

(2019) 09 JH CK 0021
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1886 Of 2019

Kamal Nath Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 337
Constitution Of India, 1950 — Article 21

Citation : (2019) 09 JH CK 0021

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Chanchal Jain, Kumari Sugandha, Rishi Pallava, Rakesh Kumar Shahi

Final Decision : Disposed Off

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Chanchal Jain, the learned counsel for the petitioner. Mr. Rakesh Kumar Shahi, the learned A.C. to AAG-II appearing on behalf of the respondent-State and Mr. Rishi Pallava, the learned counsel appearing on behalf of respondent no.5.

2. The petitioner has preferred this writ petition for quashing letter dated 15.01.2019 contained in Annexure-10. A further prayer is made for payment of Rs.42,468/- with regard to medical reimbursement to the petitioner.

3. The petitioner, who happened to be a Peon of Jharkhand High Court, was going to discharge his duty at the residence of one of the Hon'ble Judge of Jharkhand High Court on 23.09.2017, he met with an accident near Harmu Maidan Chowk as a motor-cycle hit the petitioner from back. In the said accident the knee of the petitioner was broken, right leg of the petitioner got fractured and he also got injury on his right side of chest as well as nerves of head also received injury. In such situation, the nearby person has taken the petitioner to Orchid Hospital, Ranchi, where the petitioner was treated and thereafter sent for

admission in Rajendra Institute of Medical Sciences (RIMS), Ranchi seeing the cost of treatment of private hospital. The petitioner lodged a complaint with the police which was registered as Argora P.S. Case No.294 of 2017 dated 26.09.2017 under section 279, 337 I.P.C. After the treatment in RIMS, the petitioner was discharged on 09.10.2017. For the period of treatment in Orchid and RIMS the petitioner was saddled with medical bill of Rs.49,353/-. Thereafter, the petitioner submitted the medical bill for reimbursement before the respondent no.5 on 07.05.2018 and the respondent no.5 vide Memo No.1849 dated 19.05.2018 has forwarded the said bill to the respondent no.4 with a request to grant post-facto sanction so that the reimbursement in favour of the petitioner be made. By Memo No.2158 dated 26.07.2018, the respondent no.4 informed the respondent no.6 (Accountant General, Jharkhand) that the post-facto approval has been accorded for the medical reimbursement of the petitioner. It is also pointed out that the petitioner suffered from 'Temperoparietal Infra Parenchymal Bleed' which means bleeding inside the skull/brain haemorrhage due to the accident of the petitioner. Subsequently, the respondent no.4 informed the respondent no.6 that sanction of Rs.6,885/- has been accorded for medical reimbursement of the petitioner. The petitioner further submitted an application dated 08.09.2018 before the respondent no.5 with a request to reconsider the claim of the petitioner. The respondent no.5 again forwarded the application of the petitioner to the respondent no.4 with a request to reimburse the rest of the amount in favour of the petitioner. Subsequently, the respondent no.4 by letter dated 15.01.2019 informed the respondent no.5 that the claim for medical reimbursement for the remaining amount incurred by the petitioner on his treatment is rejected by the respondent no.3 (Director-in-Chief, Health Services) in terms of Rule-6 of the Notification No.354(10) dated 15.09.2006.

4. Mr Chanchal Jain, the learned counsel appearing for the petitioner submits that the respondent no.3 has wrongly interpreted the Rule-6 of the Notification No.354(10) dated 15.09.2006. He submits that the Rule-6 is with regard to the heart surgery and kidney transplant whereas, the petitioner has met with an accident which was an emergency case and in an emergency case letter No.285(8) dated 21.12.2011 applies which is contained in Annexure-11 series to the writ petition. On perusal of the letter No.285(8) dated 21.12.2011 it is crystal clear wherein it is stated that only in case of cardiac arrest, accidents and cancer post-facto sanction are to be given and in all other cases patient is to obtain the prior sanction before his treatment. He submits that in view of this circular, the case of the petitioner is fit to be allowed. Whereas, the Director has interpreted Rule-6 of the Notification No.354(10) dated 15.09.2006 which is with regard to heart disease and kidney disease. He further submits that already post-facto sanction was granted by respondent no.4, there was no occasion to further reduce the amount which was payable to the petitioner.

5. Mr. Rakesh Kumar Shahi, the learned A.C. to A.A.G.-II appearing on behalf of the respondent-State submits that in view of Rule-6 of Notification No.354(10)

dated 15.09.2006, the petitioner was entitled only for payment of Rs.6,885/- and that is why that amount has been ordered to be paid. He further refers to paragraph no.11 of the counteraffidavit filed on behalf of the respondent nos.2 and 3 for the sake of convenience. Paragraph 11 of the said counter-affidavit is quoted hereinbelow:

"11. That it is stated and submitted that in view of Rule-6 of Notification No.354(10) dated 15.09.2006 the medical reimbursement of the OPD (Out Patient Treatment/Check up is valid for the following diseases:-

- i.) The claim of the Heart Surgery,
- ii.) The claim of the Kidney Transplantation,
- iii.) Cancer,
- iv.) Tuberculosis, and
- v.) Leprosy"

6. He further submits that the respondent no.4 has filed the counter-affidavit in this case and in paragraph no.6, he has stated that the medical bills of the officers as well as other employees of State of Jharkhand are reimbursed in the light of Sankalp No.753(6) dated 25.10.2014 of Health, Medical Education and Family Welfare Department.

7. Mr. Rishi Pallava, the learned counsel appearing for respondent no.5 submits that the respondent no.5 has already discharged his duty in this case as he is entitled for clearance of bills below Rs.10,000/-, however, if the bill amount exceeds Rs.10,000/- the application alongwith medical bills submitted by the employee is forwarded to the Principal Secretarycum-Legal Remembrancer, Department of Law(Judicial), Government of Jharkhand, Ranchi for transmission of the same to the concerned Department of the State Government for needful in the matter. He submits that in view of that the respondent no.5 has already taken steps and he has also forwarded the reconsideration request of the petitioner to respondent no.4.

8. Reference in this regard be made to paragraph no.11 of the judgment rendered in the case of "Surjit Singh vs. State of Punjab & Ors." reported in (1996) 2 SCC 336. Para-11 of the said judgment is quoted hereinbelow:

"11. It is otherwise important to bear in mind that self-presentation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognized it. Attention can usefully be drawn to Verses 17,18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine":

17. Vinaa dehena kasyaapi canpurushartho na vidyate Tasmaaddeham dhanam rakshetpunyakarmaani saadheyet

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejje vanbhaadraani pashyati

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20. Sharirarakshanopaayaah kriyante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

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22. Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself."

9. Having heard the learned counsel for the parties, this Court finds that the petitioner met with an accident while he was going to duty. He became unconscious and he was taken by a passer-by to the Orchid Hospital as in a case of emergency and in such situation the letter contained at Annexure-11 will apply. On perusal of the Rule-6 of Notification No.354(10) dated 15.09.2006 it clearly transpires that it relates to heart diseases and kidney diseases and such an interpretation of Rule-6 with regard to the case of the petitioner by the Director (Health Services) is not tenable. Even in view of the statement made in Para-11 of the counteraffidavit (supra) no prudent person will come to the conclusion that Rule-6 will apply in the case of the petitioner. Accordingly, the impugned order dated 15.01.2019 contained in Annexure-10 cannot sustain in the eye of law and the same is hereby quashed.

10. The respondents are directed to release the rest of amount amounting to Rs.42,468/- in favour of the petitioner within a period of six weeks from the date of receipt/production of a copy of this order. This Court further finds that claim of the petitioner for reimbursement of his medical bills was rejected by the Director (Health Services) on technical grounds and mechanically without considering the Rule-6 in the right perspective. On perusal of Rule-6 no prudent person can come to a conclusion that it relates to a case of emergency. Therefore, this Court awards interest @ 6% on the amount due to the petitioner from the date of submission of the bills till the date of its payment. It is open for the respondent-

State to recover this interest amount from the person on whose instance a wrong interpretation of Rule-6 the claim of the petitioner has been rejected.

11. The writ petition stands allowed and disposed of accordingly.