
(2011) 03 AHC CK 0358
In the Allahabad High Court
Case No : Writ Petition No. 251 (S/B) of 2009

Dr. S.P. Mittal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2011) 3 ADJ 805 : (2011) 129 FLR 657

Hon'ble Judges : Sudhir Agarwal, J;Devi Prasad Singh, J

Bench : Division Bench

Judgement

1. Heard Sri Sunil Sharma, learned Counsel for Petitioner and learned Standing Counsel for Respondents.
2. Petitioner has sought writ of mandamus commanding the Respondents to pay medical reimbursement of Rs. 17,146/- and 6,570/- alongwith interest without insisting on the original medical vouchers and further to conduct a high level enquiry to find out the person responsible for loss of original bill vouchers.
3. The facts, in brief, giving rise to the present dispute are as under.
4. Petitioner, Dr. S.P. Mittal, retired from the post of Director of Education, U.P. on 31.7.1990 having attained the age of superannuation. After retirement, he settled at Delhi and having exercised his option, which has been accepted by the Respondents, he is drawing pension at Delhi through Pay and Accounts Office, U.P. Bhawan, New Delhi. Presently, Petitioner is above 78 years of age. He and his wife are chronic patients of Diabetes and Asthma, hence, undergoing regular medical treatment at Delhi. The medical reimbursement claim of Petitioner and his wife used to be examined and countersigned by Addl. Director, Medical Health, Meerut Region, Meerut whereafter the payments are made by Senior Pay and Accounts Officer, U.P. Shasan at Delhi (where from he is receiving his pension).
5. For reimbursement of medical bills for the period 1.7.2006 to 31.12.2006,

requisite documents/original vouchers were submitted by Petitioner to the competent countersigning authority who after technical examination thereof, forwarded the same to the Government vide letter dated 21.2.2007 recommending for payment of Rs. 17,146/- for the Petitioner's medical bills and Rs. 6,570/- for Petitioner's wife's bills. The Deputy Secretary, U.P. Government sent letter dated 6.9.2007 addressed to the Addl. Director, Meerut Region, Meerut stating that medical reimbursement claim recommendation in regard to Dr. S.P. Mittal and his wife Smt. Savita Mittal are being returned since the same have been furnished without recommendation of Regional Medical Board/ Provincial Medical Board. Petitioner, thereafter, had to appear before State Medical Board on 25.10.2007. The Provincial Medical Board consisted of the Director General, Medical and Health Service, U.P. Lucknow as Chair Person, Chief Medical Officer, Lucknow as Secretary of the said Medical Board and Head of Department, Ophthalmology, Medical College, Lucknow as Member. The Board verified medical claim of Petitioner and his wife for payment vide certificate dated 25.10.2007/22.11.2007, copy whereof has been placed on record as Annexure 2 to writ petition.

6. The matter remained pending with Government.

7. Again on 17.3.2008, the Special Secretary, U.P. Government, sent a letter to the Director of Education stating that in view of the Government Order dated 11.2.2008, as per the new procedure, medical bills relating to treatment obtained outside State of U.P. has to be sanctioned by the competent sanctioning authority and, therefore, a decision at the level of Director of Education was required to be taken. The aforesaid letter of the Government was transmitted to Directorate of Education, U.P. Allahabad from the Camp Office of Deputy Director of Education, Lucknow with request to take appropriate decision on the medical reimbursement claim of Petitioner and his wife expeditiously.

8. The Director of Education sent a letter dated 6.8.2008 to the Deputy Secretary, U.P. Government (Education), Lucknow that alongwith Government Order dated 17.3.2008, original bill vouchers of medical claim as also the photocopy of Government Order dated 11.2.2008 were not received and, therefore, the said documents be forwarded at the earliest for further action.

9. In the meantime, since the matter was-pending for more than one and half years, Petitioner sent a representation dated 9.9.2008 to Chief Secretary, U.P. Government, brining to his notice Petitioner's frustration and predicament as also harassment due to non clearance of medical claim. The quantum of medical claim might, have been a petty amount for the authorities but of substance for the retired official and his family.

10. Thereafter UP. Government (Education Section) issued a letter on 29.9.2008 requiring the Directorate of Education (Secondary) to make search of requisite documents, i.e., original bill vouchers and Government Order and, then to take action as desired and take appropriate steps expeditiously. It also says that for

loss of documents and delay, responsibility be fixed on the person concerned and department be informed accordingly.

11. In turn, the Director of Education vide letter dated 15.10.2008 reiterated that documents are not available. It also mentioned that Dr. Mittal has sought information under Right to Information Act, hence, the documents namely original bill vouchers and copy of Government Order dated 11.2.2008 be furnished to Director of Education earliest for appropriate steps.

12. It is at this stage, the Petitioner has approached this Court by means of this writ petition.

13. While entertaining this matter, on 12.2.2009 this Court passed the following order:

Learned Chief Standing Counsel who has accepted notice on behalf of opposite parties prays for and is allowed two weeks" time to file counter-affidavit, one week then for the rejoinder affidavit. List immediately thereafter on 18.3.2009.

The Petitioner who retired from the post of Director of Education on 31.7.1990 has applied for medical reimbursement of Rs. 23,716/- in lieu of medical treatment, imparted to him and his wife. The State Government has recommended on 17.3.2008 for the dues in question as medical reimbursement but even then, the matter is hanging with the Deputy Director of Services. In spite of lapse of almost nine months, the medical dues have not been reimbursed to the Petitioner, though the State Government has already forwarded necessary papers with due recommendations to the competent authority. It is unfortunate on the part of the opposite parties.

Accordingly, the Director of Education is directed to look into the matter and ensure that the entire dues are paid by 18.3.2009. He shall also hold an enquiry as to why the entire dues have not been paid to the Petitioner in spite of the recommendations of the State Government and shall take appropriate action against the officers who are at fault in not reimbursing the medical dues and submit a compliance report to this Court by the next date of listing. In case the dues are not paid, the opposite party No. 2 shall appear in person on the next date of listing. This Court may consider to impose cost as well as payment of interest on the authorities who are at fault in not reimbursing the medical dues.

14. Having no option, Respondents immediately took steps for payment of above said medical claim and a treasury cheque bearing No. 006392 dated 27.2.2009 of Rs. 23,716/- was issued to Petitioner satisfying his medical claim for the period 1.7.2006 to 31.12.2006.

15. This is how the Petitioner could get the medical reimbursement after more than two years and that too only when he filed the present writ petition wherein this Court, taking strict view of the matter, passed order on 12.2.2009 as said above.

16. So far as direction given by this Court with respect to enquiry is concerned, a copy of alleged enquiry report submitted by Sri Krishna Mohan Tripathi, Director of Education (Secondary), UP. dated 3.3.2009 has been placed on record as Annexure 5 to the writ petition, which simply states that delay occurred due to loss of original bill vouchers for which department continued in correspondence, hence, there was no deliberate delay. Evidently, Respondent No. 2 did not find any one responsible for delay in reimbursement of medical claim i.e. after more than two years and felt satisfied that it was such an ordinary thing that no person be identified as responsible for delay. It is not his case that the amount has been paid to the Petitioner after searching out original medical bill vouchers but he says that payment has been made pursuant to this Court's order dated 12.2.2009.

17. Learned Standing Counsel submits that since the payment has now already been made, therefore, this writ petition be dismissed having rendered infructuous.

18. Sometimes, when a claim is satisfied, this Court pass order consigning the record of writ petition having rendered infructuous, but we are of the view that the present one is not a case of such a nature where mere on this account, the matter deserves to be dropped. An aged retired employee and his wife have been made to suffer financially and otherwise in respect to a claim for which they had already incurred expenses. Their right of reimbursement is not in doubt, yet in the bureaucratic jargon the Respondents kept the matter unattended for years together keeping the Petitioner to run from one to other office, but nothing impressed upon the Respondents to end his misery. So much so that the Petitioner was compelled to file this writ petition traveling althrough from Delhi to Lucknow and only thereafter, the payment has been made. Is it what expected from a model employer or from a welfare State?

19. Moreover, the conduct of the Respondent is also disturbing. The Respondents are bold enough not to hold anybody responsible for the alleged loss of documents which they have made sheet anchor of their defence to extra ordinary delay in reimbursement of medical claim of Petitioner. None has been identified for this negligence and none has been proceeded against. The Director of Education (Secondary) has taken entire things so lightly that even Court's order directing for enquiry has been tried to render futile by submitting that delay occurred due to loss of original bill vouchers and there is no deliberate delay. Why long drawn correspondence and that too with interval of months together continued though the payment could have been made to the Petitioner even without original vouchers as has actually been done ultimately. Has neither been explained in the alleged enquiry report dated 3.3.2009 nor by the learned Standing Counsel since nothing has been said in the counter-affidavit on this aspect. We have no hesitation in observing that enquiry report dated 3.3.2009 is wholly vague, sketchy and shows total apathy and a careless attitude of Respondents in such matters.

20. The manner in which Petitioner has been dealt with shows the highest degree of apathy on the part of Respondents. We express our strongest condemnation and displeasure for such attitude and conduct on the part of Respondent and in particular Respondent No. 2. We enquired from learned Standing Counsel if payment could have been made without having original vouchers on 18.3.2009, why the same could not be done earlier to which he could not forward any explanation. The only thing evident from counter-affidavit is that Court's order had to be complied with and that is why payment was made immediately and this time Respondents did not find the alleged loss of vouchers a reason for non reimbursement.

21. Here is not a case where anything was lacking on the part of Petitioner. If the documents were lost, it was from the possession of Respondents. Without holding any person responsible for such recklessness, where important documents from Government officials custody have lost, the Respondents could not have left the matter in lurch in such a way. But they have done so.

22. We have no manner of doubt to infer from all these facts that entire lapses are being ignored collusively in which Respondents 1 and 2 are also party.

23. Admittedly, there is no dispute about the genuineness of claim of Petitioner or his entitlement for reimbursement or that he did not submit all requisite documents and completed the formality at his end. In the circumstances, non-reimbursement of medical claim for such a long time is ex facie illegal, arbitrary and travels in the realm of malice in law.

24. The Apex Court has summarised "malice in law " in Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, as under:

It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

25. The Apex Court further in para 9 of the judgment in S.R. Venkatraman (supra) observed:

9. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power.

26. In Mukesh Kumar Agrawal Vs. State of U.P. and Others, the Apex Court said:

We also intend to emphasize that the distinction between a malice of fact and malice in law must be borne out from records; whereas in a case involving malice in law which if established may lead to an inference that the statutory authorities had acted without jurisdiction while exercising its jurisdiction, malice of fact must be pleaded and proved.

27. In *Somesh Tiwari Vs. Union of India (UOI) and Others*, dealing with the question of validity of an order of transfer on the ground of malice in law, the Apex Court in para 16 of the judgment observed as under:

16. ...Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the Appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

28. In *H.M.T. Ltd. rep. by its Deputy General Manager (HRM) and Another Vs. Mudappa and Others*, the Apex Court in paras 18 and 19 defined malice in law by referring to "Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989" as under:

The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite". It is a deliberate act in disregard of the rights of others.

19. It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill-will or spite on the part of the State. It could only be malice in law, i.e. legal mala fide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide.

29. In brief malice in law can be said when a power is exercised for an unauthorized purpose or on a fact which is claimed to exist but in fact, is non-existent or for the purpose for which it is not meant though apparently it is shown that the same is being exercised for the purpose the power is supposed to be exercised. [See: *The Manager, Government Branch Press and Another Vs. D.B. Belliappa, Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, K.K. Bhalla Vs. State of M.P. and Others, P. Mohanan Pillai Vs. State of Kerala and Others, M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar*

Jamindar and Others, Swaran Singh Chand Vs. Punjab State Electricity Board and Others, and Sri Yerneni Raja Ramchander @ Rajababu Vs. State of A.P. and Others, The inaction and laxity in this case, in our view, is malicious, if not in fact then in law.

30. Having said so, we are also of the view that withholding of lawful dues of Government employees for years together is not only illegal and arbitrary but a sin, if not an offence, since no law has declared so. The officials, who are instrumental in such delay causing harassment to the employees concerned, must feel afraid of committing such a sin. Unfortunately, they do not. The skin of the authorities has got so thick that the misery of even old people does not touch them.

31. In our system, the Constitution is supreme. The real power, however, vest in the people of India. The Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee and that too a retired, old and sick person.

32. The Respondents are "State" under Article 12 of the Constitution of India. Its officers are public functionaries. As observed above, under our Constitution, sovereignty vest in the people. Every limb of constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions, oppressively, are accountable for their behaviour. It is high time that this Court should remind Respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their ex-employees like the Petitioner. The Respondents have the support of entire machinery and various powers of statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting, mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the

exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to occasion otherwise the confidence of the common man would shake. It is the responsibility of Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal exercise of power on the part of the public functionaries.

33. Regarding harassment of a common man, referring to observations of Lord Hailsham in *Cassell & Co. Ltd. v. Broome* 1972 AC 1027 and Lord Devlin in *Rooks v. Barnard and Ors.* 1964 AC 1129 , the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, held as under:

An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law.... A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it...Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous.

34. The above observations as such have been reiterated in *Ghaziabad Development Authority Vs. Balbir Singh*,

35. The Respondent-authorities appears to have taken an attitude that in whatever and whichever manner they work, nothing can happen to them. They are immune from all kind of censures, commands and adverse action. In effect, the attitude is of total lack of accountability. We feel that in the welfare State, one cannot be absolved from the principle of institutional accountability where its action or omission has caused an avoidable harassment to a person and in particular a citizen of this Country and more particular a retired and aged employee of the State. Nobody can dare to say that I can keep a claim unattended as long as I like and nobody can call upon me to function in a time bound manner or fix my responsibility. The power vested in authorities is for the benefit of individual(s) or a group, and the public at large and has to be exercised in a reasonable manner, else, it may result in travesty of justice which this Court cannot permit.

36. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

37. In Registered Society v. Union of India and Ors. (1996) 6 SCC 530, the Apex Court said:

No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary.

38. In Shivsagar Tiwari Vs. Union of India (UOI) and Others, the Apex Court has held:

An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit.

39. In Delhi Development Authority Vs. Skipper Construction and another, , has held as follows:

A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not mean to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.

40. In view of above discussion and considering the fact that genuine, valid and just claim of Petitioner remained unattended before the Respondents for almost two years and more, we find it a fit case where Respondents must be saddled with responsibility of payment of interest on the aforesaid amount and also to pay exemplary cost to Petitioner for causing harassment to him to an extent of compelling him to invoke extraordinary jurisdiction of this Court by filing writ petition traveling all along in this old age from Delhi to Lucknow.

41. In the above facts and circumstances, writ petition is disposed of directing the Respondents to pay interest on the amount of medical reimbursement paid to the Petitioner pursuant to order dated 12.2.2009, at the rate of 10% p.a. from the date of recommendation dated 21.2.2007 till actual payment.

42. Respondents shall also pay cost to Petitioner quantified to Rs. 50,000/- (Rupees fifty thousand).

43. The aforesaid amounts shall be determined and paid to Petitioner within two months from the date of production of a certified copy of this order.

44. The aforesaid amount, at the first instance, shall be paid by Respondent No. 1. However, Respondent No. 1 shall be at liberty to recover above amount of interest and cost paid to Petitioner under this order from the official(s) concerned, who is/are found responsible for extra ordinary delay in payment of medical reimbursement to the Petitioner, after such inquiry as is required in law.