
(2012) 03 GAU CK 0051
In the Gauhati High Court
Case No : Writ Petition (C) No. 181 of 2003

Dr. Sujay Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Citation : (2012) 2 GLD 550 : (2012) 5 GLT 464

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—The instant writ petition is filed by the petitioner Dr. Sujay Das asking for a direction to the State respondents particularly, respondent No. 3, Medical Superintendent, GB Panth Hospital, Agartala, West Tripura to certify the medical bill, submitted by him, so that he can adjust and receive the balance amount of medical bill, by way of reimbursement, and also for quashing the letter dated 02.12.2002 (Annexure-P8 to the writ petition) written by respondent No. 3 to him wherein the respondent No. 3 has declined to certify his medical reimbursement bill, and also to quash the letter dated 26th April, 2003 (Annexure-P 10 to the writ petition) wherein he was requested to submit his medical reimbursement claim bill within seven days from the date of issue of the letter, otherwise, the amount of Rs. 15,000/- will be recovered in three installments from his salary. Heard Mr. Somik Deb, Learned Counsel for the petitioner as well as Mr. A Ghosh, learned State counsel for the State respondents.

2. Brief facts of the case are as follows:

The petitioner is a Medical Officer (Homeo) working under the health and Family Welfare Department, Government of Tripura as Group-A Gazetted Officer and he is entitled to the medical reimbursement as per the rules framed by the

government. On 01.05.2002 the wife of the petitioner met with a vehicular accident on Agartala-Sabroom road and she was admitted in the GB Panth Hospital as an indoor patient in Ward No. FC-3, Bed No. Founder registration No. 326, and received treatment in the said hospital till 06.05.2002. Thereafter, she was discharged from the said hospital by the Medical Officer In-charge, and had been referred to SSKM/any government hospital, Kolkata by the Medical Board. On referral, the petitioner went to Kolkata on 08.05.2002 for treatment of his ailing wife, and ultimately, reported to the referral hospital as outdoor patient and the attending doctors of the hospital referred her to Residential Medical officer (Ortho) on the same date. Accordingly, she went to Ortho-Out patient-Door of the said hospital and the Ortho-Out patient-Door further referred her to the Surgical Superintendent of that hospital for admission, but the Orthopedic department of the referral hospital regretted the admission of the petitioner's wife, owing to the fact that no bed was lying vacant and the said fact was also recorded in the ticket (Annexure-P4 to the writ petition).

3. Being confronted with the aforesaid situation, the petitioner admitted his wife in the Infirmary (Orthopedic) Centre and Nursing Home at Southern Avenue, 39-A, Kolkata-39 wherein one Dr. SL Sarkar operated her left elbow. The petitioner's wife remained admitted in the said hospital w.e.f. 09.05.2002 to 21.05.2002. After receiving treatment in Kolkata and coming back to Agartala, the petitioner submitted all papers relating to the treatment of his wife at Infirmary (Orthopedic) Centre and Nursing Home, Kolkata to the Medical Superintendent, GB Hospital, respondent No. 3 herein for certification of the Bill but the respondent No. 3 refused to certify the papers vide letter dated 02.12.2002 (Annexure-P8 to the writ petition). Hence, the writ petition.

4. The State respondents, by way of filing counter affidavit, denied the entitlement of the petitioner's medical reimbursement on the ground that his wife had not received treatment from the referral hospital.

5. Mr. Deb placing reliance on the order of the government dated 20th December, 2002 issued by the Chief Secretary, Government of Tripura (Annexure-P9 to the writ petition) as well as the judgment of this Court in Gouti Sengupta v. State of Assam and Ors., (2001) 1 GLR 608 would contend that even if a person who is entitled to medical reimbursement, has not admitted himself in the referral hospital and has received treatment from a nursing home, he cannot be denied the medical reimbursement. He further submits that the petitioner may not be entitled to medical reimbursement as per the rate of the nursing home where his wife received treatment, but he is entitled to the medical reimbursement as per the rate of the referral hospital or the rate of the nursing home, whichever is less and when an employee like the petitioner is entitled to the medical reimbursement, respondent No. 3 is bound to certify the same. He also placed reliance on another judgment of this Court in Modan Mohan Bhowmik v. State of Tripura and Ors., (2011) 2 GLR 738 wherein this Court held that denial of medical reimbursement to an employee on mere technical ground is denial of Right to

Life which includes Right to Health.

6. Mr. Ghosh though initially resisted the claim of the petitioner but ultimately on perusal of the judgments of this Court would contend that the petitioner is entitled to medical reimbursement as per the rate of SSKM Hospital, Kolkata i.e. the referral hospital or the rate of the nursing home, whichever is less.

7. In Gouri Sengupta (supra) the petitioner of that case a Matron of the Civil Hospital, Nowgong who went to Dibrugarh and consulted the doctors of Obstetrics and Gynaecology and the attending doctors on preliminary examination advised her Biopsy suspecting that she was suffering from Carcinoma of the uterus and ultimately it was found that she was suffering from Carcinoma and she was advised to attend an advanced Gynaecological Centre outside Assam for further treatment and being advised she went to Calcutta accompanied by an escort, i.e. her husband and there she got herself treated in Lans Down Nursing and Research Centre at Calcutta and thereafter she attended the Thakur Pukur Cancer Centre and Welfare Home for Radiotherapy and Brachy therapy and also took various courses of Radiations as advised by the Doctors of the said institution. On completion of treatment, on her return to Dibrugarh she submitted the medical reimbursement bill on 30.01.1989 to the Director of Health Services which was not approved by the authority on the ground that the private nursing home is not recognized by the State of Assam for the purpose of reimbursement of medical expenses. Thus, she preferred the writ petition which was ultimately disposed of with the direction to the State of Assam to pay the amount as claimed with an interest @ 18%.

8. In Mohinder Singh Chawla (supra) while the Apex Court considered a case relating to denial of medical reimbursement of an employee held that Right to Life includes Right to Health. It also appears from the case of Mohinder Singh Chawla (supra) that the Apex Court considered two different Special Leave Petitions registered as CA No. 16979/96 @ SLP(C) No. 12472/96 and CA @ SLP(C) No. 12945/96 respectively. In CA 16979/96 @ SLP(C) No. 12472/96 the respondent therein while had heart ailment which required replacement of two valves in the heart sought permission to the Director, with approval of the Medical board to get the treatment outside the State which was allowed and the respondent was sent for treatment at AIIMS at New Delhi and after his treatment when he submitted the bill for medical reimbursement that was denied on the ground that the government has taken a decision, as a policy resolution that the reimbursement of the expenses on account of diet, stay of attendant and stay of patient in hotel/hospital will not be allowed and permission given to was subject to the above resolution, and, therefore, the High Court was not right in directing the government to bear the expenses for the stay in the hotel/hospital contrary to para (vii) of the resolution of the government. The Apex Court considering the aforesaid contention of the state appellant therein noted, inter alia, that ".....we find no force in the contention. It is an admitted position that specialized treatment was not available in the hospital maintained by the State of Punjab,

permission and approval having been given by the Medical Board to the respondent to have the treatment in the approved hospitals and having referred him to the AIIMS for specialized treatment wherein he was admitted, necessarily, the expenses incurred towards room rent for stay in the hospital as an inpatient are an integral part of the expenses incurred for the said treatment." It is further noted by the Apex Court that/if the government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Taking note of the facts and circumstances of the case in hand and the decisions of the Apex Court as well as this Court, it can be easily said that the intention of the Council of Ministers and the government was not to deny the genuine claim of the medical reimbursement of an employee, rather to prove the medical reimbursement at the rate prescribed for the referred hospital.

9. As the referred hospital was not in a position to provide medical treatment to the wife of the petitioner as required, due to unavailability of bed, the petitioner's wife had no other alternative except to get herself admitted in the Infirmary (Orthopedic) Centre and Nursing Home for obtaining necessary treatment. As it is the admitted position that the petitioner's wife has treated herself in the nursing home, according to this Court, the petitioner is entitled to the medical reimbursement and when the petitioner is entitled to medical reimbursement then the respondents are bound to take all the necessary steps so that the petitioner can get the medical reimbursement. In any way, the respondent No. 3 is not entitled to deny the petitioner to get certification of his medical reimbursement bill.

10. In view of the above, respondents are directed to certify the medical reimbursement bill of the petitioner and also to make reimbursement as per entitlement of the petitioner in view of the order dated 20th December, 2002 (Annexure-P9 to the writ petition). The entire exercise shall be completed within a period of two months from the date of receipt of this order. With the aforesaid order, the instant writ petition is allowed and accordingly disposed of. No costs.