

(2023) 12 PAT CK 0066

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17069 Of 2015

Ajit Kumar Jaiswal

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 20-12-2023

Acts Referred:

Bihar Medical Attendance Rules, 1947 — Rule 10, 26

Citation : (2023) 12 PAT CK 0066

Hon'ble Judges : Rajesh Kumar Verma, J

Bench : Single Bench

Advocate : Prashant Sinha, Kumar Manish

Final Decision : Allowed

Judgement

1. Heard Mr. Prashant Sinha, learned counsel appearing on behalf of the petitioner and Mr. Kumar Manish, SC-21 learned counsel appearing on behalf of the State.

2. The issue which is for consideration in the present writ petition is limited to the extent that the petitioner's out patient treatment bills in relation to open heart surgery and after scrutiny the amount of claim of Rs. 2,76,260/- has been only allowed to the extent of Rs. 1,33,650/-. It is the merger balance of about Rs. 1,38,610/-.

3. On 02.10.2010 while the petitioner was participating in the State Level Workshop at Bodh Gaya, he suffered heart attack and he was taken to Herritage Hospital, Varanasi. The doctor advised him for open heart surgery in either Delhi or at Gurgaon in Medanta Medicity Hospital. The petitioner vide his letter no. 01 dated 15.10.2010 sought urgent permission from the Director, ICDS, Bihar, Patna for getting conducted open heard surgery at Medanta Medicity Hospital, Gurgaon but he received no response. Then he again vide his letter dated 22.10.2010 requested the Secretary, Social Welfare Department, Government of Bihar seeking his permission for treatment in the Medanta Hospital, Gurgaon and he

had specifically mentioned that his condition is getting worst and he is in urgent need of treatment/operation. He further stated in the aforesaid letter that he is not getting any appointment at All India Institute of Medical Science , New Delhi and as such he has been admitted in Medanta Hospital but the petitioner has received no response from the Department. Thereafter, the petitioner admitted on 21.10.2010 in the Medanta Hospital and his open heart/bypass surgery was conducted on 23.10.2010 and the total expenditure incurred in the aforesaid open hear/bypass surgery of Rs. 2,72,260/-. The District Magistrate, Buxar vide his letter No. 01-0023 dated 04.01.2012 forwarded the application of the petitioner along with medical bills to the Secretary, Social Welfare Department, Government of Bihar, Patna. The Department has forwarded his medical bills of the petitioner to the Superintendent, Patna Medical College and Hospital and requested for submission of report regarding admissibility/correctness of the bills. The Superintendent, PMCH vide his Memo No. 4037 dated 14.03.2012 intimated the Department that the Medanta Medicity Hospital is not a recognized hospital by the Government and hence the petitioner may be paid only Rs. 1,33,650/- against the bills of the petitioner of Rs. 2,76,260/-.

4. Learned counsel for the petitioner submits that it appears that as per Government Circular, the petitioner was entitled for full medical reimbursement in accordance with Bihar Medical Attendance Rules, 1947 but the Superintendent, PMCH has wrongly reduced the medical reimbursement of the petitioner from Rs. 2,76,260/- to Rs. 1,33,650/- on the ground that the Medanta Hospital is not a recognized hospital by the State Government. In fact, the petitioner has approached the All India Institute of Medical Science, New Delhi but he was not provided with any appointment and he has already informed the concerned authority that he is not getting any appointment on All India Institute of Medical Science , New Delhi and in view of the aforesaid, he informed that he has been admitted in Medanta Hospital for his treatment.

5. Learned counsel for the petitioner has relied upon a decision in the case of Nageshwar Das Vs. State of Bihar & Others (CWJC No. 80 of 2020) by which the Hon'ble Court has directed the authority to use of discretionary power under Rule-26 of the Bihar Medical Attendance Rules.

6. According to Rule 10 of the Bihar Medical Attendance Rules, if a Government servant is entitled to get Medical treatment at the expenses of the State, then in case of non-availability of any Government Medical Officer/Empanelment Hospsitals at that time or place, the person in case of emergency shall be got Medical treatment in Private Hospitals.

7. The petitioner's case was serious and due to emergency situation the petitioner after informing the authority and got himself admitted in Medanta.

8. Learned counsel for the petitioner also relied upon a judgment in the case of Surjit Singh Vs. State of Punjab and Others, (1996) 2 Supreme Court Cases 336, referring to paragraph-12 which is as followed :-

"12. The appellant therefore had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognized list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

9. Learned counsel for the petitioner further relied upon a judgment in the case of Suman Rakheja Vs. State of Haryana and Another, (2004) 13 Supreme Court Cases 562, referring to paragraph-4 which is as follows:-

"4. Counsel for the appellant submitted that in similar case (Annexure P-4) i.e. by the order of the High Court of Punjab and Haryana in Sant Prakash v. State of Haryana wherein in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the appellant's husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in an emergency condition in the hospital. In the present case the discharge certificate also shows that the case was an emergency one. In Sant Prakash case the Division Bench held that the petitioner therein would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto."

10. Learned counsel for the State submits that as per entitlement the State Government has paid the medical bills of the petitioner and admitted amount has already been paid to the petitioner and according to the entitlement the petitioner is not entitled the amount as raised by him for his treatment.

11. Having regard to the order passed in the case of Nageshwar Das (supra) and in view of the judgment passed in the case of Surjit Singh Vs. State of Punjab and Others reported in (1996) 2 Supreme Court Cases 336 as well as in the case of Suman Rakheja Vs. State of Haryana and Another reported in (2004) 13

Supreme Court Cases, 562 as also in view of Rule-26 of the Medical Attendance Rules, wherein the residuary power has been vested, the expenses incurred are admitted.

12. This Court would direct the authority to re-consider the claim of the petitioner in light of Rule-26 of the Medical Attendance Rules for considering the claim of the petitioner in accordance with law.

13. Let the entire exercise be completed within three months from the date of receipt/production of a copy of this order.

14. The writ petition stands allowed.