(2007) 07 PAT CK 0019

In the Patna High Court

Case No : CWJC No. 9038 of 2000

Arvind Prasad — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:
Bihar Medical Attendance Rules, 1947 — Rule 26
Constitution of India, 1950 — Article 14, 21, 47

Citation : (2008) 56 BLJR 116 : (2007) 4 PLJR 382

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Ganesh Prasad for the petitioner, and Mr. Prabhat Kumar Singh, learned junior counsel to Government Advocate No. I for the respondents. The petitioner seeks a direction to the respondent authorities to reimburse the petitioner''s claim for the treatment of his son (Sonu Kumar), undergone in Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow (''S.G.P.I.'' for short''), K.G.S. Medical College, Lucknow, and All India Institute of Medical Sciences, Delhi (AIIMS, in short). The respondents have placed on record their counter affidavit and have, inter alia, submitted that the petitioner did not obtain prior permission for treatment of his son outside Bihar and the claim is, therefore, inadmissible in view of the provisions of the Bihar Medical Attendance Rules.

2. According to the writ petition, the petitioner''s son aged nine years, in the year 1998, was suffering from neuro-surgical disorder and was ultimately diagnosed to be a case of Left Cerebellar Arteriovenous Malformation. The petitioner was then posted as a Headmaster in Government Primary School, Gopi Bigha, Chandi (Nalanda). Sonu Kumar was treated by Dr. Arun Kumar Agrawal, Associate Professor of Neurosurgery, PMCH, in November 1998. In view of the gravity of the ailment, he referred him to Sanjay Gandhi P.G. Institute of Medical Sciences,

Lucknow. The petitioner immediately proceeded to Lucknow, and the child was admitted in the Neurosurgery department of the said Hospital on 24.11.1998. He underwent treatment at the hospital in Lucknow upto 5.12.98. On 7.12.98, Sonu Kumar was referred to AIIMS, New Delhi. His treatment commenced at AIIMS on 15.12.98, which continued upto 21.8.99. He had undergone the first round of treatment for embolisation at AIIMS during this period, and was advised to report again on 24.10.99 for the second round of treatment. The Essentiality Certificate of AIIMS and Discharge Summary certificate are marked Annexures 1 and 3 respectively. The petitioner returned to Patna and submitted his representation dated 20.9.99 (Annexure-A), for reimbursement of the expenditure incurred over the treatment of his son, and for permission for the second round of treatment at AIIMS as well as for advance. It is, inter alia, stated in the petitioner''s representation dated 20.9.99 (Annexure-5 = Annexure-A), that Sonu Kumar shall appear before the State Medical Board on 30.9.99. The Medical Board recommended his case for treatment immediately. Sonu Kumar could not proceed to New Delhi for want of reimbursement, non-payment of advance money, and non-issuance of permission for treatment at AIIMS, and died on 30.10.99. The State Government in the Department of Health belatedly issued order No. 4091(24), dated 1.12.99 (Annexure B), according permission to the petitioner for treatment at AIIMS, and was allowed to undertake journey along with one attendant. In so far as the first round of treatment was concerned, his claim has substantially been rejected on the ground that prior permission had not been obtained for treatment outside Bihar. However, a sum of Rs. 3531/- was sanctioned for payment, vide order bearing memo No. 24/M 2-294/99), dated 24.8.2000 (Annexure-7).

3. While assailing the validity of the impugned action, learned Counsel for the petitioner submits that in view of the grave emergency for treatment at a specialised centre, there was no time to obtain prior permission and the petitioner had to rush with his son to Lucknow for treatment. It is also submitted that the petitioner, being an ordinary school teacher posted in mofussil areas, was not aware of the requirement of prior permission for treatment outside the State. After completion of the first round of treatment on 21.8.99, he had returned to Patna and became aware that prior permission was needed. He, therefore, submitted his representation dated 20.9.99, inter alia, for prior permission for second round of treatment. In any case, the State Government should have invoked Rule 26 and directed for payment of reimbursement.

4. The respondents have placed on record their counter affidavit and have supported the impugned action. It is submitted that prior permission of the State Government is essential for treatment outside the State of Bihar.

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. The facts are in dispute and lie in a narrow compass. It is manifest from a plain reading of the prescription dated 21.11.1998 (Annexure-8), of Dr. Arun Kumar Agrawal that he referred the patient to Sanjay

Gandhi Post Graduate Institute of Medical Sciences, Lucknow, with the note that "....Urgent Referred to Sanjay Gandhi P.G. Institute of Medical Sciences, Lucknow, Department of Neurosurgery, for tackling the AVM. He thereafter reported at S.G.P.I. on 24.11.1998. He was treated for two weeks and was discharged with the note dated 7.12.1998 that "Referred to AIIMS, New Delhi, for knife therapy". He had thereafter reported at AIIMS on 15.12.1998, where he was admitted on 26.12.1998, was diagnosed to be a case of "Left Cerebellar Arteriovenous Malformation", and was treated accordingly. The following portion occurs in the Chapter ''Diseases of the Nervous System'', in the authoritative text book, Davidson''s Principles and Practice of Medicine, sixteenth edition, describes the malady (page-866):

ARTERIOVENOUS MALFORMATIONS: Clinical features Subarachnoid haemorrhage Epilepsy Headache Vascular steal episodes (like TIAs) Tinnitus, vascular noises in head Investigation CT Scan with contrast enhancement Cerebral arteriography Management Surgical resection (not always possible) Stereotactic radiotherapy (reduces risk of haemorrage) Anticonvulsants if epilepsy present

6. It is thus manifest that it was a case of emergency and any delay in its treatment at a specialised centre would have resulted in Paralysis followed by death. He was initially treated at S.G.P.I. from 24.11.1998, was referred to AIIMS where he was treated from 15.12.1998 to 21.8.1999. After the first round of treatment during this period, he was asked to report on 24.10.1999 for the second round of treatment. The petitioner submitted his representation on 20.9.1999 (Annexure-5) for reimbursement of the expenses incurred till then, and also for permission for he second round of treatment at AIIMS, as well as for advance. It remained entirely unanswered. Therefore, the petitioner''s son could not report for the second round of treatment on 24 10.1999, and the petitioner''s son died on 30.10.1999, for lack of treatment. Ironically the permission was granted by order dated 1.12.1999 (Annexure-B). He was required to report on 24.10.1999, meaning thereby that more than one month''s time was available to the respondent authorities to grant permission which was really grantee on 1.12.1999 (Annexure-B), which was the date of issue of the letter, let alone its service on the petitioner, and the patient had already died on 30.10.1999.

7. The repetitive medical treatment as well as the speed with which it had commenced, the gravity of the illness or the authoritative statement in the aforesaid text-book, makes it abundantly clear that there was no time to obtain prior permission. The seriousness of the ailment could not have been more poignantly evidenced than by the death of the patient. The callous approach of the respondent authorities in declining post-facto sanction for such a serious ailment is writ large on the face of it.

8. Various cases of similar nature have been coming up before this Court where the State Government has been repeatedly declining permission for treatment outside the State on the sole ground that prior permission was not obtained,

without realising the seriousness of the ailment, and whether or not there was adequate time to obtain prior permission before proceeding for treatment, without risking the patient''s health and condition. All the cases which have come up before this Court are of ''lesser mortals'' visualised by this Court in its judgment reported in Ram Sagar Ram and Another Vs. The State of Bihar and Others , Paragraph-8 of which is reproduced hereinbelow for the facility of quick reference:

8. Before I part with this case I may observe that the Bihar Medical attendance Rules framed in 1947 i.e. more than five decades ago have become archaic. Without going into the question as to whether there was any provision for outside state treatment at the relevant time, a judicial notice can be taken of the fact that most of the serious ailments specialised treatment which is not available in the State of Bihar muchless in Government Hospitals, and therefore the patient perforce has to go to New Delhi, Mumbai, vellore or the like for better treatment. It is therefore only appropriate to make suitable amendments in the Rules. As a matter of fact need of the hour is to frame a comprehensive policy or rules as done in the State of Punjab, referred to above, rather than supplement them by executive orders and circulars from time to time. Rule 26 empowers the Government to permit outside treatment and attendance as a matter of discretion. Inasmuch as guidelines are not laid down the discretion is more often than not abused. While persons close to the powers-that-be manage to get permission, the lessor mortals are not so fortunate to get such permission resulting in heart burning and frustration. So far as the requirement of prior approval of the Medical Board is concerned, in cases of emergency the provision is totally unjustified, meaningless and unworkable. These things can be taken care of in a well laid down policy consistent with not only Articles 21 and 47 but also Article 14 of the Constitution.

(Emphasis added)

9. The State Government must forthwith give up its unfair approach of declining permission for treatment out side the State of Bihar on the specious plea of not having obtained prior permission. I find in the instant case that there was complete non-application of the mind as to the gravity of the situation, and whether or not there was time available for obtaining prior permission. I am convinced that there was not adequate time to obtain prior permission before proceeding for treatment outside the State.

10. Equally, an important aspect of the matter is that the State Government must realise that its medicare in the State of Bihar is in a state of collapse, elementary health care is alarmingly deficient, let alone specialised treatment. In my judgment dated 16.5.2007, passed in C.W.J.C. No. 3781 of 2006 (Rekha Sinha v. The State of Bihar and Ors.), I found that her husband was treated in P.M.C.H., Patna, continuously for a period of one year and the doctors were unable to diagnose the ailment. He reported at the well-known hospital at Vellore where it was diagnosed to be a case of blood cancer in two days'' time.

11. To my mind, the difference in treatment within the State of Bihar and outside the State from financial angle, is primarily one of travelling expenses payable according to the official standing of the employees along with one companion. For such a trivial matter as travelling expense, the State Government is at war with its employees of the category of "lesser mortals." If the same hospital of outside had set-up a branch in Patna, the expenses for such medical treatment would be the same and prior permission may not have been required, travelling expense making the entire difference.

12. And see how the State Government dealt with the issue of prior permission for the second round of treatment. The petitioner had submitted application dated 20.9.1999 (Annexure-5 = Annexure-A), requesting for post-facto sanction for the first round of treatment, reimbursement, and advance sum for the second round of treatment which was to commence on 24.10.1999. Five weeks'' time was available for the purpose, and it was accorded by letter dated 1.12.1999 (Annexure-B), and the child had in the meanwhile died on 30.10.1999. So much for the State Government''s insistence on prior permission.

13. The State Government would be well advised to prepare a comparative chart of the ''lesser mortals'' on the one hand, and those who are above them, on the other, and in how many cases prior permission was obtained or post-facto approval was granted in each category. Can there be more adequate evidence before the authorities and equally before this Court that the patient died because the permission for the second round of treatment in AIIMS, New Delhi, was granted much after the death of the patient. The State Government must change its arbitrary and irrational approach, and abolish the distinction between the "lesser mortals" and the rest.

14. In any view of the matter, however, it was obviously a case where the respondent authorities should have invoked Rule 26 of the Bihar Medical Attendance Rules which is reproduced hereinbelow for the facility of quick reference:

26. Power of Government to grant concessions relating to medical attendance or treatment not authorised by these rules.- Nothing in these rules shall be as preventing the State Government from granting to any person to whom they apply any concession relating to medical attendance or treatment which is not authorised by these rules.

It may be read to mean that it confers a wider power of giving medical benefits not indicated elsewhere in the Rules. The entitlement to reimbursement for medical treatment outside Bihar is not in dispute. Therefore, the requirement of seeking prior permission, which was not possible in view of the emergent situation obtaining in the present case, ought to have been relaxed by invoking Rule-26.

15. In the result, this writ petition is allowed. The respondent authorities are hereby directed to reimburse the entire medical claims raised by the petitioner

for the treatment of his deceased son in Patna, in Lucknow, and in New Delhi along with the expenses for journey to and for with a companion, and such other expenses admissible as per the rules and the established procedure. The entire dues shall carry interest at the rate of 12% from the date of entitlements till the date of payment. The petitioner shall also be entitled to costs of this petition quantified at Rs. 25,000/- (Rupees Twenty-five thousand), all to be paid in one instalment.

16. Let a copy of this order be handed over to Mr. Prabhakar Tekriwal, learned Government Advocate No. 1, to be forwarded to the Chief Minister of the State to ensure that appropriate rules are framed after thoroughly examining the issues indicated hereinabove, and in the judgments handed down by this Court earlier without further loss of time to obviate the nefarious practice of discrimination and arbitrariness to prevent the abuse of discretion, and ensure uniform justice to all its employees.

