
(2021) 01 MAN CK 0008
In the Manipur High Court
Case No : Writ Petition (c) No. 872 Of 2019

Konsam Bala Devi

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Central Services (Medical Attendance) Rules, 1944 — Rule 6, 6(2)
Constitution Of India, 1950 — Article 21

Citation : (2021) 01 MAN CK 0008

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : S. Jasobanta, Th. Vashum

Final Decision : Allowed

Judgement

[1] Heard Shri S. Jasobanta, learned Advocate appearing for the petitioner and Shri Th. Vashum, learned Government Advocate appearing for the respondents.

[2] The validity and correctness of the letter dated 22-06-2019 issued by the Director of Health Services, Manipur is under challenge and in addition thereto, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to reimburse the medical expenses incurred by her for the treatment of her deceased husband including the travelling charges amounting to Rs.3,50,756/- (Rupees three lakh fifty thousand seven hundred and fifty six).

[3.1] According to the petitioner, she is the wife of the deceased, Shri Late S. Rajen Singh, a Constable of Excise Department, Government of

Manipur who died in harness while in service on 29-11-2018 at Apollo Hospital, Guwahati.

[3.2] On 28-11-2015 at about 07:30 a.m., the petitioner's husband was knockdown by one Maruti Car 800, white in colour being Registration No.

MN01K 4717, while her husband was returning home along the Tiddim Road in two wheeler Honda Activa with her minor daughter from the Tuition

Centre, because of which her husband sustained serious injuries on his head and right side of the ear and her daughter also sustained several injuries

on her body. Immediately, both her husband and her minor daughter were taken to the Shija Hospital, Langol and on the same day, a surgical operation

was conducted on her husband who was later discharged on 25-12-2015 with the advice of doing regular check-up thereafter. On 30-01-2016, her

husband was admitted again at Shija Hosptal, Langol for second head operation which was successfully done and accordingly, he was discharged on

02-02-2016 with the advice of doing regular check-up.

[3.3] After her husband having been discharged from the Shija Hospital, he started attending his official duties for some time but as his health

condition was getting deteriorated, on 14-11-2018, he was admitted at RIMS Hospital, Imphal where he was advised to undergo various investigations

including MRI of Brain. As the report of the Radiologist was not reflecting the correct picture of the ailment, he was advised to have a second opinion

which he did. But his health condition did not show any improvement and accordingly, he was discharged on 19-11-2018 with a Medical Certificate

dated 19-11-2018 referring him to the RIMS Hospital Medical Board or the State Medical Board for treatment outside the State. Having no alternative

and in view of the urgent medical attention, the petitioner's husband was taken to Guwahati on the same day at about 07:00 pm by hiring a private

ambulance and on the next day at about 11:00 am, he was admitted at the Apollo Hospital, Guwahati where a team of Doctors consisting of

Specialists in Neuro Medicine and Neuro Surgery started investigation. As per the instruction given by the Neuro Surgery group of doctors, he was

admitted in the Neuro ICU as a special patient. During the course of investigation, her husband was directed to take MRI of Brain with contrast and

whole spine screening with no loss of time and therefore, the MRI was taken on 22-11-2018, from the report of which, it was diagnosed that her

husband was suffering from demyelination of brain with extensive T/2 FLAIR hyper intense lesions showing patchy post contrast enhancement.

Although the Doctors started examining him carefully, her husband died on 29-11-2018 at about 06:20 pm for which the Hospital authority issued a Certificate dated 29-11-2018.

Â [3.4] The authority of the Apollo Hospital prepared their bills from time to time and ultimately, it issued the Tax Invoice Final Bill on 29-11-2018 for

the expenditure incurred for the treatment of her husband amounting to Rs. 2,63,895/- (Rupees two lakh sixty three thousand eight hundred and ninety

five) after doing the adjustments. The petitioner, having no alternative, hired the ambulance of the said Hospital and brought the dead body of her

husband on payment of Rs. 35,000/- (Rupees thirty five thousand) as hiring charge and thus, the petitioner incurred a total sum of Rs. 3,38,895/-

(Rupees three lakh thirty eight thousand eight hundred and ninety five) towards the treatment of her husband including the expenditure incurred by her

towards hiring of ambulances. After the information about the death of her husband being given to the Excise Department, a Death Certificate vide

order dated 11-12-2018 was issued by the Commissioner of Excise, Manipur.

[3.5] Since her husband was the only bread earner in the family, the petitioner spent the said amount by borrowing from her friends and relatives.

After the completion of ritual and Shradha ceremony of her husband, the petitioner submitted her claims in the prescribed form to the Commissioner of

Excise, Manipur for reimbursement of the said amount. The Commissioner of Excise, Manipur, in turn, requested the Chairman, State Medical Board,

Imphal for grant of ex-post facto approval vide its letter written in the month of March, 2019 enclosing therewith all the relevant documents. After the

said letter of the Commissioner of Excise, Manipur being received, the State Medical Board held its meeting on 28- 03-2019 and after examination of

the relevant documents, the State Medical Board did not grant the ex-post facto approval on the ground that the Apollo Hospital was not included in

the list of hospitals empanelled by the Government of Manipur vide its letter dated 22-06-2019 issued by the Director of Health Services, Manipur.

Being aggrieved by the said letter, the instant writ petition has been filed by the petitioner questioning its validity and correctness.

[4] The above writ petition is contested by the respondents by way of an affidavit filed on behalf of the respondent No.1 wherein it has been stated

that the Hospital where the petitioner's husband was treated, is not the one

empanelled by the Government of Manipur. The State Medical Board is following the relevant Government rules and orders and as such, it cannot go beyond the limits prescribed by the relevant rules in respect of the medical reimbursement. The claim for ex-post facto approval of medical expenses is governed by a strict set up rules and it was not granted, as the treatment of her husband was carried out in the Hospital which is not in the list of empanelled Hospitals. If the Honâ??ble High Court allows or otherwise grants the reliefs sought for by the petitioner in the present case, the purpose of constituting the State Medical Board for examination of the case for granting or not granting the approval of the medical expenses shall certainly be frustrated and there shall be no meaning or purpose for constitution of the Medical Board by the Government under C.S. (M.A.) Rules. Since the petitioner is not entitled to ex-post facto approval as has been stated hereinabove, the instant writ petition deserves to be dismissed.

[5] It has been submitted by Shri S. Jasobanta, learned Advocate appearing for the petitioner that the issue involved herein is covered by the decision rendered by the Honâ??ble Supreme Court in *Sunjit Singh Vs. State of Punjab & ors*, (1996) 2 SCC 33 6and judgment and order dated 16-06-2015 passed by this Court in *Soram Nabakumar Singh Vs. State of Manipur*, WP(C) No.1036 of 2014 and therefore, the instant writ petition is liable to be allowed in terms thereof. On the other hand, the learned Government Advocate has reiterated the stand taken by the respondents in their affidavit.

[6] The contention of the learned counsel appearing for the petitioner has some substance and merit. In *Soram Nabakumar* (supra), the petitioner therein suffered from diarrhoea and after having consulted a gastroenterologist and as per his advice, a Colon Endoscopy was done, from which his prostate gland was found enlarged and after seeing the said report of the C.T. Scan, he was advised to go to Rajiv Gandhi Cancer Institute, Delhi for treatment. In view of the urgent treatment being required, the petitioner went to Delhi and was admitted at Rajiv Gandhi Cancer Institute and Research Centre. After having performed various clinical tests and operated upon, the petitioner was discharged from the hospital for which he spent a total sum of Rs. 4,40,957.69/- (Rupees four lakhs forty thousand nine hundred fifty seven and sixty nine paise) only and claimed for its reimbursment. This Court while allowing the writ petition, held as under:

Â [7] Admittedly, there is no dispute as regards the facts of the case and the only stand taken by the State Government is that medical reimbursement as claimed by the petitioner cannot be permitted in law. Rule 6 of the C.C.S. (M.A) Rules, 1944 (1)(i) provides that a Government servant shall be entitled to, free of charge, treatment in a Government hospital at or near the place where he falls ill. An exception has been carved out in sub-rule (1) (ii) which provides that a Government servant shall be entitled to, free of charge, treatment in a private hospital subject to the condition mentioned therein. Rule 6(2) provides for reimbursement of medical expenses. It may be noted that the said rules were made keeping in mind the circumstances prevailing at that point of time and since there had been changes in the circumstances thereafter, the Government of India had to issue instructions from time to time including the one mentioned above and relied upon by the learned Government Advocate. But one thing is clear that medical reimbursement for expenses towards treatment in private hospital is permissible, subject to the conditions mentioned therein, in accordance with the policy decision of the Government concerned and it is not that it is impermissible at all.

[8] There has been further changes recently in the circumstances with the development of science and technology in the field of Medicine, as a result, a private hospital differs from the other in respect of medical facilities to be provided therein. When one is not sure which hospital would be better for the ailment that he suffers, it must be left with the employee concerned to choose a hospital of his choice so as to avoid repentance in future. The Honâ??ble Supreme Court in the case of Surjit Singh case (supra) has explained what is self-preservation and what can be done by the individual concerned for it. As per the observations of the Honâ??ble Supreme Court, self-preservation of oneâ??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 and for his self-preservation, one has the right to take steps accordingly. One neednâ??t stand in queue before the Medical Board, the manning and assembling of which makes its meetings difficult to happen and neednâ??t stand in queue in Government hospital and could go elsewhere to an alternative hospital as per policy. As has been stated hereinabove, the Honâ??ble Gauhati High Court had delivered a judgment in the case of Gouri Sen Gupta Vs. State of Assam,

reported in 1999 (3) GLT 601 (supra), the facts of which are very much identical to that of the present case.

[7] The facts of the Soram Nabakumar (supra) are identical to that of the present case and in other words, the stand taken by the State Government

in Soram Nabakumar (supra) is similar to the one taken in the present case. However, this Court had rejected the contention of the State Government

considering the fact that the petitioner therein had to take immediate steps the moment he came to know about the seriousness of his illness and to

take a decision keeping in mind the circumstances namely the advice of the consulting doctor advising him to go to Rajiv Gandhi Cancer Institute,

Delhi for treatment and non-availability of Surgical Oncologist or Uro-oncologist in Manipur and the urgent nature of his illness and it is no doubt true

that the petitioner ought to have gone to the private hospital recognised/ approved by the State Government so as to avoid such problem of

reimbursement. But the fact remains that since the petitioner therein had the right to self- preservation as laid down by the Honâ??ble Supreme

Court, it is quite natural that he opted for the private hospital which his consulting doctor had suggested, with the idea that he would get better attention

there with the reference of his consulting doctor.

This Court was of the view that it was covered by the judgment a n d o r d e r of the Honâ??ble Gauhati High Court rendered in the case of Gouri

Sen Gupta Vs. State of Assam, reported in 1999 (3) GLT 601 (supra) and that the writ petition was liable to succeed. Similarly, the issue involved

herein is covered by this Courtâ??s judgment and order as stated hereinabove. One of the points that the learned Government Advocate has

emphasised, is that the State Medical Board ought to follow the rules and if this Court allows the writ petition granting relief to the petitioner, the

purpose of constituting such a Board will stand defeated. In this regard, it may be noted that the laws are enacted by the State Legislature/ the

Parliament and sometimes, certain rules are made by the State Government/ Central Government in exercise of power conferred upon them either by

the concerned Act or the Constitution of India. It is the duty and function of the Court to interpret them when they are brought to its notice. Since the

law relating to medical reimbursement, has been interpreted by the Honâ??ble Supreme Court or the High Court whose order has attained finality,

the State Government shall not stick to the rules and the rules shall be amended suitably in tune with the Court's interpretation in order to avoid such litigation in future.

[8] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed and the impugned letter dated 20-06-2019 issued by the Director of Health Services, Manipur is quashed and set aside and consequently, the respondents and in particular, the respondent No.2, are directed to reimburse the medical expenses, incurred by the petitioner towards the treatment of her husband, to be calculated based on the rates approved by the State Government in respect of the items listed therein or on the rates charged by a private hospital recognized/ approved by the State Government within a period of three months from the date of receipt of a copy of this judgment and order. There shall be no order as to costs.