
(2008) 04 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 3279 of 2007

Azizur Rahman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2011) 1 GLT 166

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : S. Chamaria, for the Appellant; R.K. Bora, Government Advocate, for the Respondent

Judgement

Amitava Roy, J.—This case is yet another instance of unwarranted administrative sclerosis in disregard of the situational demands of urgency and sensitive human considerations. A timely, compassionate and realistic response of the concerned State authorities might perhaps have saved the Petitioner, who helplessly ebbed out his life, pursuing his claim for reimbursement of his medical bills for treatment of his terminal disease of cancer. The Petitioner, though, have expired and presently is not substituted by his heirs to pursue this proceeding, this Court does not feel hidebound by the technical rules of procedure in the exceptional facts and circumstances of the case to undertake this adjudication.

2. I have heard Mr. S. Chamaria, learned Counsel for the Petitioner and Mr. R.K. Bora, learned State counsel appearing for the Irrigation Department of the State and its Officers on record.

3. The uncontroverted facts reveal that the Petitioner had retired from the services of the Irrigation Department of the State (for short referred to as the "Department"), on 31.10.2006, as the Additional Chief Engineer, Irrigation (Monitoring and Investigation), Guwahati. He was diagnosed of cancer in the year 2003 and was advised by the medical authorities of the State to attend the All India Institute of Medical Sciences or Apollo Hospital, New Delhi for further

investigation and advanced treatment, which was not available in Assam. A referral medical certificate was issued on 24.12.2003 and he was discharged on 31.12.2003 on completion of the initial phase of treatment. As advised, he reported back to the said hospital in the year 2005 and in course of the checkup, he was diagnosed to be suffering from Metastatic Renal Carcinoma with attendant complications for which he had to undergo a surgery followed by radiations. This was in two stages from 13.09.2005 to 16.09.2005 and 25.10.2005 to 22.11.2005. He had to return to the Hospital on 13.07.2006 as the disease spread its tentacles and had to subject himself to further radiations and was advised to pursue the treatment in the following year. The hospital on 30.04.2007, after examining him, issued a certificate, where apart from elucidating the severity of the ailment, indicated that the cost of treatment for oral chemotherapy that was required, would be in the vicinity of Rs. 2.5 lacs per month. The certificate emphasised that the treatment as prescribed, was essential for his survival. The Petitioner being woefully distressed, numbed and bewildered, had as the ultimate refuge represented before the head of his Department on 08.05.2007 fervidly praying for an amount of Rs. 15 lacs for his treatment at the earliest. A copy of the representation was also forwarded to the Director of Health Services, Hengrabari, Assam. As his appeal remained unresponded and time was running out, he reiterated his request on 18.05.2007. The Respondents maintained their glacial indifference. The Petitioner's earlier bills of medical reimbursement amounting to Rs. 4,47,116/-, incurred for his treatment during 2003 and thereafter, also remained unpaid. Incidentally, though, according to the Petitioner, this amount was approved by the Director of Health Services, Assam and the Chief Engineer of the Department by his letter dated 15.11.2006. addressed to the Secretary. Government of Assam, Irrigation Department apprised the latter thereof, the payment was not released. The Petitioner in his precarious state of mind and health on finding himself on the brink of death, thus, approached this Court for redress on 26.06.2007.

4. This Court issued notice of motion on 28.06.2007 and the learned State counsel received the same on behalf of the impleaded Respondents. This Court by the order of the even date, required the Respondents to file their affidavit by the returnable date i.e. 01.08.2007. indicating the precise entitlement of the Petitioner to medical reimbursement as claimed. On the basis of the materials disclosed by the learned Counsel for the Respondents, this Court on 09.08.2007, recorded that the Director of Health Services, Assam had issued the admissibility certificate for an amount of Rs. 4,47,116/-, on this account but in view of some discrepancies noticed by the Chief Engineer of the Department in the relevant bills, vouchers etc. submitted by the Petitioner, the matter had been referred back to the Health Department for re-examination. This Court by its order passed on the same date, directed the Director of Health Services, Assam to scrutinise the revised proposal and decide on the admissibility of the Petitioner's claim or any part thereof, within a period of 15 days. Incidentally, no affidavit by the Respondents was filed. This Court, therefore, on 23.08.2007, directed the

learned Standing counsel. Health Department to produce all relevant records, indicating the heads of claim sanctioned by the said Department, fixing 24.08.2007. On the next date i.e. 27.08.2007, the learned Standing counsel, Health & Family Welfare Department on the basis of instructions and the records, apprised this Court that on a scrutiny of the Petitioner's claim, an amount of Rs. 4,41,595/-, was ascertained to be payable to him. The learned Counsel for the Irrigation Department, having submitted that his amount has been subjected to further verification and recording the apprehension expressed by the learned Counsel for the Petitioner that he is in a very critical state and that the amount payable, if not disbursed immediately, it would be fatal for him this Court passed the following operative directions vide order dated 27.08.2007:

In the above view of the matter, it is provided that the Irrigation Department, State of Assam, would release the aforementioned amount of Rs. 4.41,595/- in favour of the Petitioner within a week herefrom.

As the said Department has some reservation with regard to the Petitioner's entitlement for the said amount and according to it, the matter rests with the Health & Family Welfare Department for its response, it is made clear that the payment thereof, would be subject to the finalization of the process undertaken by both the Departments to ascertain the amount of reimbursement to which the Petitioner is entitled in law.

List again on 3rd of September, 2007.

5. The learned Counsel for the Petitioner on the next date i.e. 03.09.2007, having submitted that the amount as ordered, had not been released, the case was re-fixed on 05.09.2007. On that day, the learned Counsel, Irrigation Department, on instructions assured this Court that the payment in terms of the order dated 27.08.2007, would be positively made within four days therefrom. The case was adjourned to 10.09.2007. On that day, the learned Counsel for the Petitioner produced a communication No. IGN(E) 165/2005/Pt./314, dated 05.09.2007 of the Under Secretary (E) to the Government of Assam, Irrigation Department, Guwahati disclosing the sanction of an amount of Rs. 3,68,537/-, as provisional medical reimbursement in favour of the Petitioner. As the decision, contained in the aforementioned communication, was prima facie in non-observance of the directions passed in the order dated 27.08.2007, this Court directed personal presence of the Secretary, Government of Assam and the Chief Engineer, of the Irrigation Department on the next date i.e. 14.09.2007 to explain the above departure. On 14.09.2007, the learned Counsel for the Petitioner apprised the Court that he (Petitioner) had expired the previous evening.

6. Mr. Subrata Sarma, Secretary to the Government of Assam, Irrigation Department and Mr. Harendra Nath Basumatary, Chief Engineer, Irrigation Department, who were personally present in Court when confronted with the letter dated 05.09.2007, conceded that the decision to pay a lesser amount of

Rs. 3,68,537/-, as provisional medical reimbursement for the Petitioner was a result of an inadvertent reading of the order dated 27.08.2007 and undertook to take necessary steps for disbursement of the balance amount by 17.09.2007. They profusely apologized for their omission and lapse. This Court intensely appalled by the recalcitrant, indifferent and obdurate disposition of the concerned authorities of the Department, expressed its strong displeasure and disapproval of the manner in which the issue had been dealt with by them, and, very reluctantly accepted the unconditional apology tendered by the Officers present and directed a copy of the order be forwarded to the Chief Secretary of the State for information and necessary follow up action, fixing 21.09.2007. On that day, the learned State counsel representing the Irrigation Department, apprised that the balance amount in terms of the earlier order, had been deposited in the Treasury on 15.09.2007 and that in due course, the same would stand transited to the account of the Petitioner. This Court reiterated its direction to forward a copy of its order dated 14.09.2007 to the Chief Secretary of the State, requiring the said authority to keep it informed with the steps taken pursuant thereto. The learned State counsel, thereafter, placed before this Court two intra-official communications between the Chief Secretary of the State and the Secretary, Irrigation Department. Whereas, by the one bearing No. CS/MISC/2007/83, dated 17.11.2007, the Chief Secretary of the State required the Secretary of the Department to initiate a process to fix the responsibility on the officer/officers for whose fault and negligence the inordinate delay in payment of the medical reimbursement bill of the Petitioner had occurred, asking the latter to submit a report by 19.11.2007, the one being U.O. No. IGN (E) 165/2005/Pt/324, dated 19.11.2007 is a forwarding note by the Secretary of the Department accompanied by report as sought for.

7. The learned Counsel for the Petitioner on 05.12.2007, while affirming that the amount of Rs. 4,41,595/- in full, had in the meantime, been disbursed and that therefore, the grievance registered in the petition had been redressed, contended that the report dated 19.11.2007 of the Secretary of the Department, does not disclose the reason for the persistent default on the part of the authorities of the said Department to comply with the orders of this Court and that therefore, an appropriate action to affirm the dominion of law is called for. The learned Counsel for the Petitioner further pointed out that as ordered by this Court, the Chief Secretary of the State has not submitted his report. On the other hand, the report of the Secretary of the Department, amply demonstrates that the authorities concerned had deliberately misread the order dated 27.08.2007 of this Court to consciously delay the release of the payment due to the Petitioner resulting in his tragic death. Mr. Chamaria, therefore, insisted that a deterrent action is imperative against the Secretary, Chief Engineer and other erring officers of the Irrigation Department to uphold the majesty of this Court and sustain the confidence of the litigating public in the system.

8. The learned State counsel, however, urged that the delay was unavoidable in view of the necessary official formalities and some detected anomalies in the bills

submitted by the Petitioner and there being no intentional omission on the part of the authorities of the department, no further action is called for. As the Secretary and Chief Engineer of the Department have expressed their unconditional apology for their lapse in complying with the order dated 27.08.2007, the matter may be closed at this stage.

9. The arguments have been duly considered. To start with, the Respondents, inspite of the orders of this Court have not felt it necessary to file their affidavit. The pleaded sworn statements of the Petitioner have, therefore, remained un rebutted. The aforementioned communication of the Chief Secretary, Assam to the Secretary, Irrigation Department discloses that the order dated 21.09.2007 of this Court has been placed before him by the learned State counsel only on 17.07.2007. The said authority noticing the seriousness of the matter, required the Secretary of the Department to locate the officer/officers responsible for whose fault and negligence the inordinate delay in payment had occurred and a report was directed to be submitted by 19.11.2007. The Secretary of the Department, in his note forwarding the report, in essence, contended that the medical reimbursement bills of the Petitioner revealed many anomalies for which fresh sanction had to be obtained and that as the process unavoidably is time consuming, it is difficult to fix the responsibility of delay on any staff of the Department. The said authority repelled the complaint of inordinate delay on the part of any individual officer of the Department to be held responsible.

10. In the report, the said authority while admitting that the medical reimbursement bills had been received by his office on 20.11.2006, it has been stated that after a preliminary verification, the same were sent to the Health & Family Welfare (A) Department for its view. The no objection certificate from the Health & Family Welfare Department (A), was received on 22.02.2007 and a final sanction was accorded for an amount of Rs. 4,47,116/-, on 14.03.2007 and the sanction letter was sent to the Chief Engineer of the Department for payment. However, before the said bill was encashed in view of the office memorandum dated 23.04.2007 issued by the Finance Department of the State, in the spate of false medical bills submitted by Government employees for encashment, the money could not be disbursed. A further scrutiny became unavoidable, the report seeks to assert, as signatures of the Petitioner, in one set of bills did not tally with the other and further invoices submitted along with some bills had been treated to be cash memos. As in the opinion of the Irrigation Department, the invoices could not have been construed to be cash memos, the relevant documents were resubmitted with the Director of Health Services with objections on this count and clarifications were sought for on 23.08.2007. The Director of Health Services clarified that the invoices, as signed by the medical officer, were to be treated as cash memos. He, however, did not offer any comment on the objection regarding the signatures in the bills. The Irrigation Department therefore, pending further verification on this count, provisionally sanctioned an amount of Rs. 3,68,537/-. The Secretary in his report was of the view that as the order dated 27.08.2007 of this Court directed payment of the amount due

subject to the finalization of the process undertaken by the Irrigation as well as the Health Department, the full amount Rs. 4,41,595/-, was neither paid nor any review of the said order or an appeal against the same was sought for/filed. The report affirmed that following the order dated 14.09.2007, the balance amount of Rs. 73,058/-, was sanctioned on 14.09.2007.

11. Apart from the fact that the report does not disclose the reason for the delay in attending to the medical reimbursement bill of the Petitioner for the period 23.04.2007 to 17.08.2007, the date on which the Director of Health Services certified the payment. The decision to release an amount of Rs. 3,68,537/-, in the face of the order of this Court dated 27.08.2007 to defray a sum of Rs. 4,41,595/-, is even otherwise patently arbitrary, autocratic and high handed, besides being contumacious. The logic of misreading of the order as put forward, is on the face of the records, an endeavour to squirm out of the obligation imposed thereby. A plain reading of the said order, the relevant excerpt whereof has been extracted hereinabove, does not admit of the construction as represented to have appeared to the authorities of the Department. The report of the Secretary of the Department, in this regard displays a clear attempt on the part of the said authority to convey that the release of an amount lesser than Rs. 4,41,595/-, was a outcome of some ambiguity in the aforementioned order of this Court. This disposition of the Secretary of the Department, is neither acceptable nor approvable in any view of the matter. Instead of complying with the order of this Court, he has thereby sought to justify the resilient efforts by adopting a fault finding stance. This is more so, after having unconditionally apologized for the lapse on his part. This only demonstrates, in the opinion of this Court, the lack of bonafide of the said authority in discharging his official duties as well as his conduct and demeanour before this Court.

12. The Petitioner having approached this Court with the grievance against undue delay in the payment of his medical reimbursement bill as well as consideration of his representation for financial assistance for further medical treatment, it was expected that the Respondent authorities on receipt of the notice of the proceeding to be vigilant in the matter, Instead they dithered and inspite of a clear order of this Court on 27.08.2007, delayed the payment in terms thereof till 14.09.2007. The Petitioner, as noted hereinabove, expired in the meantime. The report of the Secretary to say the least is vague and laconic wanting in essential particulars bearing on the delay. There is a deliberate misreading of the order dated 27.08.2007 and the justification offered is unacceptable. Not only, the Respondents did not file their affidavit, they proceeded casually at their convenience, as a result whereof, the Petitioner died of his ailments without necessary treatment for want of funds due to him in law. The note and the report of the Secretary of the Department divulge a conscious attempt to shield himself and his staff for no acceptable rationale or justification. In the opinion of this Court, the said authority has displayed an unmistakable lack of devotion to duty.

13. In the above view of the matter, the Chief Secretary of the State is hereby required to cause a departmental probe to be initiated by an independent authority to the exclusion of the Officers of the Irrigation Department and on the basis of the report, so submitted, take appropriate departmental action against those found guilty of the omissions and failings on the above issue. The Chief Secretary would also forward a copy of the said report and details of the action taken by him thereon, to this Court. The exercise indicated hereinabove, should be completed within a period of one (1) month the receipt hereof. A copy of this order be furnished to the learned Counsel for the parties. Mr. R.K. Bora, learned State counsel, on receipt of the copy, would forthwith submit the same before the Chief Secretary of the State to execute this order. The petition stands disposed in the above terms. No costs.