THE SUPREM E COURT OF INDIA

(ORIGINAL CIVIL WRIT JURISDICTION)

W.P.(C) No. 694 of 2015

In the matter of:

SHIVA KANT JHA .....Petitioner-in-person

Vs.

UNION OF INDIA …. Respondent

SUPPLEMENTAL NOTE FILED BY THE PETITIONER-IN-PERSON on 27/9/2016

The Following be treated as part of the Petitioner's Case supplementing the Petitioner's Response to the Respondent's Affidavit in Reply already filed.

Part I Introductory Submissions

Part II Apropos AIIMS Rate

[Pet. Res.] pp. 15-20 (paras 17.)

Part III. Apropos the Doctrine of Non traverse invoked.

Part IV. THE SUMMING-UP of the Adversarial dimension of this W.P.

Part V. On the PIL Dimension of this W.P.

PART I.
INTODUCTORY SUBMISSIONS

1. Through this Writ Petition, this humble Petitioner-in-person invokes jurisdiction under Art. 32 ("Remedies for enforcement of Fundamental Rights granted under Part III of the Constitution) read with Art. 142 ("complete justice") of the Constitution of India. All the grounds to be advanced in the Writ Petition are the well-known grounds on which administrative action is subject to control by Judicial Review: viz. (i) illegality (substantive*ultra vires*), (ii) irrationality (objective unreasonableness), (iii) procedural impropriety (procedural *ultra vires*), and (iv) proportionality (absence of prudence)

2 Before this Petitioner comes to his Writ Petition, he deems it worthwhile to put at the outset the core points that he has discovered on reading scores of the High Court and the CAT decisions. These points deserve to be treated as the determiners of right judicial perspective. These decisions are placed in the two volumes of this Petitioner's Paper Books containing Cases and Materials [to be referred hereinafter as the P.B. I and the P.B. II], and are also discussed in this Petitioner's Writ Petition, and his "Response to the Respondent's Reply Affidavit". Some of such propositions are summarised hereinafter keeping in view the constraints of the actual ISSUES involved in this Petitioner's Case. Some of the points worth being noticed are articulated hereunder as a set of illustrative propositions: viz.--

(i) Whilst the CGHS is accustomed to inflict injustice and sufferings on old helpless ailing civil servants by denying their legitimate claim for disbursement of medical expenditure, or by unreasonably reducing the amount on the plea of the CGHS approved rates, the courts have granted <u>in all those Cases full reimbursement</u> with interest and cost, laced with deserved comments of the censure which seldom made the CGHS stand up to discharge its duty for which it got mandate under the law and the Constitution. [The points are borne out even by the CAG'S Report: see "the

CAG on the Performance Audit of the Govt. of India No. 3 of 2010-11" marked **Annex P- 12 with the Writ Petition.]** Besides, this state of affairs is seen as an endemic malaise in the CGHS**. [**See the summary of more than 25 Cases set forth in the Appendix to the Petitioner's Response to the Respondent's Affidavit in Reply: at pp. 28-37].

(ii) This Petitioner deems it appropriate to draw this Hon'ble Court's attention to fn 9 in his Response to the Respondent's Reply Affidavit wherein he had no option but to say, with iron in his soul, in words like these:

> "It deserves to be mentioned that this **Written Submissions** is structured to answer the Attorney General who had, whilst seeking first adjournment on 14/12/2016, had told the Hon'ble Court "that the competent authority is examining the validity of the claims made by the petitioner and that an additional affidavit shall be filed within four weeks as to the amounts found due and payable to him." And this Petitioner had countered him that all the issues involved are already settled under the court decisions. To bear out my contention, this Petitioner divided the said Written Submissions into 3: Part A dealing with this nature's of this Petitioner's entitlement; Part B highlighting the core issues with reference to the various decisions governing such points; and Part C providing a chart of ISSUES already judicially considered in favour of this Petitioner. It is now for this Hon'ble Court to consider whether the Government was right in dragging the matter this way making this old and ailing man to go the extent of knocking at this Hon'ble Court's door. Surely he has done so for his benefit, but he has done so for all the suffering souls like him who cannot litigate, cannot get even a reply from the Government, and are wrenched by delays and dragging till their end."

(iii) It is most respectfully submitted that all the ISSUES relevant to this Petitioner Case are already judicially noticed, and judicially decided in favour of this Petitioner. No administrative instruction can go counter to what has been judicially interpreted and mandated. This point has been drummed into the ears of the authorities in a host of decisions by the High Courts, and our Supreme Court.

1	The reimbursement of the medical claims of the CGHS beneficiaries	Vide pp. 28-37
3	An over-arching Case Governing the major points in this Petitioner's Case	Vide pp. 37-38
4	Issues/Points material in deciding the Issues raised in this W.P.	Vide pp. 63-69
5	Points already judicially considered in favour of this humble Petitioner	Vide pp. 70-73

(iv) The administrative remissness and callousness on the part of the CGHS is a self-admitted fact that deservedly courted censure of the Hon'ble Delhi High Court. The r endemic administrative remissness was admitted by the Government's counsel in *V.K. Gupta v. Union of India* 97 (2002) DLT 337: to quote –

> "The only submission by learned counsel for respondent Mr. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and *in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs*."

The old and aging Central Government servants become the most hapless and helpless target of the most unkindest cut when a few lucky ones can knock at the judicial doors for justice.The Hon'ble High Court censured through words of studied moderation, and understatement: "This is hardly a satisfactory state of affairs" [vide the Petitioner's P.B. I at p. 198] .

Exposition

Many in the Administration that this Petitioner served for almost 3 decades consider power most enjoyable when abused, and this becomes most enjoyable when power is exercised against old, helpless, humans who had served the nation and the government over all the years. This Petitioner is thinking of those miserable souls about whom the CAG had time to bother about in his Report already mentioned. Such odds come when most of them are treated as hated burden in their family, and do not know whom to approach for help as have neither strength nor resources to approach the persons in authority. True, there is one way left to be explored. This is the supplication before Judiciary. But this is easier said than done.

I would illustrate the plight of retired Government servant with reference the Case of *Pratap Singh* (see *at P.B. I pp of 95-108*]. The Principal Bench of the CAT decided in favour of the Petitioner on all the points. But our Government appealed against this decision before the Hon'ble Delhi High Court where, as this Petitioner understands, the matter is still pending. The Administration is accustomed to cause DELAY, because it knows that it can have last laugh on the wrenched claimant just by causing DELAY. Over years their verve would be lost, their resources would get depleted, or, in most cases, they would be summoned by Almighty to render how the humans of our welfare State treat their old and hapless persons. In *Pratap Singh's Case*, the Petitioner was lucky as the milk of human kindness led the Hon'ble High Court, on May 18, 2009, to pass the following Order [see at p. 131 of the Paper Book II]:

> "Since the amount in question has already been paid to the respondent, there is no urgency in the matter. List the matter in its turn."

Till this date the matter is pending. This Petitioner understands that at the High Court 2002 matters coming up in regular course. If it comes after a decade, the Petitioner, in all likelihood in his nineties, would have gone thanking the CGHS for its strategy of Delay. He would go (if not already gone) with his respectful obeisance to the brooding omnipresent Justice. It is wholesome that the Hon'ble High Court made the Government pay the FULL CLAIM. This Petitioner begs for pardoned for mentioning these facts not directly relevant to the instant Case, but as illustrations of the game of Delay in which Justice Herself is a casualty.

(v) It is submitted that hitherto no legal analysis of the accrued interests of Central Government servants, for whose welfare the President of India had framed the Government of India (Allocation of Business) Rules, 1961, has been made by any court. This issue is brought before this Hon'ble Court for the first time. The problem has so many aspects, and requires consideration from diverse observation-posts.: First, the effect of the CS (MA) Rules, 1944; Second the Doctrine of Legitimate Expectation (as developed by our Supreme Court, and the House of Lords in *Council of Civil Service Union v. Minister of Civil Service)*; Third, the effect of the Rules made under Art. 77 (3) of the Constitution by which the President of India has assigned certain duties to the Ministry of Health & F.W. for the benefit of certain Central Government servants. This Petitioner has presented his case in his "Submissions at the threshold" a copy of which had been given to the Government Advocate on Feb. 2, 2016 in course of hearing, and is now made an Annex to the Petitioner's Response to the Respondent's Reply Affidavit [vide

pp. 40-50]. [**Refer to** (a) *Council of Civil Service Union v. Minister for Civil Service* [1984] 3 All ER 935 esp. at p. 949 See P.B. II at pp. 46-71 and (b) *All ER Report Review 1984* : the article on "Administrative Law" by Keith Davies at p. 5 (placed in the Petitioner's Paper Book II).]

(vi) It is most humbly submitted that, under this Petitioner's comprehension, the most relevant judicial decision for deciding the ISSUES in this Petitioner's Case is *E. Ramalingam v. The Director of Collegiate Education* wherefrom propositions have been collatedat pp. 37-38 of the *Response of the Petitioner to the Respondent's Affidavit in Reply* under the caption of "The Overarching Case Governing all the Major Points in this Petitioner's Case". Besides, the wholesome judicially mandated approach in considering the claims for the reimbursement is suggested in the last paragraph of *C. Ganesh vs. CAT* [2011 SCC Online Mad 1624, a Xerox copy can be seen at the Petitioner's P.B. I at pp. 150-170 esp. the observation in its para 39 at pp169-170. It is in tune with the Hon'ble Supreme Court's justice-oriented approach in *Madras Port Trust Case* relied on by Karnataka High court in *G.C. Nagraju v. Executive Engineer, PWD* [2001 (1) Kar L.J. 71 at p.79 para 28 [Xerox copy is placed in the Petitioner's P.B. II at pp. 106-112D].

PART II.

Apropos AIIMS Rate

3. The Respondent has stated in para 16 of the Respondent's Affidavit in Reply its rationale for paying only Rs 490000/ as the cost of the CRTD implant. It says:

" It is submitted that though the Special Technical Committee Meeting did not find the implant justified, the Competent Authority, keeping in view the emergency nature of the case of the petitioner, approved the reimbursement of implant as per AIIMS RATE."

It is submitted that this Petitioner requires no charity, either his claim is in accordance with law, or he has no claim to pursue. It is submitted that the aforementioned view adopted by the CGHS is unacceptable for various reasons, some of which this Petitioner summarises as under:

(i) This Petitioner had portrayed in his Representation to the Additional Secretary and Director General CGHS (a copy placed as P-8 With the Writ Petition (at pp. 216-220 paras 6-9 pointing out the lapses in the Special Technical Committee. Thrice did the Committee consider this Petitioner's Case but each time without giving him any opportunity of being heard to assess the factors which had led the eminent doctors at the Escorts Hospital to implant CRT-D on assessing the Petitioner's cardiac conditions. They perused the Petitioner's Medical History from 1979, and found their reasons to implant CRT-D vide para 27 of the W.P., and Grounds 17-28 at pp. 57-69. A learned research paper published in most prestigious medical journal[1], the *Journal of the A American College of Cardiology*, mentions in one of the well known collaborative articles what it considers the right approach in selecting the right candidates for the CRT-D implant. It says: to quote –

> "Patient-specific modifiers and comorbidities and issues of patient preference that may influence the choice of particular tests or therapies are considered, as well as frequency of follow-up and cost-effectiveness."

[Vide**Paper Book II** pp 153-158]

[1] *Journal of the American College of Cardiology* see at page .....of the Paper Book II.

It is submitted that to discover all the appropriate factors going to determine a "Patient-specific modifiers and comorbidities", the right medical decision-makers must have a holistic view of the patient's health. Consideration of "comorbidities" [2] would require the consideration of various factors shaping the conditions having bearing on all the causative factors. The doctors who had taken that decision to implant the CRT-D had full comprehension of the ***patient*** 's problems, and had access to his comprehensive medical history of cardiac ailments spanning over 25 years. A short portrait of this history is outlined in this Petitioner's Medical History vide **Annex 10 of the W.P. at W.P. pp. 223- 237.**

(ii) This Petitioner has summarised his core submissions on this point in this Petitioner's Response in para 17 at pp. 15-20. He has discussed facts with reference to *E. Ramalingam v. The Director of Collegiate Education* (2006) 3 M.L.J.641; in *the North Sea Continental Shelf Case* ICJ 1969, 3 at 222; *UoI v. J. P. Singh* 2010 LIC 3383; *State of Punjab v. Mohinder Singh Chawla* JT 1997 (1) S.C. 416, cited in *Narendra pal Singh v. UoI* 1999(79) DLT 358;*Surjit Singh v. State of Punjab &Ors*. (1996) 2 SCC 336, in which our Supreme Court has approved the approach and observations of the Divison Bench in *Sadhu R. Pall case* containing some observations having some bearing on the decision making in critical situation of the sort this Petitioner stood suddenly trapped in.

(iii) Once in some genuine EMERGENCY one is taken to hospital, the patient is treated as per the professional ethics of the doctors, The Patient is seldom in the condition to deliberate, seek approval, or waste time pursuing administrative rigmarole when every moment matters.

See GROUND 3-6 at page 47-51 of the W.P.

E. Ramalingam v. Director of Collegiate Education (2007 Writ L.R. 1073 at p. 1074

*See P.B.*I *at pp, 149-149D*

See this "**Petitioner's over-arching case governing all the major points** in this Petitioner's Case" in this Petitioner's Response to the Respondent's Affidavit at pp. 37-38

(iv) The idea to pay for the CRT-D at the AIIMS rate is arbitrary. Reasons are spelt out in the Petitioner's Response at pp. 17-20 , esp. in sub-para (vi) at page 18.[3]

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[2] "In medicine, **comorbidity** is the presence of one or more additional diseases or disorders co-occurring with (that is, concomitant or concurrent with) a primary disease or disorder; in the countable sense of the term, a **comorbidity** (plural **comorbidities**) is each additional disorder or disease. The additional disorder may be a behavioral or mental disorder."" *Wikipedia*
"The simultaneous presence of 2+ morbid conditions or diseases in the same Pt, which maycomplic ate a Pt's hospital stay; in the US health care system, comorbidity carries considerable weight in det ermining thereasonable length of hospitalization under the DRG classification of diseases."
http://medical-dictionary.thefreedictionary.com/Comorbidities

[3]" (vi) The Respondent has not quoted the specifics of the device for which this Petitioner could have gone to the AIIMS to see if that conforms to the best specifications device available. . Who will risk going in for the implant of a life saving device which is not widely tested and professionally approved. This Petitioner was admitted at the Escorts Hospital in critical conditions. He had no option but to allow the internationally reputed doctor to go ahead. Even in this Reply Affidavit, the Respondent does not mention the specifics of the CRT-D device for which AIIMS is charging so less. In life threatening situation, one cannot indulge in wild goose chase. The argument of the Respondent deserves to be rejected as the Hon'ble Delhi High Court had done some analogous submission of the Government of India in*UoI v. J. P. Singh* 2010 LIC 3383:....."

(v) The implant of the CRT-D is a serious and risky procedure. The doctors have to consider not only "Patient-specific modifiers and comorbidities and issues of patient preference"", they have to consider the right choice of the device to be implanted. They are to consider, in the context of the ailing patent under the duress of the emergency. The choice involves the consideration by the doctors of a lot of micro medical factors of the patent entrusted to his professional care. The difficulties involved in this pursuit are obvious on reading a few relevant lines in *Journal of the American College of Cardiology*.[4]

[Vide**Paper Book II** pp 153-158]

(v) The absurdity of the idea to grant the CRT-D cost at the AIIMS rates can be well evident by noticing the following facts;

No imaginary shifting of the locus of treatment under emergency can be done through administrative fiat. Such actions are neither reasonable nor fair. Besides, this approach does not accord with settled legal position we get in the following:

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[4]**"2.6. Selection of Pacemaker Device**

Once the decision has been made to implant a pacemaker in a given patient, the clinician must decide among a large number of available pacemaker generators and leads. Generator choices include single- versus dual-chamber versus biventricular devices, unipolar versus bipolar pacing/sensing configuration, presence and type of sensor for rate response, advanced features such as automatic capture verification, atrial therapies, size, and battery capacity. Lead choices
include diameter, polarity, type of insulation material, and fixation mechanism (active versus passive). Other factors that importantly influence the choice of pacemaker system components include the capabilities of the pacemaker programmer, local availability of technical support, and remote monitoring capabilities. Even after selecting and implanting the pacing system, the physician has a number of options for programming the device. In modern single-chamber pacemakers, programmable features include pacing mode, lower rate, pulse width and amplitude, sensitivity, and refractory period. Dual-chamber pacemakers have the same programmable features, as well as maximum tracking rate, AV delay, mode-switching algorithms for atrial arrhythmias, and others. Rate-responsive pacemakers require programmable features to regulate the relation between sensor output and pacing rate and to limit the maximum sensor-driven pacing rate. Biventricular pacemakers require the LV pacing output to be programmed, and
often the delay between LV and RV pacing must also be programmed. With the advent of more sophisticated pacemaker generators, optimal programming of pacemakers has become increasingly complex and device-specific and requires specialized knowledge on the part of the physician. Many of these considerations are beyond the scope of this document. Later discussion focuses primarily on the choice regarding the pacemaker prescription that has the greatest impact on procedural time and complexity, follow-up, patient outcome, and cost: the choice among single-chamber ventricular pacing, single-chamber atrial pacing, and dual-chamber pacing.Table 2 summarizes the appropriateness of different pacemakers for the most commonly encountered indications for pacing. Figure 1 is a decision tree for selecting a pacing system for patients with AV block. Figure 2 is a decision tree for selecting a pacing system for patients with SND. An important challenge for the physician in selecting a pacemaker system for a given patient is to anticipate progression of abnormalities of that patient's cardiac automaticity and conduction and then to select a system that will best accommodate these developments. Thus, it is reasonable to select a pacemaker with more extensive capabilities than needed at the time of implantation but that may prove useful in the future. Some patients with SND and paroxysmal AF, for example, may develop AV block in the future (as a result of natural progression of disease, drug therapy, or catheter ablation) and may ultimately benefit from a dual-chamber pacemaker with modeswitching capability.

Similarly, when pacemaker implantation is indicated, consideration should be given to implantation of a more capable device (CRT, CRT-P, or CRT-D) if it is thought likely that the patient will qualify for the latter within a short time period. For example, a patient who requires a pacemaker for heart block that occurs in the setting of MI who also has an extremely low LVEF may be best served by initial implantation of an ICD rather than a pacemaker.
In such cases, the advantage of avoiding a second upgrade procedure should be balanced against the uncertainty regarding the ultimate need for the more capable device."

"ACC/AHA/HRS 2008 Guidelines for Device-Based Therapy of Cardiac Rhythm Abnormalities
"[4]*Journal of the A American College of Cardiology*http://content.onlinejacc.org/article.aspx?articleid=1138927

(a) The effect of the existing Government instructions as stated in Appendix VIII (Reimbursement in Relaxation of Rules in Emergent Cases') to Swamy's *Compilation of Medical Attendance Rules* at page 297 .

Vide Ground 3 of the W.P. at p. 47.

(b) Rule 6 of the CS (MA) Rules 1944, and 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 permitting the government servants, both retired and in-service, to get treatment under emergency at the nearest hospital that can provide the appropriate treatment under conditions warranted by the status of such beneficiaries. [Vide **fn. to Ground 3** and **Ground 13** of the W.P.]. The effect of the administrative instructions have been thus summarised in The Annual Report 2013-2014 (Chapter 13) of the Department of Health and Family Welfare [at http://www.mohfw.nic.in/WriteReadData/l892s/Chapter1315.pdf] under the heading "Facilities available under CGHS":

" Reimbursement of expenses for treatment under emergency in Private unrecognized hospitals under emergency..... [vide **Annex P-13** at p. 267 of the W.P.]

(vi) The demands of EMERGENCY treatment were considered by our Supreme Court in *Surjit Singh v. State of Punjab &Ors*. (1996) 2 SCC 336; *State of Punjab v. Mohinder Singh Chawla* JT 1997 (1) S.C. 416,; and *State of Punjab and Others v. Ram LubhayaBagga*, AIR 1998 SC 1703.. **For other decisions vide Appendix to Written Submission at pp. 37-38, and 64-66 of *Petitioner's Response to the Respondent's Affidavit in Reply***

(vi) This Petitioner was taken to the Escorts hospital under emergency and was treated for his ailment. To say that he can be given the price of the CRT-D at the AIIMS rate is incongruous and untenable on the wholesome logic that had appealed to our Supreme Court in *State of Punjab v. Mohinder Singh Chawla* JT 1997 (1) S.C. 416, cited in *Narendra pal Singh v. UoI* 1999(79) DLT 358 , where the Hon'ble Supreme Court had said:

"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. Under these circumstances, the contention of the State Government is obviously untenable and incongruous."

(vii) It deserves to be recognised that emergency has often stunning effects under which the capacity to take cool calculated decision is often the first casualty. It was well said in :
*State of Punjab v. Ram Lubbaya*Bagga [AIR 1998 SC 1703 in para 17] (see the Petitioner's P. B. I at page 40-A][5].

Sadhu R. Pall's Case[6]quoted with approval by the Supreme Court in *Surjit Singh v. State of Punjab [(1996) 2 SCC 336"*(see the Petitioner's P. B. I at page 50B.]
Union of India vs. J.P. Singh [2010 LIC 3383 where the Delhi High Court observed propositions analogous to several observations in scores of decisions compiled on at pp. 37-38, at pp. 64-66 of this Petitioner's Response to the Respondent's Affidavit in Reply. The High Court felicitously observed:

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[5]" 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".

[6] "In such an emergency, one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved. "

> “”13...The issue at hand is whether, in case of an emergency, prior permission from a competent authority is necessary for availing medical treatment at a private hospital listed as a hospital wherefrom a CGHS medical health scheme beneficiary can avail necessary medical aid. If not, what has to be done?
>
> 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.
>
> 15. 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.”
>
> [see the Petitioner**P.B. I at its page 123**]

(viii) This Petitioner, by rising over the labyrinth of his own case, wonders why the fad of rates at the AIIMS is dear to the CGHS when at the material time the CGHS had not announced such rates, so this Petitioner could claim the cost of the device at its market price.

See **Grounds 20-23 at the W.P. pp. 61-63**

The Hon’ble Court may take into account the published paper on the state of affairs at the AIIMS in Delhi. [at P.B. II pp. 191-193.]

4. It is well established legal norm that there is a power of relaxation of rules which would enable a CGHS card-holder to ask for relaxation on his getting treatment under medical emergency. At page 29 of the W.P. the attention of the CGHS had been drawn to the fact that this Petitioner had made a specific request to consider the Petitioner's claim by relaxing the Rules had been made. The Technical Standing Committee ignored this Prayer which it was duty bound to consider. 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."

By just ignoring this request, the Technical Standing Committee failed in its duty. This Petitioner had brought out his grievances against the STC in his Representation to the Secretary Health, and the Director-General CGHS [vide Annex. P-6 and P-8 of the W.P. But as things stand now, the Government has accepted the Petitioner’s Case that he underwent treatment under GENUINE Emergency, though it has erred in not giving full effect to such decision. By implication, our Government has realised now what made the STC go wrong on repeated occasions. In this connection, paragraph 43(ii) at page 43 of the W.P. deserve a reading.[7]

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[7] “(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].

PART III.

Under the Doctrine of Non-traverse

*'18. Order 8 Rule 5 of the Code is known as doctrine of non-traverse which means that where a material averment is passed over without specific denial, it is taken to be admitted. The rule says that any allegation of fact must either be denied specifically or by necessary implication or there should be a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation should taken to be admitted." *Smt. Asha Kapoor vs Shri Hari Om Sharda*https://indiankanoon.org/doc/173585240/ Delhi. [*M. Venkataraman Hebbar (D) By L.RS. Vs. M. RajgopalHebbar&Ors.* 2007 (5) SCALE 598, followed.]

* See Section 58 of the *Indian Evidence Act* ,1872:

> **"S.58. Facts admitted need be proved.** – No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

See ***SethRamdayalJat* v. *Laxmi Prasad*** AIR 2009 SC 2463 para 19 and 20 at the P.B. II pp. 119-120

Refer to Order 8 OF THE Cr.P.C. AND the Supreme Court's power to do COMPLETE Justice under Art. 142 of our Constitution.

JASLOK BILL see

SEE the Petitioner's Response at pp.23-26.

It is worth mentioning that the Respondent was conscious of the Petitioner's medical expenditure at the Jaslok Hospital as it has mentioned it in so many words in para15 of the Respondent's Affidavit in Reply, but has not traversed it.

Physiotherapy expenditure was claimed by the Petitioner vide the Forwarding letter of the Bill sent to the ADG at W.P. at p. 176

ESCORTS BILL in the matter of **Carelink**

Facts supporting the claim explained in the letter forwarding the Escorts Bil: W.P. p. 115.
Discharge Summary see W.P. p. 126
Bill evidencing the purchase of the Carelink see W.P. p. 141

Discussed in the W.P

Pages in the W.P.	**Paragraphs in the W.P.**
28	22

(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."

29	23
44	Issue E
70	Ground 29

Petitioner's Response to the Respondent's Affidavit in Reply : See para 14 at p. 14. And Para 16 at p. 15

ESCORTS BILL in the matter of CRT-D: [Grounds 17-28 at the W.P. pp. 57- 69, especially the following:.

(i) The Petitioner had submitted that the device was new. And no price for it had been fixed. Hence Grounds 20, at the W.P. page 61-62. & Gr. 24 at the W.P. p. 64., This view is in tune with the Government Circular of 1/10/2012 referred in the Ground 20 at the W.P. p. 62 and Annex P-14(g) at page 285 of the W.P..

(ii) . The doctor's decision to implant was on the holistic view of the patient after considering the patient specific indicators and comorbidity involved.

(iii) The CGHS should have paid for the CRT-D implant at least at the rate of the implant at the Medanta Hospital recognized by the CGHS. Vide Grounds 21- 23 at W.P. p. 62 and the Quotation of Charges at p. 142 of the W.P. [Annex P-3]

(iv) The norms governing such decision is settled in *E. Ramalingam v. The Director of Collegiate Education* (2006) 3 M.L.J.641 as discussed **at pages 37-38** of the Petitioner's Response to the Respondent's Affidavit in Reply.

PART IV.

THE SUMMING-UP of the Adversarial dimension of this W.P.

On the adversarial dimension of this W. P. This Petitioner's outstanding claims against the CGHS can be thus stated:

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 (inclusive of the price of <u>*Carelink*</u> as prescribed)	Rs. 490000 paid on 31/3/ 2015 Rs 300000 paid under the order of the Hon'ble Sup. Ct. On 16 Feb. 2016	Rs. 196343
(b) Two Bills for treatment at Jaslok Hospital, Mumbai, submitted on July 19, 2014 for Rs. 398097 (inclusive of the charges for physiotherapy as prescribed)	Rs, 94885 paid on 25/8/t 2014	Rs. 303212
	<u>Amount yet to be paid to the Petitioner</u>	<u>Rs. 499555.</u>

PART V

On the PIL dimension of the W.P.

On the PIL dimension, the Hon'ble Court may issue such directions/ orders as it deems fit on considering the way the CGHS is functioning inflicting so much of travail on the retirees in the evening of their life. The duties of the Superior Courts in such matters have been graphically portrayed in *S. P Gupta &Ors.v. President of India &Ors*[8] wherein the House of Lords approved the ringing words of Lord Diplock in *Inland Revenue Comrs v National Federation of Self- Employed and Small Businesses Ltd*[9]*:* to quote --

> "It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public- spirited taxpayer, were prevented by out-dated technical rules of *locus standi* from bringing matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped ..... It is not, in my view, a sufficient answer to say that judicial review of the action of officers or departments of central government is unnecessary because they are accountable to parliament for the way in which they carry out their functions. They are accountable to parliament for what they do so far as regards efficiency and policy, and of that parliament is the only judge; they are responsible to a Court of Justice for the lawfulness of what they do, and of that the Court is the only Judge."

This humble Petitioner articulates his submissions by dividing them into TWO SEGMENTS for the consideration of this Hon'ble Court in order to issue appropriate directions (and/or making mandatory declarations) apropos the PIL dimension of this Writ Petition.

SEGMENT A

1. No order having civil consequences should be passed without complying with the norms of Natural Justice. This requirement emanates not only from Rules 3 and 6 of the CS (MA) Rules, but also from the mandatory norms emanating from the liberal interpretation of Articles 14 and 21 of the Constitution requiring compliance with natural justice in administrative actions. Besides, it is judicially settled that in our country the State and every public authority or instrumentality of the State must act reasonably in public interest and fairly. The non-compliance by the CGHS is a serious matter as the CGHS has not even followed its self-created norms set out in its administrative communication that it has chosen to make Annex R-1 of the Respondent's Reply Affidavit (being the Circular dated 14. 11. 2011).

   Exposition

   " Bhagwati J. said in the Airport Case [AIR 1979 SC 1682] that it was a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously adhere to those standards, for any violation of those standards would render the executive act invalid. This enunciation of the law by Frankfurter J. was accepted and applied in India in *A. S. Ahluwalia* v. *Punjab* and in *Sukhdev* v *Bhagatram.* Frankfurter J. stated the rule as part of administrative law, and did not support it by reference to the equality clause of the 14th Amendment to the U.S. Constitution..... For whatever view one may take of the concept of the rule of law, the great purpose underlying the concept is the protection of the individual against arbitrary exercise of power. Every action of the executive must be

[8] AIR 1982 SC 149 at page 190

[9] (1981) 2 ALL ER 93 at 107 (H L)

informed with reason and should be free from arbitrariness. Bhagwati J. said that in a welfare State,

> "Government was the regulator and dispenser of benefits and special services and a provider of a large number of benefits including jobs, contracts, licences, quotas, mineral rights etc.... The valuables dispensed by Govt. take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth.... Some of these forms of wealth may be in the nature of legal rights, but the large majority of them are in the nature of privileges. But on that account can it be said that they do not enjoy any protection?.... We do not think so."

[Quoted from Seervai, *Constitutional Law* I (4th ed.) at p.377]

2. The Right to an Appellate Remedy must be granted as a matter of course as required by the CS (MA) Rules 1944, and as an effective mechanism to ensure that no administrative decision is made that is tainted with (i) illegality (substantive*ultra vires*), (ii) irrationality (objective unreasonableness), (iii) procedural impropriety (procedural *ultra vires*), and (iv) proportionality (absence of prudence).

3. The non-grant of the Opportunity of Being Heard, and denial of a forum for Appellate Scrutiny is not an inadvertent lapse, but they seem to emanate from deliberate rejection of FAIR PLAY in administrative actions. This Petitioner has submitted in Ground 34: to quote--

> "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."

The Hon'ble Court may issue such directions as is required to be given not only on consideration of this Petitioner's Case but also of the CAG's Report forming Annex P-12 with the W.P. (being 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.

Exposition

"In an innovative measure aimed at staff welfare, Minister of Railways Shri Suresh Prabhakar Prabhu has directed railway administration to develop an online system for the redressal of grievances of Railway Employees both serving as well as retired. The IT Department of Indian Railways has started working on developing this system which will be called "**NIVARAN**" and will come into operation by 24.06.2016. Under this system, a railway personnel will be able to submit his grievances online and can also track the progress in resolution or disposal of the grievances. The main focus areas of

the grievance redressal will be reimbursement of medical claims, pension claim, compassionate appointment and improvement in staff quarters. The move will benefit around 13.26 lakhs serving railway employees and around 13.79 lakhs retired railway personnel that is the system NIVARAN will serve the needs of around total 27 lakhs persons. The Railway Minister has also directed the Railway Administration to create a provision or mechanism in this system for "**appeal**" against a particular decision of an authority. The Railway Minister has accorded important priority to this new system and has decided to personally review and monitor the functioning of this system. The monitoring and review will also be done at Railway Board Level, at Zonal Level and at Divisional level also. The Railway Minister has always been emphasizing on measures aimed at the welfare of the staff and resolution of their problems. He has always been pointing out the sincerity, dedication and hard work being put in by the railway employees to make Indian Railways as the world class railway system. ***Courtesy PIB - 19.04.2016"***

[*Bharat Pensioner* quoting PIB of *19.04.2016* ***see the Petitioner's P.B. II at page 189]***

4. Time-bound and quick redressal of grievances should be provided keeping in view the constraints of the old age and other distressing road-blocks to which such persons are forced to suffer whilst inter-acting with the persons who matter in the decision-making of the opaque administrative process. The CGHS must be made to act, at least, in accordance with its own administrative norms governing the praxis of the claims settlement as spelt out in its own administrative Circular of dated 14. 11. 2011 mentioned above. This Petitioner has mentioned in para 10 of the Petitioner's Response to the Respondent's Reply Affidavit certain the instances of the cussed breach of such norms.

5. The evident deficiency in the perception of the role performance deserves to be removed The in-house procedure for the consideration of the claims for reimbursement of medical expenditure deserves a judicial evaluation. In this context, this humble Petitioner would draw the Hon'ble Court's attention to two specific issues pertaining to the in-house procedure:

(i) The Functioning of the Technical Standing Committee, against which the Ground 55 of the W.P. is directed, hasdmade it essential for this Petitioner to criticise its perception of its role not only in the Memorial addressed to Director General of the CGHS (see Annex p-8 of the W.P. at p. 219 para 9.), but also in para 8 of the Petitioner's Response to the Respondent's Reply Affidavit stating this Petitioner's amazement at how the technical input by the Technical Standing Committee was considered sacrosanct by the CGHS decision-makers who failed to consider that the role of the experts end with the provision of technical input, thereafter it is for the decision-makers to decide on the merits. [This Petitioner relies on the page 599 of the *Criminal Law and Processes* by Kadish and Paulsen.]

(ii) It is saddening that no authority has considered till now the legal status of the Technical Standing Committee, and the procedural propriety of its decision-making. The Technical Standing Committee that stuck to its wrong decision repeatedly is neither a creation under some primary legislation, nor is created under power delegated by law. It is not that type of Standing Committee as is contemplated by the Rule 11(3) of the CS (MA) Rules, 1944. It is only an administrative body bidden to play only an advisory role the worth of whose advice is for the decision-makers of the CGHS to judge. [The differentiation *inter se* the players of such roles can be seen in the exposition by Keith Davies on "Administrative Law" apropos the GCHQ Case (vide the last para at pp. 36-37 of the Paper Book II). This humble Petitioner is obliged to the decision-makers in the CGHS who differed from the view of the said Technical Standing Committee on all the material points. It is also the Petitioner's fortunate that he has survived to tell the story of his woe to this Hon'ble Court for the first time that

may even be the last time for obvious reasons. Retired officers have neither the logistics nor stamina to enact a litigation that may become rivalsto the story of *Jarndyce v Jarndyce*. This Petitioner has already has had the foretaste of this in the way the Respondent had dragged the matter over half a dozen dates, when the cost of engaging a lawyer for one hearing would be five times the Petitioner's whole claim. It was just judicial clemency that granted *Pratap Singh's* claim (vide para page 3 *supra* under Exposition), though it still survives in the pendency at the Hon'ble Delhi High Court, in all probability, till the Petitioner is alive . It has been well said Delay always helps the defendant without good cause because with the passage of time cause becomes stale, and verve of a combatant sags. It is submitted with utmost humility but with well-deserved candour that the odyssey of this Petitioner's Case [please see the next page forming an Annex to this Supplemental Note to the Petitioner's Response to the Respondent's Affidavit –in-Reply] is one more illustration of this strategy pursued by our own Government represented by its chief legal advisor, and its primary lawyer in the Supreme Court of India, the .Attorney-General of India.

(iii) The CGHS should ensure that none has reasons for anguish because of its arbitrariness as set forth in the Ground 55 of the W.P. (at p. 92) as every action of the executive must be informed with reason, and should be free from arbitrariness. The Hon'ble Court may keep in view the Petitioner's Ground 19 that stresses on the violation of the very grammar of medical decision-making; and Ground 55 of the W.P. **"**Aprops the taint of arbitrariness and unreasonableness of the impugned decisions"[10]

SEGMENT B

Some Salutary Suggestions culled from the 71st Report on the Functioning of the Central Government Health Services (CGHS) (Ministry of Health and Family Welfare. [A copy of the Report enclosed].

The CGHS should consider the salutary suggestions made in the 71st Report on the Functioning of the CGHS (The Ministry of Health and Family Welfare presented to the Rajya Sabha and the Lok Sabha on the 6th August 2013, esp. on the following points {a copy of the Report is enclosed for reference]:

1. Problems faced by Senior Citizens:

at pages 7 &8 of the Report under reference.

2. Emergency Services

at pp. 8-9 of the Report under reference.

3. Bill Settlement

[10] "...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. .... 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....",

at pp. 8-9 of the Report under reference

4. Grievance Redressal System

at pp. 20-21 of the Report under reference

5. Separate Super-speciality Hospitals for the CGHS beneficiaries

at p. 22 of the Report under reference

6. The Report suggests the creation of the post of PRO who "Provide link between Members of Parliament and various government hospitals including AIIMS, private medical institutions and the specialists and super-specialists." Similar posts deserve to be created so that the retired officials, who after retirement stand blown hither and thither in this vast sub-continent, can take advantage to the benefits which accrue them by way of legally protected claims.

See at p. 23 of the Report under reference

7. Whilst considering the above suggestions, it may be worthwhile to notice the comments at page 51 of the Report as this seems to this humble Petitioner virtually the summing-up: Please see page 51 of the the Report under reference.

An Apology

This Petitioner ends this Supplemental Note with an apologetic submission that this Petitioner's objective in highlighting his grievance against the CGHS is not to throw the baby out with the bathwater. The objective is only to humanise the administration when implementing beneficial provisionsso that the cause of substantial justice is promoted amongst the beneficiaries coming within what this Petitioner has called the "X- Zone" explained at pp. 43-47 of the Petitioner's Response to the Respondent's Reply Affidavit. In *C. Ganesh v. CAT*[9(2012)5 Mad LJ 257], the High Court had pithily observed: "it must be seen that the judiciary is respected not on account of its power to legalise injustice on technical grounds but, because it is capable of removing injustice and is expected to do so." (para 39). The CGHS has ignored to adopt the right perspective so lucidly stated in *E. Ramalingam v. Director of Collegiate Education* (2007 Writ L.R. 1073 at page 1074 (quoted in para 10 of *C. Ganesh's Case* (2012) 5 Mad LJ 257**):**

"It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expertised both on academic qualifications and experience gained. Very little scope is left to the patient or his relative to decide as to manner in which the ailment should be treated.....

The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds as found in the impugned order. Writ Petition allowed."

Finding that the CGHS has chosen to stick to its arbitrary style despite the criticism of its functioning in the scores of Cases, this humble Petitioner has moved this Hon'ble Court for mandatory directions to the CGHS/ Government of India as it considers fit and proper.

Drawn up and filed before the Hon'ble Supreme Court by

(Shiva Kant Jha) Petitioner-in-person

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Annex to this Supplemental Note to the Petitioner's Response to the Respondent's Affidavit –in-Reply

THE SUPREME COURT OF INDIA

W.P.(C)No. 694 of 2015

In the matter of:
SHIVA KANT JHA …. Petitioner-in-person
vs.
UNION OF INDIA
Through The Secretary, Ministry of Health & F. W. ,New Delhi …. Respondents

The odyssey of this W,P,

	Date	Court	Orders of the Court
1	5.10.2015	**Court No. 14**	"Issue notice, returnable within four weeks."
2	16.11.2015	**Court 13**	"Nobody appears on behalf of the respondent-Union of India in spite of notice. We have requested the learned Attorney General who is present in the Court to look into the matter."
3	14.12.2015	**Court No. 1**	"Mr. Mukul Rohatgi, learned Attorney General for India submits that the competent authority is examining the validity of the claims made by the petitioner and that an additional affidavit shall be filed within four weeks as to the amounts found due and payable to him."
4	1.2.2016	**Court No. 6**	"In the meantime, we direct the respondent to pay a sum of Rs.3,00,000/- (Rupees Three Lacs only) to the petitioner, without prejudice to the rights and contentions of the respondent. The said payment shall be effected within two weeks from today.
5	22.2.2016	**Court No. 6**	""".....a sum of Rs.3,00,000/- (Rupees Three Lacs) has been transferred into the account of the petitioner. Petitioner also confirmed the same. In order to ascertain, what is the procedure that is being followed in dealing with the claims of such C.G.H.S. Card Holders, we direct the respondent/Union of India to file their reply within six weeks, wherein the respondent should indicate as to what is the in-house procedure that is prevalent and any appeal/remedy is available in dealing with the claims of such Card Holders and also the nature of similar claims pending in respect of C.G.H.S. Card Holders, apart from the claims of the petitioner herein." Refixed on 11/4/2016

6	11.4.2016	**Court No 6**	"At the request of the learned Attorney General for India, we grant two more weeks' time, finally, for the respondent to comply with the directions in our order dated 22.2.2016/"
7	22.2.2016	**Court No. 6**	"Application seeking permission to appear and argue in person is allowed. List the matter on a non-miscellaneous day in the month of September, 2016. In the meantime, response to them reply be filed by the Petitioner appearing in person."
8	27.9.2016	**Court No.**	