

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**REVIEW APPLICATION NO.03 OF 2016**

**IN**

**ORIGINAL APPLICATION NO. 35 OF 2015**

**DISTRICT :PUNE**

Shri Vijay Dattatray Sawant )  
Flat No. D-14, Rohan Garden, )  
Near Eklavya College, )  
Kothrud, Pune – 411 038. )...**Applicant**

**VERSUS**

- 1) Sate of Maharashtra )  
through Chief Secretary, )  
Mantralaya, Mumbai – 400 032. )
- 2) Principal Secretary, )  
Co-operation, Marketing and )  
Textile Department, )  
Mantralaya, Mumbai – 400 032. )
- 3) Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**

**DATE : 4.04.2016**

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**ORDER**

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Review Application has been filed by the Applicant seeking recall of order dated 23.12.2015 in O.A.No.35 of 2015 and allowing the O.A.

3. Learned Counsel for the Applicant argued that this Tribunal has erroneously held that the request for advance for treatment at Medanta Hospital, Gurgaon was rejected by Commissioner of Co-operation on 1.4.2011 as that hospital is not a recognised hospital. In fact, the rejection was on the ground that the 'Liver Transplant' is not mentioned in the list of serious illnesses in G.R. dated 19.3.2005, Commissioner has, in fact, recommended the case by letter dated 13.8.2012 for medical reimbursement to the Applicant as a 'Special Case'. Learned Counsel for the Applicant contended that the arguments of the learned P.O., which were considered by this Tribunal were not mentioned in the affidavit in reply and not part of the pleadings. The same could not have been considered by this Tribunal. In para 6 of the judgment, there is a grave error apparent on the face of the record on the following findings:-

- (a) There is no recognised hospital by the State Government for Live Liver Transplantation and the case of the Applicant is not rejected on the ground



that Medanta Hospital is not a recognised Hospital.

- (b) The finding "that the Applicant knew this as his application for advance treatment was rejected by the Commisioner of Co-operation" is erroneous.
- (c) The certificate of Sassoon Hospital dated 28.3.2011 refers to the condition of the Applicant as SOS which clearly shows it was an emergency, G.R. dated 19.3.2005 is therefore applicable. As the committee didnt reject the case of the Applicant on the ground that he didnt require emergency treatment, these facts were not put on record. Rejection of the O.A. on this ground is a grave error apparent on the face of record.

4. Learned Counsel for the Applicant argued that Live Liver Transplantation was not available in public hospitals and therefore, it was necessary, to take treatment in a private hospital.

5. Learned Counsel for the Applicant stated that there is error in para 7 of the judgment as the committee didnt reject the case of the Applicant on the ground that he didnt attempt to get reference to a public hospital, while the judgment refers to that ground. There is another grave error that the ground of discrimination was not considered by the Tribunal. Learned Counsel for the Applicant argued that the judgment of this Tribunal has many grave errors apparent on the face of record and the order may be recalled.

6. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant is confusing error

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apparent on the face of record with the view taken by the Tribunal on various issues raised by him in the O.A. If the Applicant feels that the view taken by this Tribunal on various issues is incorrect, that should not be confused with the error of fact or law. Learned P.O. argued that the Applicant's R.A. in the nature of appeal and the Applicant has not been able to point out any error of fact or law and is merely assailing view/findings of the Tribunal on various issues.

7. The law of Review is settled by Hon'ble S.C. in the case of **Ajit Kumar Rath Vs. Stae of Orissa and others: (1999) 9 SCC 596**. Hon'ble S.C. has held as follows, while deciding about the powers of review available to the Tribunal. It will be instructive to reproduce relevant paragraph 30 of the judgment in full:-

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other



sufficient reason' in order 47 Rule 1 means a reason sufficiently analogous to these specified in the rule."

The contentions of the Applicant are examined in the light of the above law laid down by Hon'ble S.C.

8. In paragraph no.6, this Tribunal has held that:-

"It is seen that the Applicant is not entitled to reimbursement of medical expenses at Medanta Hospital, Gurgaon, as it is not a recognised hospital by the State Government. The Applicant, admittedly, knew this as his application for advance for treatment was rejected by the Commissioner of Co-operation, Maharashtra State, Pune by letter dated 1.4.2011."

The Applicant has applied on 29.3.2011 (Exhibit A-4 in O.A.) for an advance of Rs.20 Lakh as a 'Special Case'. This was rejected by Commissioner of Co-operation by letter dated 1.4.2011 (Exhibit -A 5). The fact that the Applicant had asked for advance as a 'Special Case' clearly shows that he was aware that such advance was not available in normal course. If he was taking treatment in a recognised hospital, advance could have been sanctioned to him in the normal course. There is no error in this observation of the Tribunal.

9. The Applicant has claimed that there are various errors in the judgment. It is argued that the Applicant's claim was not rejected on the ground that Medanta Hospital was not recognised but on the ground that liver Transplant was not included in the list of diseases for which expenses of emergency treatment in a private hospital can be reimbursed. The Committee under G.R. dated 19.3.2005 has

considered the following facts, while rejecting the reimbursement claim of the Applicant, viz.

“ श्री. व्ही.डी. सावंत, जिल्हा विशेष लेखापरिक्षक यांच्यावर यकृत प्रत्यारोपणाची शस्त्रक्रिया मेदांता दि. मेडीसीटी हॉस्पिटल, गुरगांव हरियाणा या राज्याबाहेरील शासन मान्य नसलेला खाजगी रुग्णालयात करण्यात आली आहे. जिल्हा शल्य चिकित्सक नाशिक यांनी सदरचा आजार वैद्यकीय खर्च प्रतिपूर्तीसाठी अनुज्ञेय असलेला आजारांच्या यादीतील आजारामध्ये समावेश होत नसल्याने प्रतिपूर्तीची रक्कम अनुज्ञेय होणार नाही असे प्रमाणित केले आहे.

From this it is clear that Medanta Hospital is not a Hospital recognised by the State Government. This fact was prominently mentioned in the note put up before the Committee to consider approving the medical reimbursement proposal of the Applicant. To say that the observation of the Tribunal is erroneous is not correct.

10. The judgment of the Tribunal has considered the provision of G.R. dated 19.3.2005. This G.R. lists 5 serious illness and 27 emergency illnesses. In such cases, a Government servant can get treatment in a recognised private hospital in emergency. For other illness, he is required to obtain permission to take treatment in a private hospital. There is nothing on record to show that the Applicant sought such permission for treatment in Medanta Hospital. He didnot even inform his superiors that he was admitted to Medanta Hospital, Gurgaon. It was not an emergency in the sense that the Applicant was required to be admitted to Medanta Hospital suddenly. As per his own admission, he was initially admitted to Medanta Hospital on 6.4.2011 and was under treatment till 11.4.2011. He was

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again admitted on 7.5.2011. During this period of 11.4.2011 to 7.5.2011, the Applicant could have at least informed his superiors that he was required to undergo Live Liver Transplantation, which facility was not available in any of the Public Hospitals. Incidentally, the list of hospitals where liver Transplant facility was available in Delhi was placed on record of O.A. by the Applicant himself. Observation of this Tribunal in para 6 of the judgment were made in this context. This Tribunal didnot consider it necessary to consider the issue of discrimination, as the full facts about cases where medical expenses were reimbursed were not before this Tribunal.

11. The case of the Applicant is clearly not covered by G.R. dated 19.3.2005. The question is whether such cases are not entitled to any reimbursement. This Tribunal has held that the Applicant should have made a proper application to the competent authority with a request to permit him to take treatment in a particular private hospital explaining the reasons. The Applicant, however, on his own got treatment in a private hospital of his own choice, though as per information submitted by him only, it was clear that similar facilities were available in at least 4 public hospitals. The fact that the Applicant required Live Liver Transplantation, is mentioned for the first time in the R.A. However, he could have disclosed this fact while applying to the competent authority for permission to take treatment in a private hospital.

12. All the issues raised by the Applicant were considered by this Tribunal while delivering judgment dated 23.12.2015. The so called errors apparent on the face of record are findings of this Tribunal, which are probably not to the liking of the Applicant. There is no reason to review the aforesaid order. This R.A. is dismissed with no order as to costs.

Sd/-

**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

**Date : 4.04.2016**

**Place : Mumbai**

**Dictation taken by : SBA**

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**Date:-05.04.2016.**

Lateron.

Heard Shri Punam Mahajan, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Review Application has been rejected yesterday. Learned Advocate for the Applicant Smt. Punam Mahajan stated that the Tribunal may kindly make it clear that this rejection of Original Application and (Review Application) will not come in the way Applicant making a representation to the competent authority to consider his case for medical reimbursement in relaxation of the relevant rules. The Applicant is allowed to make a representation to the



Government and in case Government decided to consider the case of the Applicant in relaxation of any Rules, the order passed by this Tribunal will not come in the way of Applicant.

Sd/-  
**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

**Date : 5.04.2016**

**Place : Mumbai**

**Dictation taken by : SBA**

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