

(2013) 07 TP CK 0001

In the Tripura High Court

Case No : Writ Petition (C) No. 135 of 2013

Amal Barua Vs State of Tripura and Others

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 07 TP CK 0001

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : D.C. Saha, for the Appellant; B.C. Das, General and J. Majumder, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—The present petitioner, Sri Amal Barua, a Group-B gazette officer, has prayed for quashing the letter dated 14.5.2007 (Annexure-6 to the writ petition) issued by the Sub-Regional Employment Officer, Directorate of Employment Services & Manpower Planning, Agartala, the respondent No. 3 herein, whereby the medical bill along with relevant vouchers submitted by the petitioner for reimbursement has been returned to him, and consequent thereto to give a direction to the respondents to allow reimbursement of the said medical bill to the petitioner. Heard Mr. D.C. Saha, learned counsel appearing for the petitioner as well as Mr. B.C. Das, learned Advocate General assisted by Mr. J. Majumder, learned counsel appearing for the State respondents.

2. As agreed to by the learned counsel for the parties and considering the nature of the prayer made in the writ petition, the writ petition is taken up for final disposal at the admission stage.

3. The facts needed to be discussed are as under:

The petitioner while working as an Asstt. Employment Officer, a Group-B gazette post, had suddenly fallen sick on 22.01.2007 due to cardiac problem and he applied for 28 days commuted leave with effect from 22.01.2007 to 18.2.2007. Subsequently, on 2.2.2007, the petitioner again applied for 38 days commuted leave extending the period from 18.2.2007 to 28.2.2007 on the advice of the

doctors of the IGM Hospital, Agartala. But in the mid night of 2.2.2007, the petitioner again suffered from cardiac problems and his condition was deteriorating gradually. Therefore, he decided to go to Apollo Hospital, Chennai on 4.2.2007 on his own instead of waiting in the queue of the Medical Board of the State for referral as the cardiac treatment was not available in the State. Accordingly, on 3.2.2007, the petitioner submitted a prayer to permit him to leave the station on 4.2.2007 for his treatment, which was granted.

4. Ultimately, he went to Apollo Hospital on 4.2.2007 and on the advice of the doctors there, to save his life, he underwent an open heart surgery at Apollo Hospital on 16.2.2007. On return, he submitted the medical bill to the respondent No. 2 on 16.2.2007 along with other relevant papers for reimbursement, but the respondent No. 3 vide letter dated 14.5.2007 returned the medical bill to him on the ground that the treatment had not been done as per approved guidelines of the Government.

5. Again the petitioner resubmitted the said medical reimbursement bill on 31.5.2007. It is also stated that the commuted leave as prayed for by the petitioner was sanctioned on medical ground and though the petitioner has taken up the matter with the authority again and again for reimbursement of his medical bill, the authority declined to do anything. Aggrieved by the action of the respondent authority, the petitioner has preferred the instant writ petition.

6. The State respondents have not filed counter-affidavit, but the learned Advocate General has placed the para-wise comments where the instructions of the respondents are available.

7. Mr. Saha, learned counsel for the petitioner while urging for the relief sought for would contend that the petitioner was denied the reimbursement of his medical bill on the ground that he had left for medical treatment on his own without being referred by the standing Medical Board of the State to a referral hospital. He further submits that admittedly, in the State hospital, there is no facility for cardiac treatment except in a private hospital recently established in the State, but at the relevant time, the said private hospital was also not established in the State of Tripura. So, getting no other alternative, the petitioner had to go outside the State for his treatment on his own to save his life.

8. He has also contended that when life of a person is in danger, he cannot wait to follow the official formalities like appearing before a Medical Board for his treatment. He has finally contended that the case in hand is fully covered by a decision of the Gauhati High Court,

Agartala Bench in *Modan Mohan Bhowmik v. State of Tripura and Ors.* (2011) 2 GLR 738 (2011 Lab IC (NOC) 927 (Gau))

wherein it has been noted that denial of reimbursement of medical bill to an employee on mere technical ground is denial of right to life which includes right to health.

9. Learned Advocate General submits that the petitioner submitted the said medical reimbursement bill in the year 2007 and the same was rejected in that year. So, the petitioner has approached this Court after almost five years and on that count itself, the writ petition can be dismissed. He further submits that the medical reimbursement bill of the petitioner was returned on the basis of the revised G.O. No. 08 dated 25.9.2004 of the Government in the Health & Family Welfare Department wherein it is stated that excluding referral cases by the Standing Medical Board, those Government employees are entitled to medical reimbursement facility to whom requires medical treatment while being outside normal duty station in connection with official works. In the instant case, the petitioner was treated outside the State while he was not in official work. Thus, he is not entitled to medical reimbursement as prayed for.

10. In

Surjit Singh v. State of Punjab and Ors. (1996) 2 SCC 336 (AIR 1996 SC 1388)

the Apex Court while dealing with almost a similar issue held as under:

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 meeting 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 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 differences be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

11. The aforesaid decision of the Apex Court on medical reimbursement is the first decision wherein the Apex Court considered the case of an employee of Punjab Government who was suffering from heart trouble. He even without approval of the Punjab Government went to London on his own. After coming back from London, he submitted the medical for reimbursement. The Punjab Government refused to pay the bill for there was no approval of the Government

as because the case was not referred by the Medical Board as required under the Rules.

12. In the aforesaid case, the Apex Court also pointed out that it is always not necessary to wait for the approval of the Medical Board. It is also not necessary to stand in the queue before the Medical Board because it is well known situation that the Medical Board shall meet according to its convenience and in the mean time the patient may die. The Apex Court also stated in the said judgment that there is no need to go for a particular approved institution. He can go to any institution of his choice, but he will be paid the medical reimbursement according to the rate of the approved institution.

13. In

Gouri Sengupta v. State of Assam & Ors., : 1999(3) GLT 601 (1999 Lab IC 3296) (Gau)

the petitioner went for treatment of cancer in a private nursing home outside the State of Assam and whose medical bill was not sanctioned on the ground that the private nursing home is not recognized by the State of Assam for the purpose of reimbursement of the medical expenses, the Gauhati High Court taking note of the aforesaid decision of the Apex Court as well as other cases decided by the Apex Court directed the respondents therein to reimburse the medical expenses of the petitioner.

14. In

Modan Mohan Bhowmik (: 2011 Lab IC (NOC) 527) (Gau) (supra)

, the petitioner therein though was referred to Christian Medical College Hospital (CMCH) at Vellore by the Medical Board at G.B. Hospital, went to Narayan Hridayalaya, Bangalore without permission of the Government for his open heart surgery, which was done on 9.1.2002, and on his return, he submitted the medical bill which was denied to reimburse. It was considered by this Court that the State had decided for medical reimbursement in a case when the patient employee has not received treatment from the referred hospital and it was also further recorded that by order dated 20.12.2002, the Government intended to provide medical reimbursement to Group-A & B Govt., employees to a referred hospital like SSKM Hospital, Kolkata, CMC Hospital, Vellore or AIIMS, New Delhi or any Govt. hospital or a hospital recognized under the CS (MA) Rules, 1944 in Kolkata or Assam. Not only that even a person who is not treated in a referred hospital after reference, that person is also entitled to get the benefit of medical reimbursement at the rate of the referred hospital, but not at the rate of hospital where he was treated. More so, from the said order, it also appears that when a Govt. official/employee and/or entitled member of the family goes outside for any reason and requires medical treatment, they are eligible to obtain treatment from the government and other hospitals/dispensaries recognized under CS(MA) Rules. In such case, the Govt. official/employee should explain the reasons for

not appearing before the Medical Board of the Govt. for reference for outside treatment and the medical reimbursement would be as per the rate of the referred hospital.

15. In

Ranjit Kr. Debnath Baidya v. State of Tripura & Ors., (2008) 4 GLR 868 (2008 Lab IC 969) (Gau)

, the Gauhati High Court noted that there is no doubt that an employee supposed to follow the Rules/Scheme/administrative orders passed by the authorities relating to reimbursement of medical bill(s). But that does not mean that even if his bypass operation (CABG) or any other treatment was emergently required to save his life, he should not go for that and he has to stand in queue in the referred hospital and has to wait till his turn will come for admission and treatment in the referred hospital to follow the memorandum of the authority at the cost of his life.

16. In

Nimai Chandra Sarkar v. State of Tripura, (2009) 6 GLR 160 (2009 Lab IC (NOC) 1164 (Gau)

the aforesaid observation was reiterated and in the case of Anil Kr. Sarkar v. State of Tripura and Ors., (WP (C) No. 426 of 2006), it has been noted that the petitioner of that case shall be entitled to reimbursement of his medical expenses in terms of the memorandum of Finance Department at the rate of SSKM Hospital, Kolkata prevalent at the relevant time irrespective of the fact whether the petitioner of that case treated himself either in the referral hospital or in any other hospital.

17. In Harendra Ch. Das v. The State of Tripura, (W.P. (C) 208 of 2008, the Gauhati High Court held:

Having regard to the above decision of the Supreme Court in

Surjit Singh (: AIR 1996 SC 1388) (supra)

, I find that the refusal by the State Authorities to reimburse the costs of medical treatment on the ground of not being referred to by the Medical Board cannot be sustained and accordingly, I am of the view that the petitioner is entitled to obtain reimbursement of costs of medical treatment, incurred by him for his medical treatment at Kolkata.

18. In the instant case, admittedly, the petitioner applied for commuted leave and also sought for permission to leave the station wherein it was specifically stated that he had suffered serious cardiac problems on 22.2.2007. Thus, it cannot be said that the authority was not aware regarding the petitioner's health condition. When a person is suffering from serious cardiac problems and the facilities of his treatment in the State are not available, he cannot/should not

wait for reference by the Medical Board at the cost of his life. In the instant case, the petitioner left the State for his treatment to save his life and it cannot be said that the petitioner, without going for open heart surgery, submitted the medical bill for reimbursement. It is also not the case of the respondents that the petitioner submitted the medical reimbursement bill without undergoing any treatment.

19. In a case, when an employee entitled to medical reimbursement goes for his treatment outside the State without taking reference from the standing Medical Board, in that case, the authority has to see as to whether the said employee was in a position to wait for reference and also as to whether the treatment for which he had to go outside the State was available in the State hospital. If the treatment of cardiac diseases like by-pass surgery is not available in the State hospital, in that case, an employee should not be denied reimbursement of medical bill towards his treatment outside the State on mere technical grounds. Rather it would be proper to reimburse the medical bill at the rate of referral hospital as the right to life includes right to health in view of the decision of the Apex Court in

State of Punjab and Ors. v. Mahinder Singh Chawla, etc., : AIR 1997 SC 1225

wherein the Apex Court while considering a case relating to denying of a medical reimbursement bill held that right to life includes right to health.

20. Considering the entire facts and circumstances, this Court is of considered opinion that when a person is admittedly entitled to medical reimbursement, if he is referred by a standing medical board to a referral hospital, then even after reference also, if he goes outside the State and takes treatment in a hospital other than the referral hospital, he should not be deprived of getting medical reimbursement on the ground that he went outside the State for taking his treatment on his own when such treatment is not available in the State hospital for saving his life.

21. There is no doubt that the petitioner approached this Court almost after about five years and very rightly, learned Advocate General pointed out that aspect. But in a case, where a person is admittedly denied his right by the authority, the Court should not dismiss his petition only on mere ground of delay. It is also not the case of the Government that the petitioner was denied the medical reimbursement on the ground that he was getting the medical allowance at the relevant time.

22. Admittedly, neither in the Govt. hospital nor in Govt. medical college, treatment of cardiac problems is available though at present there is a private hospital where the cardiac treatment is available and for that also, a patient has to wait when a specialist comes from outside. Reference by the standing Medical Board to a referral hospital itself cannot be a ground for not granting medical reimbursement to him, rather the Govt. should see whether the employee (patient) took treatment outside the State which is not available in the State of

Tripura. In such a situation, the Govt. should not deny the medical reimbursement of its employee merely on the technical ground. This Court is of the further opinion that the claim of the petitioner is a genuine one as he was admittedly a Group-B gazette officer at the relevant time and went for open heart surgery.

23. In view of the above, the respondents are directed to allow the medical reimbursement to the petitioner and make payment of the same at the rate of referral hospital within a period of two months from the date, of receipt of this order. In the result, the writ petition is allowed, but no order as to costs.