

(2007) 04 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 778 of 2006

Imphalbench Angom Sushila Devi

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Citation : (2007) 3 GLT 176

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : P.H.Sanajaoba Singh, R.S.Reisang, Advocates appearing for Parties

Judgement

T. N. K. Singh, J.—By this writ petition, the petitioner is praying for a direction to the respondents to reimburse the medical bill for her treatment at Mallya Hospital, Bangalore on the refusal by the respondents to reimburse the medical bill only on the ground that the said hospital was a private hospital. The point called for decision in the present writ petition is no more res integra. The decision of the Apex Court in Surjit Singh Vs. State of Punjab & Ors. reported in (1996) 2SCC 336 and the decision of this Court in Gouri Sengupta Vs. State of Assam reported in 1999 (3) GLT 601 had already answered the point called for decision in the present writ petition.

2. The petitioner is a State Government employee serving as Additional Public Prosecutor cum Additional Government Advocate (District) and undisputedly the petitioner is a Class I Officer of the Government of Manipur.

3. On 27.08.2005, the petitioner left Imphal for Bangalore for her son's admission at Dayananda Sagar of Dental Science, Bangalore and she was on earned leave for a period of 15 days commencing from 27.8.2005 to 10.9.2005 under the Manipur Civil Service (Leave) Rule 1979. Unfortunately, while she was at Bangalore for her son's admission she suddenly fell ill and admitted at Kidwai Institute of Oncology, Bangalore, Department of Pathology on 2.9.2005 vide Registration No. 14774. On initial examination, the concerned doctor (specialist)

suspected that she was suffering from Cancer of her right breast and thyroid lobe. The attending doctor (specialist) after preliminary examination further advised her for histological evaluation of the case by way of lumpectomy and biopsy. It is said that due to nonavailability of bed in the said Kidwai Memorial Hospital, Bangalore, she was referred to Mallya Hospital, Bangalore. In support of her case, petitioner annexed the photocopy of the registered receipt of the OPD having registration No. 14774 Unit GDD Diagnosis dated 2.9.2005 wherein the concerned doctor made a noting on 4.9.2005 that "refer to Mallya Hospital for shortage of bed" to the present writ as AnnexureA1. The petitioner also undergone many tests and found that the illness of the petitioner was of serious nature and required immediate intervention. She was also further subjected various medical tests at Mallya Hospital, Bangalore as per advice of the attending doctors. The attending doctor (specialist) Dr. Vishwanath Hiremath advised her to undergo medical test like needle aspiration cytology, thyroid scan, mammography routine, aspiration, complete hemogram test, HIV rapid assay, hepatitis etc. After the medical report of the said test highly suspicious to be suffering from thyroid left malignancy fnac breast (RT) lump suspicious of malignancy (complex cyst). Accordingly, she was admitted to Mallya Hospital, Bangalore on 22.9.2005 and was operated on the next following day on 23.9.2005 and was finally diagnosed as Left Lobe Follicular Adenoma with Atypical Papillary Hyperplasia and Fibrocystic disease with Lobular Hyperplasia Right Breast (mildatypia). After completion of the operation she was discharged from hospital on 28.9.2005. The photocopies of the medical tests receipts along with medical reports and discharged summary reports are also enclosed as AnnexureA/2(Colly)

4. After arrival at her home town at Imphal, the petitioner applied to the Public Prosecutors (Districts), Government of Manipur under whom the petitioner is serving for seeking permission to the Medical Directorate, Health Services, Manipur for grant of ExPost Facto Sanction for medical reimbursement of the actual expenditure incurred in her medical treatment in a private hospital which is not a referable hospital/recognized Hospital of the Government of Manipur and also a sanction for further periodical check up. The petitioner's application dated 28.12.2005 addressed to the Public Prosecutor (Districts) was submitted along with the application and the necessary documents such as duly filled in Form 97A, Form 97B along with the original bills and medical reports. The said application of the petitioner dated 28.12.2005 was forwarded to the Secretary (Law), Government of Manipur by the Director of Prosecution vide its letter No.3/27/90DP (ExtS (pt) dated 7.2.2006 for grant of Expost Facto Sanction from the Medical Board as the medical treatment of the petitioner was obtained during her earned leave at Mallya Hospital, Bangalore. The total expenditure incurred as the costs of the medical treatments, hospital charges, doctors fees, costs of medicines, dietary, laboratory, bed charges and miscellaneous expenditures is Rs. 52,050.31 (Rupees fiftytwo thousand fifty and paise thirty one) only. The Deputy Secretary (Law) to the Government of Manipur vide his letter

No.7/23/95GA/L dated 24.6.2006 informed the Director of Prosecution, Manipur that the medical reimbursement of the petitioner as claimed could not be reimbursed under C.S. (M.A.) Rules 1944 after having examined by the State Medical Board on 14.6.2006 on the sole ground that the medical treatment of the petitioner was obtained in the private hospital. A copy of the said letter dated 24.6.2006 is annexed as AnnexureA/7 to the present writ petition. On 3.6.2006, the petitioner reported to the Regional Institute of Medical Sciences (RIMS in short) for her follow up medical check up vide C.R. No. 2000606022021 being OPD registration card. The petitioner was advised by the concerned Associate Professor of RIMS to attend the Mallya Hospital, Bangalore on the ground that the RJMS does not have the details of her surgery or/treatment available with the Mallya Hospital where the petitioner had been operated. Having no alternative, the petitioner after obtaining leave went to Mallya Hospital for follow up medical check up on 21.6.2006 by flight from Imphal via Kolkata to Bangalore and returned from Bangalore via Kolkata to Imphal by flight. During the follow up medical treatment, she got clinically examined on 1.7.2006 and 3.7.2006 respectively. The total amount incurred for the follow up medical check up as the costs of investigation and the clinical test and the costs of journey is Rs. 22,890/ (Rupees twenty two thousand eight hundred and ninety) only. As stated above, the petitioner being aggrieved by the refusal to grant as post facto sanction for treatment of the petitioner in the Mallya Hospital, Bangalore by the State Medical Board and also refusal to reimburse the said amount of medical bill i.e. Rs. 74,940.31 (Rupees seventy four thousand nine hundred forty and thirty one paisa) only on the ground that her treatment was at private hospital filed the present writ petition.

5. The respondents also filed their affidavits in opposition. In the affidavits in opposition, the respondents are not denying that the petitioner had the medical treatment at Mallya Hospital, Bangalore and also had the follow up medical check up at Mallya Hospital and the total expenditure incurred by the petitioner for her treatment was Rs. 74,940.31 (Rupees seventy four thousand nine hundred forty and thirty one paisa) only but the respondents in their affidavits in opposition stated that the Mallya Hospital, Bangalore is not recognized by the State Government as the same is not included in the list of the recognized institutes/hospitals for the purpose of medical treatment of the State Government employees and their family members vide Government order No. 5/1/98M dated 26.08.2006. It is also stated in their affidavit that any reimbursement of expenditure incurred for medical treatment if the amount exceeds Rs.2,000/ required approval of the State Medical Board which is the final authority irrespective of the nature of medical treatment either emergency or normal and the said restriction has been imposed by a policy decision of the Government of Manipur in view of the acute financial crunch in the State.

6. From the case of the respondents made out in their affidavits in opposition, it is clear that the respondents are denying to reimburse the medical expenditure incurred by the petitioner only on the two grounds

1. The said Mallya Hospital, Bangalore is a private hospital.
2. The petitioner did not obtain the sanction of the State Medical Board for her medical treatment at Mallya Hospital, Bangalore.
7. It also appeared that the respondents also had taken another ground for refusing to reimburse the bill for medical treatment of the petitioner in their affidavit that there is no emergency for treatment of the petitioner at Mallya Hospital, Bangalore.
8. The Apex Court in the case of State of Punjab & Ors. Vs. Mohinder Singh Chawla & Ors. reported in (1997) 2 SCC 83 observed that it is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. 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. Expenditure, thus, incurred requires to be reimbursed by the State to the employee, Right to health life is the constitutional right of every citizen of India. It is an obligation of the State to tone up health services and to give way to the right of the public at large. The Articles 41 and 47 of the Constitution give recognition to this aspect.
9. The Apex Court in Surjit Singh(supra), held that the government employee suffers from serious illness is not required to stand in queue before the Medical Board for obtaining necessary sanction and also did not have to stand in queue in the Government Hospital for treatment and could go elsewhere to an alternative hospital but the amount incurred for medical treatment in the private hospital would be limited to the amount chargeable by the approved/referable hospital. The fact in that case was that the appellant Surajit Singh after obtaining leave from his superior from 15.06.1988 to 08.09.1988 went to England to visit his son. While he was in England he fell ill due to heart problem and as an emergency case, was admitted in Dudley Road Hospital, Birmingham. After diagnosis he was suggested treatment at a named alternative place. Thus to save himself the appellant got himself admitted and operated upon in Humana Hospital, Wellington, London for a bypass surgery. He claimed a sum of Rs. 3 lakhs for medical reimbursement but rejected by the Govt. of Punjab only on two grounds
 - (i) The appellant while on leave had the bypass surgery at foreign hospital without sanction of the Medical Board and
 - (ii) it was not an emergency case.
10. The Apex Court in the context of the fact in Surjit Singh (supra) held that the appellant Surjit Singh will get the medical reimbursement to the extent of medical expenditure chargeable by the AIIMS or/government hospital/or referable hospital and also the appellant need not have to stand in queue before

the Medical Board for necessary sanction and also when reimbursing the medical bill at the rate of medical expenditure chargeable by a referable/government hospital whether the case is emergency or not is immaterial. Para 3 and 12 of Surjit Singh (supra) are quoted hereunder

3. The appellant, Surjit Singh (now retired) while posted as a Deputy Superintendent of Police, Anandpur Sahib, District Ropar, Punjab developed a heartcondition on 22.12.1987 and that very day went on a short leave extending it upto 10.01.1988 on medical grounds. It remains unclarified on the record of this case as to what steps the appellant took thereafter to meet his ailment. However, six months later he obtained leave from his superiors from 15.06.1988 to 08.09.1988 and went to England to visit his son. It is the case of the appellant that while in England, he fell ill due to his heart problem and as an emergency case, was admitted in Dudley Road Hospital, Birmingham. 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 bypass surgery. He claims to have been hospitalized from 25.07.1988 to 04.08.1988. A sum of Rs. 3 lakhs allegedly was spent on his treatment at London, borne by his son.

12. The appellant therefore had the right to take steps in selfpreservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, 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 alternative hospital as per policy. When the state itself has brought Escorts on the recognized list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on mat 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 others 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 grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

11. This Court also followed the ratio laid down in Surjit Singh (supra) in the case of Gouri Sengupta(supra) and directed the State respondents to reimburse to the petitioner i.e. Gouri Sengupta for her medical treatment at the private hospital. The fact of the case is spell out in para No. 1 and the operative portions of the

judgment are mentioned in para No. 3 and are quoted below :

1. 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 Gynaecological Centre out side 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 bill comes to Rs. 34,774.19. 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.

3. That being the position, this writ application is allowed and the authority is directed to pay the amount of Rs. 34,774.19 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 senior Advocate for the petitioner and Mr. K.H. Choudhury, learned Addl. Senior GA, Assam assisted by Mr. B. Goswami, GA, Assam for the respondents."

12. This Court is not burdening itself by citing different decisions of the Apex Court in order to answer the point called for decision by this Court in the present writ petition inasmuch as decision of this Court in Gouri Sengupta (supra) and the decision of the Apex Court in Surjit Singh (supra) shall squarely cover this case. In the present case, the respondents are not stating that the medical reimbursement bill claimed by the petitioner are excessive and the more than the medical bill chargeable by the referable hospital or by the Government hospital.

13. For the reasons discussed above, the respondents are directed to pay the amount of Rs. 74,940.31 to the petitioner within a period of two (2) months from the date of receipt of this order. In the event of failure to pay the said amount within two (2) months from the date of receipt of this order, there shall be interest @ Rs. 14% per annum from the date of delivery of this judgment.