
(1999) 07 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 4807 of 1996

Gouri Sengupta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : (1999) 3 GLT 601

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : Amitav Roy and Avijit Roy, for the Appellant; K.H. Choudhury and B. Goswami, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This writ application has been filed by a lady and that also by a Matron of the Civil Hospital at Nowgong. But ultimately she herself was ill and she went to Dibrugarh and there she consulted Dr. H.N. Sarma, Professor of Obstetrics and Gynaecology, Assam Medical College, Dibrugarh and Doctor Binit Kumar Baruah, Asstt. Professor of the same Department. The attending Doctors on preliminary examination advised her Biopsy suspecting that she was suffering from Carcinoma of the uterus and it was found that she was suffering from Carcinoma. Doctor immediately advised her to attend an advanced Gynecological centre outside the State of Assam for further treatment. It was also advised that the patient should be accompanied by an escort. She was advised to undergo major abdominal surgery for removal of the uterus. A copy of the reports are annexed to this writ application as Annexures-1, 2 and 3. The Petitioner went to Calcutta 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. The Petitioner after completion of her treatment returned to Dibrugarh. It is stated herein that the husband of the Petitioner accompanied the Petitioner as Escort.

Documents regarding her treatment are Annexure-4. The Petitioner on her return to Dibrugarh submitted the medical reimbursement bill on 30.1.89 to the Director of Health Services, Hengrabari at Guwahati. Along with the bill, she furnished the relevant vouchers supporting her claim and necessary certificates of the attending Doctors. The total amount of the bill comes to Rs. 34,774.19 p. Certain classifications were called for with regard to the claim which she furnished in due course. The bill of the Petitioner 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 the medical expenses. Hence, this writ application.

2. Though this writ application was filed in the year 1996, till today no affidavit-in-opposition has been filed. Today Mr. K.H. Choudhury, Addl. Sr. Advocate, Assam has produced before me a written instruction received by him from the department. The only ground is that there is a report of the Committee of Assam Legislative Assembly with regard to this matter. That is quoted below:

After a very careful consideration of the case in the light of the recommendation of the Hon"ble Committee, Government has found that any exception to the rules already in force may result into a series of demands of this nature. In such a situation it would be difficult for the Govt. to reject such cases once a precedent is set and it is also possible, that the applicants in such cases, after failing to receive Govt. approval may obtain favourable court orders. In view of this it is felt that rules in force shall be adhered to strictly in case of reimbursement of medical bill of Smti. Gouri Sen Gupta, Matron of Assam Medical College, Dibrugarh.

It is really a strange situation wherein it is stated that after failing to receive Govt. approval may obtain favourable court orders. That is why her claim was rejected by making strict adherence to the rules regarding reimbursement of medical bill of Smti Gouri Sen Gupta, the present Petitioner. This matter is no longer res-integra inasmuch as the Apex Court in 3 decisions has settled the matter. The first decision in this regard is Surjit Singh Vs. State of Punjab and Others, . That was a case where an employee of the Punjab Government was suffering from heart trouble. He even without approval of the Punjab Government went to London on his own. After coming back from London, he submitted a medical bill for reimbursement. The Punjab Government refused to pay the bill on the plea that there was no approval from the Government and as because the case was not referred by the Medical Board as required under the rules. Dealing with that aspect of the matter, the Apex Court in paragraph 12 has laid down the law as follows:

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, barefacedly, makes its meeting 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 alternative hospital as per policy.

When the state itself has brought Escorts on the recognised list, it is futile for it to contend that the Appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the Appellant remained in India, he could have gone to Escorts like many Ors. did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and -timely. On that hypothesis, it is fair and just that the Respondents pay to the Appellant, the rates admissible as per Escorts. The claim of the Appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000 already paid to the Appellant would have to be adjusted in computation. Since the Appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the differences be paid to the Appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

The Supreme Court has pointed out that it is always not necessary to wait for the approval of the Medical Board. There is no necessity to stand in the queue before the Medical Board because it is well known situation that the Medical Board shall meet according to its convenience and in the meantime the patient may die. It was further pointed out by the Apex Court that there is no need to go for a particular approved institution. He can go to any institution of his choice, but he will be paid the medical reimbursement according to the rate of approved institution, (ii) the next case of this point is State of Punjab and others Vs. Mohinder Singh Chawala, etc., That of course was a case where the Punjab Govt. approved the referred case of the patient of a particular hospital as there was no specialized treatment available in the State of Punjab and permission was given to go outside the State. That was done, but only the controversy was that whether the patient shall be paid the room rent of that particular hospital. The Supreme Court allowed it. The Supreme Court said that room rent of that particular hospital is a part of the medical expenses and that must be reimbursed by the State Government, (iii) The next case on this point is State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., . There a challenge was made to the policy formulated by the State of Punjab with regard to the reimbursement of medical bill. The Supreme Court said that a policy cannot be challenged, because that is wisdom of the authority. But at the same time, the Supreme Court referred to the earlier law and the Supreme Court pointed out as follows: A right, it correlates to a duty upon Anr. individual that is employer, government or authority. The right of one is an obligation of Anr. . Hence the right of a citizen to live under Article 21 casts obligation on the state. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. The Supreme Court further pointed out in this case as follows:

When we speak about a right, it correlates to a duty upon Anr. , individual, employer, government or authority. In other words, the right of one is an

obligation of Anr. . Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at Anr. hospital. Its upkeep, maintenance and cleanliness has to be beyond as person. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen, of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This is turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

3. That being the position, this writ application is allowed and the authority is directed to pay the amount of Rs. 34,774.19 p. within a period of one month from the date of receipt of this order, with interest @ 18% from 31.1.89. The Petitioner also shall be paid a cost of Rs. 2500/- heard Mr. A. Roy, learned Sr. Advocate for the Petitioner and Mr. K.H. Choudhury, learned Addl. Sr. GA, Assam assisted by Mr. B. Goswami, GA, Assam for the Respondents.