the counts of Legality and Constitutionality alone (see Para 19)	(B) Not relevant where the point pertains to discharge of duties towards the Government Servants	(B) Such considerations do not apply to emergency cases.	(B) This was in worse crisis. In Heart attack cases, crisis is over after 72 hours. This Petitioner had gone, in 1989, to the Apollo Hospial, Madras in 1989 after his first heart-attack on CGHS reference. But this time he had ceased to be his decision-maker when at the Escorts, and under stroke and paralysed when at the Jaslok, Such situations do not give time[61].

[60] " The respondents had been paid at the admissible rate in AIIMS but claims the difference between what is paid and what is admissible rate at Escort. Looking to the facts and circumstances of this case we hold that the respondent in SLP(C) No. 11968/*97 is entitled to be paid the difference amount of what is paid and what is the rate admissible in Escorts then.* The same should be paid within one month from today. We make it clear reimbursement to the respondents as approved by us be not treated as precedent but had been given on the facts and circumstances of these cases." AIR 1998 1712, para 39

[61] "Some of the serious diseases do not knock or warn through bell giving them time. Emergency cases require immediate treatment and if with a view to comply with procedure one has to wait then it could be fatal. One may not in such cases live, if such a procedure is strictly followed" *State of Punjab and Others v. Ram LubhayaBagga*, AIR 1998 SC 1703 para 1

(b) *State of Punjab v. Mohinder Singh Chawl*a AIR 1997 SC 1225

(A). Material points in *Chawla's Case;* (B) Material points in this Petitioner's Case

The nature of Fundamental Rights available for invocation	**Permission granting authority**	***Ex post facto* permission was granted**	**Decision**
(A) Government is required to fulfill the constitutional obligation.	(A) A Government servant, after a sudden coronary ailment, was recommended to go over to Escorts for urgent treatment.	(A) The Medical Board granted *ex post facto sanction* for treatment with one attendant.	(A) Held that the employee was entitled to reimbursement of actual room rent charges paid by him,[62]
(B) Do	(B). It couldn't apply a retired government servant caught in medical emergency.	(B) The Government has already granted *ex post facto* sanction by granting partial payments on the Bills	**(B)** This Petitioner was entitled to reimbursement of actual expenditure under emergency .

(O) The impropriety of the impugned decisions becomes horrendous when read with the observations in the CAG's Report

G.57.For that even the partial payment was made only after pursuing for long the matter before the Supervisory Authorities and the Secretary Ministry of Health experiencing callous indifference and injustice not much different from the

[62] "Held that the employee was entitled to reimbursement of actual room rent charges paid by him. The Government was not entitled to take the stand that the reimbursement could be allowed as per rates charged by All India Institute of Medical Sciences. When the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is integral part of his expenditure incurred for the treatment. Consequently the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment. "[H.N.]*State of Punjab v. Mohinder Singh Chawl*a AIR 1997 SC 1225

distress of the retired officers noticed by the CAG in course of its Performance Audit of the Government of India No. 3 of 2010-11 : ['Reimbursement of Medical Claims to the Pensioners under CGHS']: viz--- **[Annexure P-12]**.

(a) If this Petitioner's benefactors, who carried this humble self to the Emergency at the Escorts Hospital, or the Jaslok, would have waited for the approval of the CGHS, this Petitioner would have met the fate of the pensioner whose Case has been graphically described, with a lot of pathos, by CAG under heading: " Negligent handling of files leading to failure to grant permission to a pensioner, who died without getting the recommended treatment." [vide the CAG's comments at page 250 of this W.P.]

(b) The said CAG Report, in its Second Case Study, tells someone's drudgery over a decade that witnessed a rejection of medical claim without spelling out reasons for doing so; then again a rejection even on consideration of a representation, and, at the end of the tether, the grant of the claim by recognizing that the expenditure was incurred under genuine emergency, but only "after receipt of application under RTI Act". [vide the CAG's comments at page 251 of this W.P.]

(c) Some of the rounds of rejections in the story of this Petitioner's claims could have been avoided if the authorities would have given him an opportunity of being heard , or if this Petitioner's claim papers had been carefully scrutinized seeking clarifications on the points causing problems.[vide the CAG's comments at page 256 of this W.P.]

Ground 58. For that the remissness on the part of the authorities caused the DELAY in the settlement of this Petitioner's claims that has caused " harassment and financial hardship " (to say in the words borrowed from the page 45 of the CAG's said Report [describing someone's plight in a Case Study- 2 under the caption 'Delay in the settlement of medical claims of pensioners']. [vide this W.P. page 246, and Case Study 2 at page 251 of this W.P.]

XI

46. CONCLUSION

That this humble Petitioner would conclude this Writ Petition before this Hon'ble Court by articulating and stating, with utmost brevity, the objectives of this Petition:

(i). to get the reimbursement of Rs 799555, wrongfully denied to this Petitioner by the CGHS and the Ministry of Health and F.W., by not reimbursing this Petitioner's claims of the fully for his treatment at the Escorts Hospital, and the Jaslok Hospital; [para 3 of the W.P.]

(ii). to get a declaration on the right norms and protocol which can govern the treatment, in emergency conditions, of a patient "brought" to the Emergency of the Hospital in critical conditions after suffering syncope, stroke, and paralysis which render him not capable of taking decision; [Part VI & Grounds 14, 15, 20]

(iii). to get the decisions of the CGHS judicially examined for their propriety of judging the decision of the doctors dealing with the patients, in such critical emergency, with a long history of cardiac complications over 25 years through several rounds of surgical procedures, viz. rounds of angiographs and angioplasty;[Part VI, Grounds 16, & 'Medical History' marked **Annex P- 10**]

(iv).to get the rights and duties of such patients, and of such doctors, treating them in such critical emergency, declared, keeping in view:

(a) the conditions of the patient with faltering flame of life, and

(b) the doctors' duties in terms of Medical Ethics and their professional attainments & reputation; [Grounds 3, 17, 28]

(v). to get, in the light of Articles 14 and 21 of the Constitution, the IMPUGNED decisions of the CGHS examined to see whether they were right in refusing to pay for the CRT-D device installed on their patient in emergency by a team of

some of the most eminent cardiologists of our country at the Escorts Hospital; [Grounds 50-53 & 55]

(vi) to get a direction to the Government to pay full amount of the CRT-D implant at the market rate, or as charged by the hospital, as this was a new device with therapeutic novelty for which no ceiling rate had been fixed by the CGHS on the date of the implant, i.e. November 12, 2013 ;

(vii). to get it judicially declared that the administrative rules and instructions through memoranda of any sort cannot operate as binding norms to control the treatment under emergency in which situations only the medical decision of the treating decision of the doctors for the good of their patient is final and binding, otherwise the doctors would be acting against professional ethics, and would be guilty of the betrayal of duty towards their patient, which would also be arbitrary and violative of the Articles 14 and 21 of our Constitution; [Grounds 7, 26, 28]

(viii) to get it decided/ declared that in grave emergency medical treatment is not subject to administrative instructions through the memoranda issued by the CGHS, or the Ministry of Health, because the provision of proper treatment cannot be subjected to any official pre-conditions [which fact is suggested also by the fact to the CGHS has no pre-fabricated rates, rules, and instructions on the treatment given under EMERGENCY][63] [Grounds 4-7,];

(ix). to get it declared that it is unreasonable to question the treatment done, under emergency conditions, at any of the hospitals registered by the Medical Council by the competent doctors enrolled by the Medical Council set up under the Medical Council Act 1956 which grants powers to the Central Government to take punitive actions against any unethical and unprofessional acts of the doctors or the hospitals; [vide Ground 5 'Exposition']

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[63] *UoI vs. J.P.Singh* [2010 LIC 3383 para 5] Del. H.Ct.

(x) the get it declared that every patient is entitled to the treatment, wherever taken, considered proper and in keeping with his status and the class of his entitlement as mentioned on his CGHS Medical card, and no rates or package rates can be fixed arbitrarily without taking into account the status of the claimants, and the nature and gravity of his ailments undergone under emergency conditions;[Grounds 39-47]

(xi) to get it declared that all the impugned decisions in this Petitioner's Case are bad as they have been made in violation of the Rules of Natural Justice that requires that a party should have the opportunity of addressing all relevant evidence on which he relies, and that no materials should be relied on against him without his being given an opportunity of explaining them. [Grounds 33-38, &55]

(xii) to get it declared the role and duties of the authorities deciding claims preferred by a government servant, whether under yoke or retired, by categorizing them in three broad categories: administrative, advisory (as is the Standing Technical Committee) appellate, underscoring the plenary power of the appellate authority to correct the decisions of Standing Committee, and of other administrative authorities; [Ground 55]

(xiv) to get it declared that in honouring the medical reimbursement claim of the government servants, under yoke or after retirement, a holistic, a humanitarian and pragmatic common sense approach should be the guiding factor in a pragmatic manner, and system be so operated as to save the CGHS beneficiaries from becoming victims of BIAS or hubris which was also seen by the CAG at work in the working of the CGHS in its 'Performance Audit of the Government of India No. 3 of 2010-11' pertaining to the "Reimbursement of Medical Claims to the Pensioners under CGHS". [**Annexure P- 12** at pages 239-266 of this W.P.].

Certificate:

This Petitioner submits that he has not filed any Writ Petition, or any other petition before this Hon'ble Court, or any other court, for the relief sought by him in this Petition.

XII

47. PRAYERS

That under the circumstances aforementioned, and apropos the GROUNDS set forth above in this Writ Petition, this Petitioner most humbly prays that this Hon'ble Court may be graciously pleased:

1. to direct that the full claims for the reimbursement of the medical expenditure already incurred under serious and genuine emergency be allowed having the effect of granting claims to the tune of Rs. 799555 denied by making only part payments on the Medical Bills [vide para 2 of this Writ Petition],

2. to pay on the outstanding dues, interest at such rate and for such period as is considered fair and just, and a reasonable sum to meet the cost of this litigation;

3. to declare norms to govern the working of the CGHS, taking account of the CAG's Report, and the facts of this Petitioner's Case, so that the retired Government servants do not suffer in obtaining their rightful claims;

4. to pass such order/orders in terms of the plenitude of the constitutional power emanating from Articles 32 & 142 as this Hon'ble Court considers fit and proper on the facts, and pleas, presented in this Writ Petition.

5. to permit this Petitioner to raise such other grounds as he may deem his duty to raise in course of this proceeding.

(Shiva Kant Jha)

New Delhi: / / 2015.

Petitioner-in-person

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