

(1998) 10 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 7004 of 1998

Chandubhai Ambalal Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 10 GUJ CK 0011

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Advocate : P.H. Pathak, for the Appellant; P.B. Bhatt, AGP and S.P. Hasurkar, for the Respondent

Judgement

K.R. Vyas, J.—Rule. Mr. P.B. Bhatt, learned Assistant Government Pleader waives service of the Rule. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

2. The petitioner in this petition under Article 226 of the Constitution of India has prayed for an appropriate writ, order or direction declaring the decision of respondent No.2 rejecting the medical reimbursement claim of the petitioner as arbitrary, illegal, unjust and violative of Article 14 of the Constitution of India and to direct the respondents to reimburse the amount of medical bills to the petitioner with 18 per cent interest.

3. The petitioner is serving as Deputy Executive Engineer in Roads and Building Department at Viramgam. The daughter of the petitioner was admitted in Gujarat Research & Medical Institute (Rajasthan Hospital) due to serious heart problem . It is the case of the petitioner that his daughter while being in an unconscious state was admitted and the Heart Specialist of the hospital was of the opinion that the operation was required to be performed immediately and that she could not be removed from the hospital since her condition was very critical and any delay in operation might prove fatal to her as the heart of the daughter of the petitioner was completely blocked with Stroke Adams Attack with Intermittent

Cardiac Asystole. In view of this opinion, with the consent of the petitioner, an operation was performed on the daughter of the petitioner with the result the daughter of the petitioner survived with temporary pacemaker and thereafter permanent pacemaker implanted.

4. The petitioner submitted medical bills with all the relevant papers, receipts, bills etc for an amount of Rs. 1,47,025-70 vide his letter dated 14-6-96 for reimbursement. The said bills were forwarded by the Additional Engineer, R&B Circle-I on 24-6-96 to the Director, Medical Services State of Gujarat-respondent No.2. Respondent No.2, however, rejected the claim of the petitioner vide his letter dated 1-7-96 stating that the treatment was not taken from Government Hospital/Municipal Hospital, Ahmedabad and Certificate of Civil Surgeon of Civil Hospital, Ahmedabad was not obtained for taking treatment from other hospitals. The petitioner made representation and pointed out that the position of his daughter was very serious and she was advised not to move from Rajasthan Hospital as she was under emergency treatment and operation was required due to complete heart block. The said representation of the petitioner was also turned down by respondent No.2 by his letter dated 2-11-96 saying that what is stated in the reply dated 1-7-96 is confirmed and there is no question of reviewing the earlier decision. The petitioner on 10-3-1997 therefore gave a notice through Advocate to respondent No.2 pointing out that the Gujarat Research & Medical Institute (Rajasthan Hospital) is a Government recognised Institute of the State for reimbursement of medical bills and it is not a hospital outside the State and that therefore there is no need to obtain certificate from the Civil Surgeon, Civil Hospital, Ahmedabad. It was also pointed out that considering the condition of the daughter of the petitioner, it was not possible to move her from Rajasthan Hospital and that even the Rules also provide that there is no need to obtain any certificate from the Civil Hospital in such emergent circumstances. It appears that respondent No.2 by his letter dated 4-4-97, instead of considering the request of the petitioner, gave one more reason to justify the rejection of the claim of the petitioner by stating that the residence of the petitioner is at Vasna and VS hospital is nearer than Rajasthan hospital and the Civil Hospital is at the same distance and therefore since the petitioner has chosen Rajasthan hospital for treatment of his daughter, he is not entitled to reimbursement of the medical bills and that as such the order dated 1-7-96 passed earlier is final. It so happened that after the receipt of the reply in April, 1997, the petitioner was facing great financial difficulties due to rejection of his request with the result he himself suffered great mental depression and due to that he suffered heart attack in October, 1997. The petitioner was, therefore, required to be hospitalised and was further required to undergo heart operation in January, 1998. The daughter of the petitioner was also under supervision of Medical Officer. With the aforesaid facts, the petitioner has approached this Court by way of this petition.

5. Mr. P.H. Pathak, learned Advocate appearing for the petitioner, submitted that the rejection of the reimbursement of the medical bills by respondent No.2 is ex-

facie illegal ,arbitrary and unconstitutional as the petitioner has a right to provide medical treatment to his family at the best hospital and by the choice expert. In the submission of Mr. Pathak, Gujarat Research and Medical Institute (Rajasthan Hospital) is a recognised institute of the Government for treatment of heart-attack and Nuro-Surgery and , therefore, there was no need for prior permission of the Civil Surgeon, Civil Hospital, Ahmedabad. It was further pointed out that Rajasthan Hospital is not an Institute outside the State and, therefore, also there is no need to obtain certificate from the Civil Surgeon, Civil Hospital, Ahmedabad. Under the circumstances, it was submitted that both the reasons given by respondent No.2 for rejection of the claim of the petitioner are baseless, illfounded and have no merit and, therefore, the same is required to be quashed and set aside.

6. An affidavit in reply has been filed by Mr. M.K. Patel, Accounts Officer, Office of the Additional Director, Medical Services. Over and above raising the contention regarding alternative remedy by way of approaching Civil Court on the ground that the petition involves disputed question of fact regarding the amount spent by the petitioner, it has been pointed out that the petition is not maintainable as the petitioner is entitled for reimbursement of medical bills only for the treatment as per Rule 8(1) in the hospital outside. As per Rule 8(1), the petitioner is supposed to take treatment in the Civil Hospital or atleast in the VS Hospital , which are nearest hospitals to the residence of the petitioner and both these hospitals have all facilities. Despite this, the petitioner took his daughter to Rajasthan Hospital, Ahmedabad, which is far away from his residence. It has been pointed out that as per the Resolution dated 30th September, 1995, the Rajasthan Hospital , Ahmedabad is treated at par with Hospitals outside the State and treatment taken in this hospital is admissible for reimbursement only on conditions which are similar to those hospitals which are outside the State and that the petitioner was required to obtain certificate or prior sanction from the Director of Institute of Cardiology and Research Centre and that the petitioner has not produced such certificate and, therefore he is not entitled for the reimbursement.

7. Rule 8 of the Gujarat State Services (Medical Treatment) Rules, 1988 is relevant for our purposes which, when translated into English, reads as under:

"Rule 8. The hospitals where the treatment can be taken and about its reimbursement.

(1) The patient is entitled for free services at the following Hospitals:

(a) Dist. Govt Hospitals (where he fell ill (Station) as per the opinion of the authorised Medical Officer, where proper required treatment is available,

OR

(b) when the Hospitals stated in clause A are not available, at any other Hospital other than Govt. District Hospitals, where, in the opinion of the authorised

medical officer, proper required treatment can be given,

OR

(c) In case there is no Hospital stated in clause A & B above available , the Hospital which can provide required proper treatment but in exceptional cases if the authorised Medical Officer is of the opinion that required proper treatment is only available at the Hospital outside the State (but in India) then he shall send the patient to such Hospital on obtaining permission from the Director of Health & Medical Services (which will be obtained in advance, except where delay will be dangerous to the health of the patient)."

8. On bare reading of the aforesaid Rule it is clear that the patient is entitled for free services at the hospital when he is admitted in the District Government Hospital where as per the opinion of the authorised Medical Officer proper required treatment is available or when the hospitals stated above are not available, at any other hospital other than Government District Hospitals where , in the opinion of the authorised Medical Officer, proper required treatment can be given or when there is no hospital available as stated above, the hospital which can provide required proper treatment. However, in exceptional cases if the authorised Medical Officer is of the opinion that the required proper treatment is only available at the hospital outside the State (but in India) then he shall send the patient to such hospital on obtaining permission from the Director of Health and Medical Services (which will be obtained in advance), except where delay will be dangerous to the health of the patient. Thus in normal circumstances, the patient is required to take treatment at the District Government Hospital or the Hospitals which provide required proper treatment. However, in exceptional cases, after getting the opinion of the authorised Medical Officer, a patient can get treatment from the hospital outside the State after getting permission from the Director of Health and Medical Services but there also an exception is carved out where no permission is necessary if the delay is likely to result dangerous to the health of the patient. Therefore, the question which arises for consideration is whether Rajasthan Hospital where the daughter of the petitioner was given treatment is a hospital outside the State and for getting treatment therein any permission is necessary. In view of the affidavit in reply, as per the Resolution dated 30th September, 1995, Rajasthan Hospital, Ahmedabad, is treated on par with the hospitals outside the State and treatment taken in this hospital is admissible for reimbursement only on conditions which are similar to those hospitals which are outside the State and, therefore, the petitioner is required to obtain certificate or prior sanction from the Director, Institute of Cardiology and Research Centre, Civil Hospital, Ahmedabad. Therefore, it is necessary to see the Resolution No.MAG/1094/225/A dated 30th September, 1995 issued by the Health & Family Welfare Department, which reads as under:

" STATE OF GUJARAT

HEALTH & FAMILY WELFARE DEPARTMENT

RESOLUTION NO.MAG/1094/225/(FN)[

SACHIVALAYA, GANDHINAGAR 30-9-1995

Read:- 1 Health & Family Welfare Resolution

No.MAG-1088-2616/Gha dated 30th December, 1998.

2. Health & Family Welfare Resolution

No.MAG-1088-3203-GHA dt. 23-8-90.

3. Health & Family Welfare Amendment

No.MG-1093-3063-a dt 8-6-94.

4. Letter of Commissioner Health, Medical

Services and Medical Education (Medical

Dept) Gandhinagar dtd 19-4-94

No.F/7,TSA-Chaturbhuj Hospital

Recognition.

RESOLUTION

As shown in preamble No.1 dt. 30-2-1998 of Gujarat State Services (Medical Treatment) Rules, 1988, as per rule 8(G) in exceptional circumstances of case if the authorised medical officer is of the opinion that required , proper treatment is available only in the hospitals outside the State (but in India), he shall obtain permission (which will be obtained in advance, except where delay will be dangerous to the health of the patient) of Commissioner, Health & Medical Services (Medical Dept) Gandhinagar, and will send the patient to such recognized hospital outside the State. The hospital outside the State are approved and recognised for such treatment vide above referred item No.2 & 3 of preamble date 23-8-1990 & 86-94 resolutions. Now facilities for treatment of heart attack and Nuro Surgery are available in the Hospitals within State, therefore, it was in active consideration of the State Govt to amend rule to the extent :- "Hospitals within State" to recognise such hospitals par with the hospitals out of State in reference to Heart Attack and Nuro Surgery. After full fledge thinking, the words "Hospitals within State" are amended in rule 8 (G) of the Gujarat Medical Services Rules, 1988.

1. For the treatment of Heart Attack and Nuro Surgery latest instruments/ technology and expertise are at Gujarat Research & Medical Institute (Rajasthan Seva Samiti Sanchalit) Ahmedabad. Now Government servants/officers (their family members) and pensioners are allowed to take the treatment in this hospital on the same conditions as are available for treatment outside the State recognised hospitals, only in economic class.In case of hearth surgery the concerned patient has to obtain opinion of authorised medical officers i.e. from

Institute of Cardiology and Research Centre, Civil Hospital, Ahmedabad and for Nuro Surgery from Proferssor and Head of Nuro Surgery, Civil Hospital, Ahmedabad and on that basis to obtain the permission from Director (Medical Services), Gandhinagar. It is the discretion of the employee to take this type of treatment in the hospital within the State or outside the State, the Additional Director (Medical Services) will grant permission as per choice of the employee.

This resolution will come into effect from today on its dispatch. This order is issued with the concurrence of the Finance Department of the same number file.

By the order of the Governor of Gujarat.

Sd/-Praveen Dhani

Deputy Secretary."

9. On bare reading of the said Resolution, it is clear that for treatment of heart attack and Nuro Surgery latest instruments/techynology and expertise are available at Gujarat Research & Medical Institute (Rajasthan Seva Samiti Sanchalit) Ahmedabad and , therefore, the Government servants/officers (their family members) and pensioners are allowed to take the treatment in this hospital on the same conditions as are available for treatment outside the State recognised hospitals, only in economic class. It is further provided that in case of hearth surgery the concerned patient has to obtain opinion of the authorised medical officer i.e. from Institute of Cardiology and Research Centre, Civil Hospital, Ahmedabad and for Nuro Surgery from Professor and Head of Nuro Surgery Civil Hospital, Ahmedabad and on that basis to obtain the permission from Director, Medical Services, Gandhinagar. It is left to the discretion of the employee to take this type of treatment in the hospital within the State or outside the State and the Additional Director, Medical Services , will grant permission as per choice of the employee. In view of this Resolution, even if prior permission from the Institute of Cardiology and Research Centre, Civil Hospital, Ahmedabad, is necessary, such a permission is nothing but a mere formality in view of the fact that it is left at the discretion of the employee concerned to take this type of treatment in the hospital within the State or outside the State and the concerned authority has to grant permission as per the choice of the employee, as provided in the said Resolution. Thus, merely because the petitioner had not obtained prior permission of the concerned authority, that by itself is not a ground for rejecting the just and valid claim of the petitioner since rule 8 clearly provides that prior permission of the Director of Health and Medical Services can be dispensed with where delay will be dangerous to the health of the patient. Since the petitioner has come out with a case pointing out the circumstances under which his daughter was admitted in Rajasthan Hospital wherein she was given emergency treatment for blockage of heart and she survived with temporary pacemaker and thereafter permanent pacemaker implanted. These facts, in my opinion, demonstrate that the condition of the daughter of the petitioner was serious and she required emergent treatment.If

one visualises the mental condition of the petitioner at the relevant time, he was more interested in saving the life of his daughter rather than completing formality and waiting for the permission to come from the concerned authority. When Rule 8(1) itself grants discretion to the Director of Health and Medical Services to dispense with the procedure of obtaining prior permission in case of emergency, it is too much for the respondent No.2 to put forward a ground of non-obtaining of prior permission while rejecting the reimbursement claim of the petitioner . Apart from that not only the case of the petitioner is rejected on the aforesaid ground, but respondent No.2 has even gone further by stating that the petitioner being a resident of Vasna, VS hospital which is run by the Municipal Corporation of the City of Ahmedabad is nearer than Rajasthan Hospital and at about the same distance there is Civil Hospital and since the petitioner has chosen Rajasthan Hospital, the claim of the petitioner cannot be granted. In my opinion, this reasoning on the part of respondent No.2 is not only absurd but is ridiculous in view of the fact that the State of Gujarat itself has recognised Rajasthan Hospital also for medical reimbursement. It is the right of the petitioner to provide medical treatment to his family at the best hospitals and by the choice of the expert. This view of mine is also supported by the decision of the Supreme Court in Surjit Singh Vs. State of Punjab and Others, . It was a case wherein the appellant fell ill due to his heart problem and as an emergency case he was admitted in Dudley Road Hospital Brimingham. After diagnosis he was suggested treatment at a named alternate place. Thus to save himself the appellant got himself admitted and operated upon in Humana Hospital, Wellington,London for a Bye-pass Surgery and spent Rs.3 lacs on his treatment in London borne by his son. On return to India, the appellant submitted a bill for medical reimbursement claiming that very sum in the office of the Senior Superintendent of Police,Ropar which was forwarded to the Director General of Police, Punjab. Some correspondence took place between the appellant and the department. However, the department expressed its inability to sanction the bill for medical reimbursement. The appellant therefore moved the High Court of Punjab and Haryana. Before the High Court, the learned Additional Advocate General made a statement that the State was ready to pay to the appellant the expenses incurred for Bye-Pass Surgery and Angiography on the rates prevalent in the All India Institute of Medical Science, New Delhi and a sum of Rs.30,000 on account of Bye-Pass Surgery and Rs.10,000 for Angiography were ordered by the High Court to be paid to the appellant. The appellant challenged the said order. In this context, the Supreme Court held in paragraph 11 as under:

"11 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, bare-facedly; makes its meetings 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 alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his

claim cannot on that basis be allowed on suppositions...."

10. In the result, this petition is partly allowed. It is held that the petitioner is entitled to claim the medical reimbursement for the treatment given to his daughter in Rajasthan Hospital and respondent No.2 is accordingly directed to grant the admissible medical reimbursement to the petitioner in accordance with the Rules within three weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.