(2011) 10 PAT CK 0004

In the Patna High Court

Case No : CWJC No. 10564 of 2007

Banwari Pandey APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 24-10-2011

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2012) 4 PLJR 591

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Ranjeet Tiwary and Jitendra Kumar Pandey, for the Appellant; Pushkar Narain Shahi and Ritesh Kumar No. 1 for the State, for the Respondent

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard learned counsel for the parties. In this writ application, the petitioner, a retired Assistant Teacher of a Government Middle School in the district of Bhojpur, has made a prayer for payment of balance amount of expenditure incurred in course of his medical treatment by way of installation of Pacemaker in Indira Gandhi Institute of Cardiology, Patna, hereinafter referred to as I.G.I.C.

2. Learned counsel for the petitioner has submitted that the petitioner, on account of suffering from severe cardiac problem, was referred to I.G.I.C., a specialised wing of Patna Medical College and Hospital and treated over there as an indoor patient in between 2.9.1992 to 10.9.1992, during which a Pacemaker was inserted in his body by way of his treatment for regulating his heart beat. He has also submitted that after completion of such treatment, the petitioner had submitted his medical bill for reimbursement for a total sum of Rs. 37,084/- in which the cost of the Pacemaker of ''Siemens'' make itself was Rs. 34,000/-. The said bill for reimbursement of the total expenditure incurred by the petitioner to the tune of Rs. 37,084/- was duly verified and certified by the Director, I.G.I.C. but its reimbursement as per Government order dated 12.5.1993 (Annexure-2)

was restricted to Rs. 20,642.90/- only in which the cost of Pacemaker was slashed down from Rs. 34,000/- to 18,000/- on the ground that the Government in the year 1956 had fixed the cost of Pacemaker as Rs. 18,000/- only and as such Government was not liable to reimburse the total cost of such Pacemaker being Rs. 34,000/-.

3. In this regard, learned counsel for the petitioner has also explained that in the month of March, 1997, the State Government in keeping with the trend of ever increasing price rise had ultimately revised the reimbursement amount of Pacemaker from Rs. 18,000/- fixed in the year 1956 to Rs. 38,000/- made effective from 21.3.1997 but the same also did not enure to the benefit of the petitioner because such revision of price of Pacemaker being prospective could not have been made applicable to September (sic). Therefore, learned counsel for the petitioner had expanded his submissions that once the price of the Pacemaker in September, 1992 to the tune of Rs. 34,000/- was certified by the Government Hospital, namely, I.G.I.C. and as such the petitioner could not be denied its full reimbursement, inasmuch as, the Pacemaker installation was a part of treatment of the cardiac problem being faced by the petitioner. He would, accordingly, submit that when the Government had sanctioned and paid Rs. 18,000/- only by way of cost of Pacemaker as against Rs. 34,000/- incurred by the petitioner he would be entitled for payment of remaining balance amount of Rs. 16,000/-.

4. Learned counsel for the State, on the other hand has relied on a Government resolution dated 27.5.1997, whereby and whereunder, the price of Pacemaker was revised from Rs. 18,000/- to Rs. 38,000/- which was made operative with effect from 21.3.1997. He would accordingly submit that whatever additional amount a Government servant may have paid, the liability of the Government will be restricted only to the tune of the price of Pacemaker as fixed by the Government and therefore, the price of Pacemaker as fixed by the Government in the year 1992 being Rs. 18,000/- only, the petitioner cannot be reimbursed any amount beyond Rs. 18,000/-.

5. In the considered opinion of this Court, the Government and its functionaries cannot be permitted to reduce the cost of Pacemaker of Rs. 18,000/- only when admittedly I.G.I.C., a Government Hospital being part of Patna Medical College and Hospital, Patna had certified Rs. 34,000/- by way of price of Pacemaker used for the petitioner. In this regard, it would be significant to take into account the provision of Rule 1 of Medical Attendance Rules, hereinafter referred to as the Rules which reads as follows:--

1. Entitlement of Government servant to free medical attendance and free supply of medicine.--Every Government servant is entitled to receive for himself free medical attendance and such medicines as are available in the hospital or dispensary at which he is being treated under every circumstance, whether at his own or another station whether passing through his own or another district, and whether on duty or on leave.

Note 1-------.

Note 2-------.

Note 3. When a Government servant has been admitted to a hospital or dispensary as an outdoor or indoor patient, he should be provided with all requisite medicines which are considered essential. Nursing may also be made available as far as possible within the resources of the hospital. It is the duty of the hospital or dispensary to supply the required drugs and medicines and there should be no occasion for the Government servant to himself purchase any medicine while admitted as an indoor patient, if he is asked to do so, the medical officer should state the special circumstance as to why a particular medicine recommended by him could not be supplied from the hospital or dispensary and he should also state whether that medicine or its substitute is not available in the hospital or dispensary, nor it can be procured by the hospital or dispensary. On the production of such certificate from the hospital or dispensary authority, the amount should be reimbursed to the Government servant concerned.

(Local Self-Government Department letter No. 15265-medl... dated the 11th December, 1950.)

Note 4-------.

Note 5-------.

Note 6-------.

Note 7-------.

Note 8-------.

Note 9-------.

Note 10------.

Note 11------.

Note 12. Government servants being treated at their residences are also entitled to the free supply of medicines under certain circumstances for which attention is invited to Notes 2 and 3 under Rule 3

6. From the reading of aforesaid Rule 1 and its three relevant notes, i.e. 3, 10 and 12, it would become clear that the Government servant is entitled for free medical attendance as also free supply of medicine from the Government hospital and in the event of such medicines being not available, the Government itself has adopted the procedure of reimbursement of cost of such medicine to the Government servant incurring such expenditure. In this regard, the Government order regarding reimbursement of expenditure incurred on medical treatment as contained in letter No. Med. IVN/56/15464 Med., dated Patna, the 7th November, 1951 from P.K. Menon. I.A.S., Secretary to Government of Bihar, L.S.G. Department to the Accountant General, Bihar through the Finance

Department reads as follows:--

Subject.--Accounting procedure for grant of medical attendance and Supply of medicines to Government Servants of the State of Bihar.

I am directed to refer to letter No. 15265 Med., dated the 11th December, 1950 which contemplates inter alia the re-imbursement of the cost of the medical treatment of a Government servant of the State:

(i) to a hospital or dispensary where the person concerned has been treated; and

(ii) to the Government servant concerned on the production of a certificate from the authorized medical attendance that the cost has been incurred by him.

After due consideration of the position Government have arrived at the following decisions with regard to the accounting procedure which should be adopted in making payment in such cases.

2. So far as item (i) is concerned, the existing proceeding of obtaining extra grants through the Controlling Officer will apply. The Hospitals of dispensaries incurring special expenditure for treatment of Government servants will apply to the administrative department for reimbursement after giving full details of the charge incurred. It will then be for Government to sanction extra grant to the hospitals usually by augmenting the contingent grant. The Controlling Officer and the Administrative Department will be responsible for provision of funds in accordance with the present practice.

3. As regards the question of reimbursement of charges incurred by Government servants, the procedure laid down in the Government of India, Finance Department Memo No. F-44 (17) Estt. V/46 dated the 24th April, 1946 (copy enclosed) will be applicable. The charges on account of reimbursement of the cost of medicines should be classified under the unit "Allowance" subordinate to the appropriate major, minor, and sub-head under which the pay and employments of the Government servant concerned are accounted for. Necessary orders sanctioning the expenditure for sums exceeding Rs. 150/- will be issued in the form of Government order by the Local Self-Government Department in consultation with Finance Department and under sanctioning expenditure for sums upto 150 will be issued in the form of office order by the Controlling Office of the Government servant concerned. The amounts due to a Gazetted Officer are to be drawn on their own salary bill while those due to non-gazetted Government servants on the establishment pay bills prepared in the office of the drawing and disbursing officer concerned.

4. While the above explains the accounting procedure, it is necessary that there should be some specific provision for financial check and scrutiny of claims to be prepared by a Government servant. Sub-paragraph (b) of the Government Order No. 15265 Med., dated the 11th December, 1950, requires the production of a certificate from the authorized medical attendant before payment can be made. It has been decided that the authorized medical attendant should be required to

scrutinize the claims and certify the correctness of the amount, besides there being checked in the office where bills are initially presented as an extra precaution Government have also decided that the certificate of the authorised medical attendant in respect of claims up to Rs. 50/- should be countersigned by the Civil Surgeon of the district and the claims exceeding that amount should be countersigned by the Inspector General of Civil Hospitals, Bihar. Specific approval of Government through Inspector General of Civil Hospitals, Bihar will be necessary in case the amount exceeds Rs. 150/-.

Reimbursement Certificate.

(This certificate is essential in respect of all claims for reimbursement made under paragraph (b) of G.O. No. 15265-Medl., the dated the 11th December, 1950 and 5464, dated the 7th November, 1951).

Grandmother, Mother, Wife Mr./Mrs./Miss..........Grandfather, Father, son of Daughter

Ms./Mrs............................employed in the ....Office/ Department had been under my treatment at the ....Hospital/ Dispensary from the..........................to the ....and the under noted quantities of medicines

Blood

which were essential for the recovery/prevention of serious deterioration in the condition, of the patient of their substitute could not be supplied from the hospital/dispensary as they were neither available nor could be procured by the Hospital/Dispensary, Dated the................................19.

Signature and designation of the authorized Medical Attendent. ....Hospital Dispensary Name of Medicine Quantity Price Countersigned Civil Surgeon......District D.H.S., Bihar dated...........

7. From the aforementioned executive instruction issued under the Medical Attendance Rules, it would be absolutely clear that reimbursement of the price of medicine is part of the package of benefits under the Rules. In this background when this Court would find that the reimbursement certificate as quoted in the aforementioned executive instruction in verbatim had been reproduced in the certificate of the petitioner as contained in Annexure-1 issued under the signature of Director, I.G.I.C. a Government Hospital reading as follows:--

Mr. Banwari Pandey employed in the Middle School, Dhanpura (Bhojpur) office/ Deptt. at the Indira Gandhi Institute of Cardiology, Patna Hospital from 2.9.92 to 10.9.92 and the undemoted quantities of medicines/Blood which were essential for the recovery of the patient or for the recovery of the patient or their substitute could not be supplied from the Hospital/dispensary and they are neither available at nor could be procured by the Hospital/Dispensary.

nothing would be left for speculation that the petitioner was entitled to reimbursement of the full price of the Pacemaker as incurred by him for his treatment. This Court would also have no hesitation when the Director, I.G.I.C. has himself recorded that the Pacemaker was used as a medicine for the petitioner, the price of the same could not be curtailed or disallowed in part by the Government by treating it to be not a medicine.

8. In fact it was the I.G.I.C., which had the liability for providing the Pace-maker free of cost as it was a part of the medicine required for treatment of the petitioner. The fact that I.G.I.C. could not supply the Pacemaker and the petitioner had to incur the expenditure of Rs. 34,000/- as price of Pacemaker is also not in dispute, inasmuch as, in the certificate given by the Director, I.G.I.C. in the prescribed proforma dated 17.10.1992 (Annexure-1) had himself authenticated the claim of the petitioner for reimbursement of cost of thirty five medicines to the tune of Rs. 37,084/- including Rs. 34,000/- being the cost of Pacemaker. Such certificate therefore is itself a clear proof of the fact that the petitioner was admitted as an indoor patient in I.G.I.C. between 2.9.1992 to 10.9.1992 and had incurred the expenditure on the head of medicines worth Rs. 37,084/- (thirty seven thousand eighty four) including the cost of Pacemaker of Rs. 34,000/- which were essential for his recovery and could not be supplied to the petitioner due to its non-availability as also because they could not be procured by the I.G.I.C. Such certificate in the prescribed proformat (sic) by the Government for reimbursement made under para (B) of Government order no. 15265 dated 11.12.1950 and 12464 dated 7.11.1951, did leave nothing for speculation that the 35 items of/on medicines including the Pacemaker were essential for the recovery of the petitioner from his cardiac problem and as they could not be supplied to the petitioner by I.G.I.C., its reimbursement had to be made in keeping with the object of Medical Attendance Rules.

9. It has to be also kept in mind that under Rule 11, a Government servant is not entitled for reimbursement of the fees paid to a private medical practitioner or the cost of medicines purchased privately. Rule 11 in this regard reads as follows:--

No Government servant, who is entitled to the gratuitous attendance of a Government Medical Officer or to a free supply of medicine from public stores, shall be reimbursed the fees which he may have occasion to pay to a private medical practitioner or the cost of medicines which he may purchase privately.

10. The said Rule 11 thereafter also contains a note which reads as follows:--

This Rule has been liberalized by the issue of Local Self-Government Department letter No. 1563 Medl. dated the 11th December, 1950 which has been incorporated in Note 3 to Rule 1 above and Notes 2 and 3 to Rule 3 above. Under these instructions there should be no occasion for Government servant to purchase any medicines while admitted as indoor or outdoor patients of the hospital or dispensary or if they are treated at their residences by the authorized medical attendant who does not advise him to get admitted to the hospital in which accommodation is available.

11. From the reading of aforesaid Rule 11 and its note, it would therefore become clear that the reimbursement of fees paid by a Government servant to a private medical practitioner or the cost of medicine purchased privately is only prohibited. In the present case however neither the petitioner was treated by a private medical practitioner nor he had purchased the medicines privately rather he was an indoor patient in I.G.I.C. a Government Hospital and as such when the hospital was not in a position to supply any of the medicines including the Pacemaker, 35 of them as specifically enumerated in the certificate contained in Annexure-1, he cannot be denied the actual purchase price of Pacemaker as duly certified by the Director, I.G.I.C.

12. In that view of the matter, the petitioner was/is entitled to reimbursement of the full price of the Pacemaker to the tune of Rs. 34,000/- without its being slashed down to Rs. 18,000/- on the basis of some order of the Government issued in the year 1956 fixing the price of Pacemaker to be Rs. 18,000/-. The price of Pacemaker fixed in the year 1956 at Rs. 18,000/- being not a Government controlled item, when its price had definitely increased to Rs. 34,000/- in the year 1972 sic--1992?), the petitioner could not have been deprived of the full reimbursement of price of Pacemaker which was inserted on his person to regulate his heart beat to overcome his cardiac problem. In this regard, this Court has also taken into account the Government resolution dated 27.5.1997, as contained in Annexure-A which was heavily relied by the learned counsel for the State to support the Government decision for allowing the reimbursement of the cost of Pacemaker of Rs. 18,000/- only. The aforesaid Government resolution dated 27.5.1997 reading as follows:--

by itself would go to so that the reimbursement of the price of Pacemaker as a medicine for the cardiac patient was approved by the Government decision and that the Government had enhanced the price of Pacemaker from Rs. 18,000/- to Rs. 38,000/- in the year 1997 on obtaining report from the Director, I.G.I.C. after taking into account the price rise in the cost of Pacemaker. The Government in fact had also made a clear distinction between the earlier Pacemaker and the permanent Pacemaker while revising the price of the Pacemaker in 1997, and as such it cannot be held that if the Government decision was taken after 41 years of earlier fixation of price for revising the price of Pacemaker any person treated in between these 41 years was to be also reimbursed the price of Pacemaker as fixed in the year 1956.

13. This Court therefore, would hold that the whole approach of the State Government of slashing down the cost of Pacemaker in the case of the petitioner by way of reimbursement of Rs. 18,000/- only in place of Rs. 34,000/- as incurred by him is wholly arbitrary and thus violative of Article 14 of the Constitution of India. This Court therefore, has also no hesitation in holding that the Government resolution dated 27.5.1997 would also not come in the way of the petitioner in claiming full reimbursement of the price of the Pacemaker to the

tune of Rs 34,000/- as duly recorded by the Director, I.G.I.C. in his certificate dated 17.10.1992.

14. In the considered opinion of this Court, a Government servant in terms of the Rules is entitled to free medical attendance and free supply of medicines and is also entitled to full reimbursement of actual cost of treatment spent and incurred by him on medicine including any apparatus used as a medicine. The only other restriction in the Medical Attendance Rules framed by the Government is only that such medical treatment either in a specialized hospital in the State or outside must have been undergone in places selected and authorized by the Government. Such norms therefore only restrict the selection of hospitals and/or specialized centers but nowhere in the Rules there is any restriction on the reimbursement of actual expenditure incurred in course of such treatment. The Pacemaker for a cardiac patient is also a medicine, inasmuch as, the job of Pacemaker is to regulate heart beat. Insertion of Pacemaker to a cardiac patient, therefore, is by way of treatment of such cardiac patient and when such a Pacemaker is also being supplied by a Government Hospital at the prescribed rate, such as in the case of petitioner at Rs. 34,000/- charged by the Indira Gandhi Institute of Cardiology, it cannot be scaled down to Rs. 18,000/- on the basis of such price fixed in 1956.

15. One cannot lose sight of the fact that it may take the Government years to revise the rate of different Pacemakers as has been done in this case wherein the Government after 41 years could ultimately find that the price of Pacemaker of Rs. 16,000/- was wholly insufficient and, therefore, its price of Rs. 18,000/- was enhanced to Rs. 38,000/- in the year 1997. The price of a Pacemaker, however, was not all of a sudden increased from Rs. 18,000/- to Rs. 38,000/- in 1997 and that being a open market commodity in which the price went on increasing year after year, the Government had to notify such rates at least on year to year basis. In that view of the matter, the payment of Rs. 34,000/- by the petitioner I.G.I.C. in the year 1992 and fixation of price of Pacemaker of Rs. 38,000/- in the year 1997 by itself would be a sufficient yardstick to show that the petitioner had actually incurred the expenditure of Rs. 34,000/- by way of cost of pacemaker permissible for reimbursement under the Rules read with executive instructions issued thereunder.

16. This Court also must note an ancillary submission of the learned counsel for the State that there are many types of Pacemaker and the Government is not bound to pay for the best of them and, in fact, that is how, the Government has fixed the standard price for Pacemaker. Such submission also however cannot be accepted inasmuch as the Pacemaker inserted to a patient aged about twenty-five years would require a longer span of life in comparison to a patient of seventy-five years of age for whom a pacemaker of shorter durability would suffice the purpose. Therefore, it is the opinion of experts and the treating doctors as to what type of a Pacemaker will suit a particular patient and the same cannot be decided by the authorities of the Government by applying the

rule of thumb. The Government under the Medical Attendance Rules having undertaken to pay the actual expenditure incurred by the Government servant towards his medical treatment would be therefore under obligation to reimburse the cost of medicine which was prescribed by the treating doctor. As a matter of fact in the case of the petitioner, the Pacemaker was used for him by I.G.I.C. a Government Hospital and thus its actual price of Rs. 34,000/- as certified by Director, I.G.I.C. had to be reimbursed as a whole in terms of the Rules.

17. Considering all these aspects, this writ application is allowed with a direction to the respondents to pay the balance amount of Rs. 16,000/- inasmuch as there is no dispute that the actual cost of Pacemaker inserted in the person of the petitioner for regulating his heart beat incurred under the expert advice and treating doctors in I.G.I.C. was Rs. 34,000/-and therefore, the petitioner had to be reimbursed the full amount of Rs. 34,000/- without its being slashed down to Rs. 18,000/-. Thus, the balance payment of the remaining amount of Rs. 16,000/- to the petitioner must be made within a period of six months from the date of receipt/production of a copy of this order with interest quantified @ 6 per cent per annum from 12.5.1993 till the date of payment inasmuch as the petitioner a lowly paid school teacher had been illegally deprived of the aforesaid amount from 12.5.1993 when he was paid Rs. 18,000/- only by way of cost of Pacemaker alongwith cost of other medicine to the total tune of Rs. 20,642/- vide Annexure-2 to the writ application. With the aforesaid observation and directions this application is allowed.

