



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.425/1092/2013

Dated:- 28.04.2014

In the matter of:

Shri M.L. Prakash,
C3-324 (Ground Floor),
Janakpuri,
New Delhi-110 058.

..... Complainant

Versus

Central Water Commission,
(Thru the Chairman),
2nd Floor, R.K. Puram,
New Delhi-110066.

.... Respondent 1

Central Government Health Scheme,
(Thru the Director),
Directorate General of Health Services,
Nirman Bhawan,
Maulana Azad Road,
New Delhi-110 001.

.... Respondent 2

Date of hearing : 26.03.2014

Present :

1. Shri M.L. Prakash, complainant.
2. S/Shri SD. Sharma, Director, CWC on behalf of Respondent No.1, Dr. Sanjay Jain, OH.JD (R&N) & Dr A.K. Rai, Consultant & HOD (ENT) on behalf of Respondent No.2.

O R D E R

The above named complainant Shri M.L. Prakash, father of Master Vijeth, a person with 100% hearing impairment filed a complaint dated 09.09.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding reimbursement of expenditure towards Cochlear implantation.

2. He submitted that his son is suffering from Profound Hear Loss since birth. They had taken him to AIIMS, New Delhi for treatment. ENT Surgeon and Head of Department, AIIMS examined his son and suggested for Cochlear Implant Surgery before he attained the age of five years and various tests like Neurology test, Eye test, Speech Therapy, IQ tests were conducted periodically. The given estimate by AIIMS had to be approved by competent authority formed by Ministry of Health & Family

.....2/-

Welfare. But Committee after going through his son's reports rejected the case based on four reasons and declared that his son is unfit for operation. Subsequently, he decided to take second opinion and took his son to B.L. Kapur Hospital, New Delhi. The doctor advised certain test, which was got done and after seeing the report, the doctor suggested for surgery well in advance but the amount was very huge.

3. The matter was taken up with the Chairman, Central Water Commission vide this Court's letter dated 30.09.2013. The copy of the said letter was also endorsed to the Joint Director (R&H), CGHS HQ, Office of the Additional Director (HQ), Central Government Health Scheme, Delhi, Bikaner House for reviewing the matter and submitting the comments in the matter within 30 days from the date of receipt of this communication.

4. Joint Director (R&H), CGHS vide letter No.S-5870/2011/R&H/CGHS(HQ)/2784-85 dated 06.11.2013 informed that Shri M.L. Prakash was directed telephonically to provide medical documents/films. Some documents are still awaited. Upon submission of all documents by Shri M.L. Prakash, the case will be re-examined by the Technical Committee which might take some time but will be expedited as soon as possible. A copy of Cochlear implant OM was also enclosed for reference.

5. Under Secretary, Central Water Commission vide letter No.D-12015/1(32)/2013-Estt.XIV/2853 dated 28.10.2013 submitted that Shri M.L. Prakash has not submitted any medical bill for reimbursement of medical treatment of his son in this Commission so far. He narrated the brief history of his case. He further submitted that Shri M.L. Prakash has not submitted the bills in his office for reimbursement of the surgery and follow-up treatment of his son undertaken at private hospital perhaps due to the rejection of the case by the Standing Committee. As per Para 4 of the Ministry of Health & Family Welfare O.M. No.S.12020/4/97-CGHS(P) dated 27.12.2006, Ministry of Health & Family Welfare is empowered to decide the case. Accordingly, the case may be taken up by Shri M.L. Prakash with M/o Health & Family Welfare for ex- post-facto approval.

6. A copy of the reply of Respondent No.1 dated 28.10.2013 was forwarded to the complainant vide this Court's letter dated 19.11.2013 for comments/rejoinder.

7. The complainant in its rejoinder letter dated 27.11.2013 submitted that he had submitted the estimated amount received from AIIMS for Cochlear implantation surgery for his son with the Section Officer, Estt.III, Central Water Commission on 29.08.2011. The dealing Officer called him and informed that Chairman, Central Water Commission is having power to sanction of Rs.2 lakhs and for more than of Rs.2 lakhs, the proposal will be sent to the Ministry of Water Resources for sanction and had returned back his application. The concerned officer also informed him to go directly to the Director (CGHS), MG II Section, Directorate General of Health Service. Accordingly, he submitted all the relevant medical reports/documents and estimated amount given by the AIIMS to Director, CGHS on 04.10.2011.

8. Joint Director (R&H), CGHS (HQ.) vide letter dated 10.01.2014 informed that the case of the complainant was reconsidered by the Technical Committee on dated 11.12.2013. The view of the Technical Committee was that Cochlear Implant in this instant case is regretted on technical grounds.

9. The complainant vide letter dated 24.01.2014 in response to respondent's letter dated 10.01.2014 submitted that the reasons given by the respondent in the letter was not at all satisfactory to him as he had regretted the reimbursement of the Cochlear Implant on technical grounds without giving any reasons for his rejection. He had spent a huge amount of money for his son's operation by taking loans and selling gold ornaments of his wife. He requested in the light of the fact that after operation his son has improved in all respects. He also requested for calling Dr. J.M. Hans of B.L. Kapoor Hospital for the hearing, who operated upon his son.

10. Upon considering the letters dated 28.10.2013, 27.11.2013 of respondent No.1 and letters dated 06.11.2013, 10.01.2014 of respondent No.2 and complainant's letters dated 09.11.2013, 24.01.2014, a hearing was scheduled on 26.03.2014.

11. Reiterating their written submissions, the respondent No.2 submitted that the surgery was not approved due to un-certainty in relation to the outcome of the surgery.

12. The representative of the respondent No.1 reiterated their written submissions and stated that as per the prevailing norms, prior approval of the Ministry of Health and Family Welfare has to be obtained for such cases. He also quoted Office Memo. No.6-469/2003-CGHS/R&H dated 12.06.2009 of Ministry of Health and Family Welfare which states as follows:-

"8. Pensioner CGHS beneficiaries and serving employees, who are CGHS beneficiaries, may submit their request for permission for cochlear implant to the Director, CGHS. Central Government employees who are beneficiaries under Central Services (Medical Attendance) Rules, 1944 may submit their requests for permission to MG II Section, Directorate General of Health Services, Nirman Bhawan, Maulana Azad Road, New Delhi-110108."

13. The representative of the Respondent No. 2 further stated that while All India Institute of Medical Sciences as well as Dr. Ram Manohar Lohia Hospital had recommended for Cochlear Implantation Surgery with the latest form of treatment of "Nucleus-Freedom-Cochlear Implant System", the Technical Committee of the CGHS did not approve it. This explains why the cost of the surgery could not be reimbursed to the complainant.

14. Amplifying his written submissions, the complainant stated that the refusal to allow reimbursement of the cost of the surgery of his son was wrong, more particularly, in the face of the fact that both the All India of Institute of Medical Sciences as well as the Dr. Ram Manohar Lohia Hospital had recommended such surgery. He further contended that the very fact that there is visible improvement in the condition of his son Master Vijeth in the wake of the surgery which was performed by Dr. J.M. Hans, Cochlear Implant Surgery & Head of the Department of ENT, is proof enough that the outcome of the surgery is satisfactory.

15. It would be in the fitness of things for this Court to observe that both the All India Institute of Medical Sciences as well as Dr. Ram Manohar Lohia Hospital had recommended the surgery albeit with graded prognoses. It would also be quite in the context to observe that as per the version of the complainant, there has been marked improvement in the condition of his son Master Vijeth. Moreover, the complainant's plea that their son does not have mental retardation and that his I.Q. test was also not done properly, needs to be looked into as well. It is also pertinent to keep in mind that the Technical Committee of the CGHS arrived at a decision based on records and did not physically examine the complainant's son Master Vijeth.

16. In the light of the foregoing, Respondent No. 2, CGHS is hereby advised to re-process and re-consider the case of the complainant's son by constituting an independent High Level Five Members Committee, which, in addition to ENT Specialist, must also include a qualified Psychiatrist. No member of the Technical Committee, who had examined this case, should form part of the Committee to be so constituted. Respondent No. 2 is advised to co-operate with Respondent No.1 whenever such co-operation is asked for by the Respondent No.1. The aforesaid advice may be complied with within two months from the receipt of this order.

17. The matter stands disposed off accordingly.

Sd/-

(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities