
(2011) 01 PAT CK 0155
In the Patna High Court
Case No : CWJC No. 464 of 2003

Dr. Onkareshwar Prasad,

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Bihar Medical Attendance Rules, 1947 — Rule 26

Citation : (2011) 3 PLJR 948

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—Pleadings being complete, with consent of parties, the writ petition has been heard for final disposal at this stage itself.

2. At the time when the writ petition was filed Petitioner was Director, Statistics and Evaluation, Bihar, Patna. The dispute is with regard to the liability of the State to reimburse cost related to specialized medical treatment outside the State.

3. The basic facts are not in dispute. Petitioner in 1999 was diagnosed with coronary artery disease and recommended for treatment at Delhi. The Petitioner applied and Medical Board examined. Petitioner went to Escorts Heart Institute and Research Centre (EHIRC), New Delhi. Thereafter, angioplasty was performed and he made complete recovery and returned to Patna. As against the total medical expense bill of about Rs. 1,61,000/- the Petitioner was reimbursed only Rs. 1,05,000/-. The deductions said to be on two counts (1) he could not be permitted to travel by air with attendant and as per T.A. Rules he could only be reimbursed second class AC train fare without attendant, and (2) that payment could only be made at the rate prevailing in the All India Institute of Medical Sciences, New Delhi.

4. Soon after his treatment and recovery, he re-developed angina pectoris (Heart ailment). He immediately rushed to EHIRC, New Delhi and was immediately

operated upon. A coronary bypass surgery was performed. This time he could not even wait for Medical Board and this time as against the total expense of about Rs. 2,21,000/-he was reimbursed of only Rs. 60,000/- and odd. This time again he was paid traveling allowance for himself by second class AC train and even though as per T.A. rules he was entitled to air fare, the same was not reimbursed. Thus, Petitioner claims full reimbursement.

5. Petitioner has cited several instances where high officials, apart from others, including ministers have been given full reimbursement. In my view, learned counsel for the Petitioner rightly submits that the Government rate at All India Institute of Medical Sciences, New Delhi is highly subsidized rate and not the actual rate and that rate cannot be taken as a benchmark for medical reimbursement. EHIRC, New Delhi is the internationally renowned hospital and the rates are standard. He submits that if others can be allowed reimbursement at that rate why not the Petitioner. Reliance has been placed apart from others on judgment of this Court in the case of Dr. Dharendra Kumar Vs. The State of Bihar and Others, and in the case of Arvind Prasad v. The State of Bihar & Others, 2007 (4) PUR 382. Learned counsel for the Petitioner also relies upon Rule 26 of the Bihar Medical Attendance Rules, 1947 wherein authorities has been given power to relax the provisions in that relation. It is submitted that once the Government has the authority to relax the Rules it implies that it is under duty to do so in appropriate case and for this reliance has been placed in the case of Md. Ahad Raza & Rekha Sinha v. The State of Bihar & Others since reported in 2008 (1) PUR 337 and in the case of Biresh Chandra Chatterji v. The State of Bihar & Others, 2008 (1) PUR 394.

6. State, on the other hand, submits that in view of the Bihar Medical Attendance Rules and the executive decisions what can be reimbursed is the expense incurred or the expenses as sanctioned by the Government Hospital.

7. Having considered the matter, in my view, ordinarily the stand of the State is correct but illness and ailments are not ordinary situations. It is common knowledge and it cannot be disputed that the rates fixed at Government Hospitals for any treatment or surgical procedures are highly subsidized rates, Government Hospitals being Hospitals of welfare Government but either they lacked the expert personnel or they are overburdened with work where immediate attention cannot be given. In either event, an employee is forced to rush for treatment in well recognized private hospitals. In such a situation, to say that they cannot be reimbursed the full medical expenses would be a travesty of justice. The Bihar Medical Attendance Rules itself, as noticed in several judgments, is archaic law which needs revisions repeatedly. This Court has been directing the State to reconsider the matter but it is not being done.

8. In such a situation, I am left with no option but to hold that the specialized medical treatment undertaken by the Petitioner at the EHIRC, New Delhi would be reimbursed to the Petitioner in full including the traveling allowance with attendant. It would be well advisable to give a re-look to the entire rules and

reformulate it so as to avoid future litigations. The reimbursements, in accordance with directions of this Court, must be made within three months of production of a copy of this order before the Health Commissioner, Health Department, Government of Bihar, Patna and the orders, as contained in Annexures-1,2 and 3 series, rejecting the claim of the Petitioner, are accordingly set aside.

9. The writ petition is, thus disposed of.