
(2011) 11 PAT CK 0137
In the Patna High Court
Case No : CWJC No.12828 of 2007

Ambika Devi

APPELLANT

Vs

The State of Bihar through

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Citation : (2013) 2 BBCJ 229

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Mr. Er. Harendra Kumar, Advocate, for the Petitioner; Mr. Alok Kumar, AC to AAG-12, for the Respondents

Final Decision : Allowed

Judgement

Mihir Kumar Jha, J.— Heard learned counsel for the parties.

2. The widow of late Raghu Nandan Prasad Yadav, a Government employee, who had died in harness, has moved this Court for quashing the order dated 27.10.2005, whereby and where under, her claim for reimbursement of the expenses made on the treatment of her husband has been rejected. The petitioner has also prayed for a consequential direction for payment of Rs. 1,03,370/- by way of reimbursement of the expenditure incurred on the treatment of her husband.

3. The facts which are not in dispute and would be sufficient to dispose of this writ application lies in a very narrow compass. The husband of the petitioner was found to be suffering from cancer in his pancreas and accordingly Dr. Anant Prasad Singh, a retired Professor and Head of Department of Surgery of a of Patna Medical College and Hospital having treated him from 27.6.1998, had referred him to Indira Gandhi Institute of Medical Sciences (hereinafter to be referred to as "the IGIMS") on 20.11.1998. The records further go to show that the husband of the petitioner was admitted in IGIMS on 20.11.1998 but, as his condition had deteriorated, the doctors at IGIMS had referred him to Tata

Memorial Hospital, Mumbai (hereinafter to be referred to as "the TMH") on 14.1.1999. The husband of the petitioner, having returned back to his place after being treated at T.M.H., Mumbai, had submitted his medical bill for reimbursement, which was duly forwarded by his immediate controlling authority Civil Surgeon cum Chief Medical Officer, Supaul to the Director-in-Chief of the Health Services vide his letter dated 4.8.1999. The husband of the petitioner, thereafter, is said to have ultimately succumbed to his dreaded disease i.e. cancer on 2.6.2000 while still awaiting the reimbursement of his medical bill. It is after more than five years of the death of the husband of the petitioner that the impugned order has been communicated to the petitioner, wherein, the claim for reimbursement of the medical treatment of her husband has been rejected on the ground that the required formalities as laid down by the Government Circulars for being treated outside the State of Bihar was not completed by the husband of the petitioner.

4. Counsel for the petitioner has submitted that it was a sudden aggravated ailment of her husband which did not permit the petitioner or her husband to go through the prescribed procedure of obtaining prior Government approval for being treated outside the State. He has also explained that the factum as with regard to the husband of the petitioner being treated at Patna in the IGIMS is not in doubt nor the respondents even deny the treatment of her husband in TMH and yet the issue of reimbursement has been answered in negative by the Finance Department only on the ground that the required Government approval for treatment outside the State was not obtained by the husband of the petitioner. He has accordingly submitted that it was a fit case where the authorities of the State Government ought to have exercise the power under Rule 26 of the Bihar Medical Attendance Rules (hereinafter referred to as "the Rules") for making payment of admissible amount spent in treatment of the husband of the petitioner in TMH, a Government Hospital.

5. In this case, in the two counter affidavits filed by the respondents, it has been explained that in terms of Rule 26 of the Rules, any employee being in need of treatment outside the State will have to undergo examination by a Medical Board which alone can certify the requirement of being treated outside the State. Learned counsel for the State in this regard has submitted that as this procedure was not followed in the case of the husband of the petitioner, he would not be entitled for reimbursement of his bills of expenditure incurred on the treatment.

6. In the considered opinion of this Court, every case of medical treatment cannot be circumscribed in a fixed compass and decided by rule of thumb. In the present case, from the prescription of Dr. Anant Prasad Sinha, a renowned surgeon of the State, this much is clear that the husband of the petitioner was being treated for a period of almost three months and when it was confirmed that the husband of the petitioner was suffering from cancer of pancreas, he was referred to IGIMS. The prescription and other related papers of IGIMS also go to show that the husband of the petitioner was treated for a while in the said

Government institute and when the case of the husband of the petitioner became unmanageable in I.G.I.M.S., he was referred to the TMH, Mumbai, the specialised center for treatment of cancer. There is also no denial to the fact that the husband of the petitioner was an indoor patient in the TMH who was admitted on 14.12.1998 and continued to be treated there till middle of February, 1999 during which he had also undergone surgery as is also evident from certificate given by the authorities of TMH.

7. As a matter of fact, while the husband of the petitioner was still alive, the bills relating to expenditure incurred on the treatment of the husband of the petitioner in TMH were submitted before the controlling authority, namely, the District Education Officer, who had forwarded the same to the Civil Surgeon cum Chief Medical Officer, Supaul. The Civil Surgeon cum Chief Medical Officer, Supaul also did not raise any objection as with regard to the deteriorated condition of the husband of the petitioner requiring his hospitalization in TMH and in fact had duly forwarded such bills to the Director-in-Chief with a recommendation for its being passed so that the petitioner and other family members could get payment of amount incurred on the treatment of the husband of the petitioner.

8. A question, therefore, would arise that if the Civil Surgeon, who had power to constitute the medical board himself did not doubt the condition of the husband of the petitioner and the Director-in-Chief also took no step for verification of the physical condition of the husband of the petitioner, can the whole cause be lost after a period of five years in the bureaucratic jugglery? In fact it was the duty of the Director-in-Chief of Health Department to immediately refer the husband of the petitioner to medical board if he had entertained any doubt as with regard to the physical condition of the husband of the petitioner. It is in this regard that Rule 26 of the Bihar Medical Attendance Rules in fact gives sufficient power to the State Government to evolve such a procedure where no prior sanction and/or approval has been obtained by the Government servant before being taken for specialised treatment outside the State of Bihar. Rule 26 reads as follows:-

" ,sls mipkj vkSj bykt tks bl fu;ekoyh }kjk izkf/kd`r ugha gS dks fj;kr nsus dh jkT; ljdkj dh "kfDr%& bl fu;ekoyh esa fdlh ckr ds gksrs gq, Hkh jkT; ljdkj dks ;g "kfDr gS fd og fdlh Hkh O;fDr dks] tks bl fu;ekoyh ds v/khu mipkj ;k bykt ds fy, izkf/kd`r ugha gSa] mipkj vkSj bykt dh lqfo/kk iznku djsaA"

While interpreting the scope of Rule 26 as in the case of Dr. Mithileshwar Kumar v. The State of Bihar & Anr. reported in 1999(2)PLJR 259 this Court has gone to hold that in appropriate case, the Government must exercise the discretion vested under Rule 26 where a person was suffering from serious disease. This aspect of the matter in fact has also been considered in the case of Ram Narayan Sah v. State of Bihar & Ors. reported in 2001(3)PLJR 621 where the power of relaxation of Rules for allowing treatment undertaken outside the State has been discussed at length.

9. This Court, in fact, had also occasion to look into the technical requirement of

a prior permission or following the prescribed procedure in the case of Sri Anil Kumar Singh v. The State of Bihar & Ors. reported in 2002(4)PLJR 447 wherein it was held that in case of an existing emergency, insisting on such a formality may prove detrimental to life and well being of the patient. Similar view was also taken by this Court in the case of Ram Sagar Ram v. the State of Bihar & Ors. reported in 2003(3)PLJR 729. The issue in hand in fact has been fully answered in the case of Ravi Shankar Kumar v. The State of Bihar & Ors. reported in 2007(3)PLJR 63 wherein it was held that the petitioner's requirement of medical treatment outside the State without getting prior permission from the Government will be required to be waived in the emergent conditions where it was not possible to obtain prior permission from the Government. The same view was also taken by this Court in the case of Dr. Dharendra Kumar v. State of Bihar & Ors. reported in 2007(4)PLJR 281 as also in the case of Biresh Chandra Chatterji v. State of Bihar & Ors. reported in 2008(1)PLJR 394. In the case of treatment of cancer for which there is almost no facility of specialised treatment in this State, this Court having taken judicial notice of this aspect in the case of Ran Vijay Kumar Singh v. The State of Bihar & Ors. reported in 2010(1)PLJR 369 had held that as there is lack of adequate facility for treatment of cancer in this State, nothing more would be required to demonstrate when a patient is moved outside the State for treatment of cancer.

10. Thus, both on the basis of facts discussed above as also in the light of the law settled by this Court while interpreting Rule 26 of the Bihar Medical Attendance Rules, this Court will have no difficulty in holding that the petitioner suffering from cancer in pancreas was facing an emergent problem of his medical treatment in which his treatment hospitalization became necessary not only in the IGIMS, Patna but also in the TMH in Mumbai.

11. In the result, this writ application is, accordingly, allowed and the impugned order dated 27.10.2005 is, hereby, quashed and the respondents are directed to make full payment of admissible amount incurred on the treatment of the husband of the petitioner as per the bills submitted and authenticated by the treating doctors/authorities within a period of four months from the date of receipt/production of a copy of this order.