
(1999) 02 KL CK 0066
In the High Court Of Kerala
Case No : O.P. No. 3847 of 1990

John Philip and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1999) 1 KLJ 649

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : B. Krishna Mani, for the Appellant; Subal Paul, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D. Sreedevi, J.—Petitioner has filed this Original Petition for a writ of certiorari quashing Exts. P10 and P14 and to direct the respondents to reimburse the amounts mentioned in Ext. P8 bill to the petitioner. Petitioner entered the service in 1960 as a Junior Engineer in the Public Works Department and retired as Executive Engineer on 28-2-1988. In 1976 he had the first episode of acute myocardial infarction. He was hospitalised for three weeks in Medical College Hospital, Kottayam in the intensive care unit. Thereafter, he was admitted in the Medical College Hospital, Kottayam, in connection with his acute heart ailment. In 1987 he had another attack, when he was admitted to the Cardiology Ward on 28-6-1987. Finally, Dr. Rajan Joseph Manjooran, Cardiologist and Associate Professor of Cardiology and Head of the Department in charge, who had treated the petitioner, was of opinion that the petitioner's improvements are not satisfactory. He was of opinion that he requires advanced investigation and surgical treatment. According to him, considering condition of the petitioner, there is a high risk in undertaking the procedure of treatment, "internal mammary artery graft and coronary artery bypass graft surgery" and hence he advised him to go abroad and to undergo the above procedures. Ext. P1 is the

letter issued to him by Dr. Rajan Joseph Manjooran. Ext. P2 is the medical report with regard to the condition of the petitioner. Thereafter, the petitioner made enquiries and came to know that the treatment in Australia was the cheapest and as such he decided to undergo treatment in Etworth Hospital, 34, Erin Street, Richmond Victoria 3121, Australia. Ext. P3 is the letter received from Etworth Hospital agreeing to undertake the surgery. Petitioner then addressed the Director of Health Services to go abroad for treatment. Ext. P4 is the letter addressed to the Government for recommendation of the Director of Health Services. Ext. P4(a) is the true copy of the form submitted by him to the government, wherein it is stated that in spite of the best treatment available in India no improvement has taken place and it is necessary in the interest of the health of the patient to seek treatment abroad. This certificate was signed by Dr. Rajan Joseph Manjooran and countersigned by the Principal, Medical College, Kottayam. By Ext. P5, the petitioner addressed the Chief Engineer to grant leave without allowances for 47 days from 17-9-1987 to 3-11-1987. Ext. P6 is the order of the Chief Engineer, whereby he was sanctioned leave without allowances on medical grounds. Ext. P7 is the release of foreign exchange for medical treatment abroad. After undergoing surgery, the petitioner returned to Kottayam on 8-11-1987 and took charge of his office on 9-11-1987. Petitioner had to spend an amount of Rs. 1,44,943/- (15484.40 Australian Dollars). This is evident from Ext. P8. Petitioner then filed Ext. P9 representation to the Secretary to Government (Health Services), Secretariat, Trivandrum for reimbursement of the amount spent by him. By Ext. P10, the petitioner's representation was rejected, stating that his proposal cannot be agreed to. Ext. P11 is another communication received by him, stating that there is no reason to reconsider the representation Ext. P10. Hence this Original Petition.

2. The third respondent has filed a counter affidavit, stating that for medical treatment abroad the Medical Board constituted by the Director of Health Services should make specific recommendations and also give reasons for recommending treatment abroad. It should also certify that the treatment is not available in India. This certificate should also be endorsed by the Director of Health Services and the same shall be sent to the Director General of Health Services, New Delhi for his approval. Petitioner has not complied with the aforesaid conditions in the Norm No. 2 of Travel for medical treatment abroad given as Ext. P4(a). So far as he is concerned, it has only been certified by the Associate Professor of Cardiology, Medical College, Hospital, Kottayam, that in spite of the treatment available in India, no improvement has taken place and it is necessary in the interest of health of the patient to seek the treatment abroad. Petitioner's request has been declined by the Government, which is in conformity with the provisions contained in Ext. P12, wherein it has been stated that, as a rule reimbursement of the cost of medical treatment abroad should not be allowed. Petitioner has not obtained sanction from the Government to go abroad.

3. Admittedly the petitioner was a heart-patient. He had undergone treatment in the Medical College Hospital, Kottayam and also in the Medical College Hospital,

Trivandrum. From the records it is seen that he had to undergo advanced investigation and surgical treatment, "Internal Mammary Artery Graft and Coronary Artery Bypass Graft Surgery". This treatment is available in India. But considering the high risk in undertaking the above procedure in India, the Doctor who treated him, who was an Associate Professor of Cardiology and Head of the Department in charge advised him to undergo the above procedures in a more advanced centre, abroad. As the treatment in Australia was found to be the cheapest the petitioner preferred to go to Australia to undergo surgery, for which he has applied for leave and the same was granted by the Department. He has also submitted Ext. P4 representation to the Director of Health Services for his recommendation. He had submitted the necessary form filled up with the certificate of the Doctor who treated him, countersigned by the Principal, Medical College, Kottayam. He had also obtained an order sanctioning leave without allowances for medical treatment abroad from the Chief Engineer (General) Thiruvananthapuram. He has also proved that he has incurred expenses to the tune of Rs. 1,44,943/- for undergoing surgery in Australia. The learned Government Pleader objected to the petitioner's claim for reimbursement of the amount spent by him for treatment on the ground that he has not obtained prior sanction from the Central Government, as enjoined by the rules. A person, who is suffering from acute heart disease, cannot wait for getting sanction from the Central Government to undergo the treatment and to get reimbursement of the medical expenses. He has to undergo surgery at the earliest point of time to save his life. The Supreme Court has held that right to health is an integral part to the right to life, which is guaranteed under Article 21 of the Constitution, of India. While dealing with medical treatment/reimbursement, the Supreme Court held in *State of Punjab and others Vs. Mohinder Singh Chawala, etc.,* , as follows:

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 specialised 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

Relying on the above decision of the Supreme Court, the Learned Counsel for the petitioner submitted that the petitioner is entitled to get reimbursement. But the learned Government Pleader submitted that the Government have prescribed certain guidelines for reimbursement of medical expense for treatment abroad, and, as the petitioner has not complied with those guidelines, he is not entitled to get the medical expenses reimbursed. In the case referred to above by the Supreme Court, the petitioner therein had obtained permission from the Director with the approval of the Medical Board to get the treatment in an approved hospital outside the State. Petitioner herein has not obtained any sanction. He has not even applied to the Government for sanction. The guidelines, Ext. P12, goes to show that the petitioner has to first approach the Specialist Hospitals

mentioned therein and only after availing service from any of the hospital and if it is found that the treatment in the Specialist Hospital is inadequate for him or the particular treatment is not available in India the petitioner can seek treatment abroad. Then only he is entitled to apply for sanction to go abroad for treatment and claim reimbursement. Petitioner has not availed of the service from the Specialist Hospital mentioned in Ext. P12. As a general rule, medical treatment abroad is not allowed. If any relaxation of the rule is necessary, the petitioner ought to have obtained sanction from the Government. He need not wait for the sanctioning order, but he should have at least applied for sanction from the Government. What he has obtained is only a sanctioning of his leave to go abroad for treatment. Therefore, the decision cited above is not applicable to the present case. During the pendency of this Original Petition the petitioner passed away and his legal representatives have come on record. Petitioners are not entitled to get reimbursement of the medical treatment expenses abroad.

In the result, the Original Petition is dismissed.