(2007) 10 PAT CK 0064

In the Patna High Court

Lal Bahadur Gupta — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:
Constitution of India, 1950 — Article 14, 21, 47

Citation : (2008) 2 PLJR 182

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Judgement

Sudhir Kumar Katriar, J.—This writ petition is directed against order No. 784(14), dated 17.4.2006 (Annexure 12), issued under the signature of respondent No. 3 (Joint Director, Health Services, Bihar, Patna), whereby the petitioner''s claim for reimbursement for his. heart surgery undergone at BM Birla Heart Research Centre, Kolkata (hereinafter referred to as the Centre''), has been rejected, inter alia, on the ground that he had undergone surgery at Kolkata, instead of New Delhi for which prior sanction had been accorded. The respondents have placed on record their counter affidavit and have supported the impugned action.

2. The facts are not in dispute and lie in a narrow compass. The petitioner was in February 2001 posted as Medical Officer, Primary Health Centre, Shambhuganj., district Banka. He suffered chest pain on 8.2.2001, had reported at Indira Gandhi Institute of Cardiology, Patna Medical College, on 14.2.2001, and was admitted. He had undergone Coronary Angiography Test on 16.2.2001 (Annexure 1). He was detected for triple vessel disease which needed by-pass surgery (CABG) urgently and was, therefore, referred to All India Institute of Medical Sciences (AIIMS), New Delhi, for surgery. He submitted his application dated 22.2.2001 (Annexure 2), to respondent No. 2 (Director in Chief, Health Department, Govt. of Bihar, Patna), for permission for treatment at AIIMS, New Delhi. He reported in AIIMS on 21.3.01. He was asked to report for surgery after three months. The State Government issued order No. 3189, dt. 2.5.2001 (Annexure 4), permitting his treatment/heart surgery in AIIMS.

3. It further appears that he had thereafter gone to Kolkata on a private visit and, while he was staying at his sister''s place, he suffered chest pain on 18.4.2001 and had reported at the Centre the same day. He was advised operation on 24.4.2001 on emergency basis. He was asked to deposit a sum of Rs. 1.20 lacs for the purpose which he could not arrange and, therefore, had to return to Patna to arrange the money for the heart surgery. He submitted his application dt. 15.5.2001 (Annexure 6), to respondent No. 2, for permission for heart surgery at the Centre. The petitioner reported at the Centre on 15.5.2001, had undergone heart surgery on 16.5.2001, was discharged on 25.5.2001, and was asked to report for review and follow-up action after six weeks. Photocopy of the discharge summary and the bills of the Centre are marked Annexure 7 series.

4. The petitioner submitted his application dated 28.5.2001 (Annexure 9), to respondent No. 2, stating therein that his treatment at the Centre may be reimbursed. Respondent No. 3 made certain queries from the petitioner, vide his communication dated 11.9.2001 (Annexure 10). The matter remained pending with the State Government for four years whereafter the petitioner submitted his reminder dt. 15.6.2001 (Annexure 11), requesting for reimbursement which has been rejected by the impugned order on the ground that he had undergone surgery at the Centre on his own and, therefore, the treatment charges can not be reimbursed. Hence this writ petition.

5. While assailing the validity of the impugned order, learned Counsel for the petitioner submits that the petitioner''s claim for medical reimbursement for heart surgery at the Centre is admissible in a situation where prior permission had been granted for treatment in AIIMS. The petitioner had to undergo treatment at the Centre in view of the medical emergency. Learned Government Counsel submits that none of the prescriptions issued by the Centre states that it was a case of emergency. Secondly, the petitioner had undergone treatment at Kolkata without prior permission of the Government, and in a private hospital, which is impermissible.

6. I have perused the materials on record and considered the submissions of learned Counsel for the parties. The angiography report clearly showed that the petitioner was suffering from triple blockages and, therefore, needed surgery at the earliest possible. His representation for treatment at AIIMS was sanctioned by the State Government, but before he could report after three months for the surgery at AIIMS as advised, he suffered chest pain again on 18.4.2001 while at Kolkata on a personal trip, accentuating his heart problem. He was advised by-pass surgery most urgenly lest it may be dangerous for his survival. He could not undergo surgery on the same occasion for paucity of funds, and had to return to Patna for that purpose. After arranging the money, he again reported at the Centre on 15.5.2001, and had undergone by-pass heart surgery for triple blocakges on 16.5.2001. The chronological narration of events, and the rapidity with which the clinical events had taken place on the very face of it speaks of surgical emergency. The Centre''s "Admission Advise" of 18.4.2001 (Annexure 5)

states that the petitioner should be admitted on 23.4.2001, and shall undergo surgery on 24.4.2001. Instead of reading the circumstances obtaining in this case with a view to appreciate the genuineness and the gravity of the situation, the respondent authorities have in the impugned order stated the hair-splitting and untenable reason that the expression emergency'' is not stated in the prescription. The speed with which the hospitals in Patna, Delhi, and Kolkata had treated the petitioner, advising him surgery urgently to save his life, the recurrence of chest pain at Kolkata, speak edoquently of the critical and the emergent situation. Triple vessel coronary artery disease, meaning three blockages in three different arteries to the heart, does not require any further proof of emergency. It is manifet that there was no time to wait for his turn to come at AIIMS. In fact, the prescriptions of AIIMS do not show that a firm date after three months had been given.

7. It is thus manifest that it was undoubtedly a case of emergency and the respondent authorities have taken an irrational and unreasonable stand in rejecting it on the ground that it was not a case of emergency because the prescriptions do not say so. Secondly, the impugned order states that the petitioner had undergone surgery at the Centre on his own which is impermissible in law. I feel very unhappy at the heartless attitude adopted by the respondents for various reasons. What difference does it make to the State Government if the petitioner would have undergone surgery at AIIMS or at the Centre, in a situation where sanction for permission for the surgery outside the State of Bihar had already been granted, there was not enough time to obtain prior permission for the operation at the Centre. The emergent circumstances in which he had undergone surgery at Kolkata has been discussed hereinabove.

8. Learned Counsel for the petitioner has rightly relied on the judgment reported in Ram Sagar Ram and Another Vs. The State of Bihar and Others , which disposed of two writ petitions by two government servants, whereby the State Government was directed to reimburse the claim because there was not enough time for obtaining prior sanction. This Court had noted the unreasonable approach of the State Government and further observed as follows in paragraph 8 of the judgment:

8. Before I part with this case I may observe that the Bihar Medical Attendance Rules framed in 1947, i.e. more than five decades ago have become archaic. Without going into the question as to whether there was any justification for not making any provision for outside State treatment at the relevant time, a judicial notice can be taken of the fact that most of the serious ailments which are hazardous to life require specialised treatment which is not available in the State of Bihar-muchless in Government Hospitals, and therefore the patient perforce has to go to New Delhi, Mumbai, Vellore or the like for better treatment. It is, therefore, only appropriate to make suitable amendments in the Rules. As a matter of fact need of the hour is to frame a comprehensive policy or rules as done in the State of Punjab, referred to above, rather than supplement them by

executive orders and circulars from time to time. Rule 26 empowers the Government to permit outside State treatment and attendance as a matter of discretion. Inasmuch as guidelines are not laid down the discretion is more often than not abused. While persons close to the powers-that-be manage to get permission, the lessor mortals are not so fortunate to get such permission resulting in heart burning and frustration. So far as the requirement of prior approval of the Medical Board is concerned, in cases of emergency the provision is totally unjustified, meaningless and unworkable. These things can be taken care of in a well laid down policy be consistent with not only Articles 21 and 47 but also Article 14 of the Constitution.

(Emphasis added)

The State Government was also directed to replace the existing Medical Attendance Rules which comprise of administraive instructions and circulars, to make it consistent with Articles 14, 21 and 47 of the Constitution. We have not been informed by the State Government whether new Rules have been framed.

9. Learned Counsel for the petitioner has rightly relied on the following judgments of this Court:

i. Rama Paswan and Others Vs. State of Jharkhand,

ii. 2007 (3) BLJ 1 : 2007 (3) BLJR 2101 (Md. Ahad Raza v. State of Bihar) and analogous case

iii. Judgment dated 9.7.2007, passed in CWJC No. 7142 of 2000 (Dr. Dhirendra Kumar v. State of Bihar)

iv. Judgment dated 3.07.2007, passed in CWJC No. 9038 of 2000 (Arvind Prasad v. State of Biahr)

10. Paragraph 11 of the aforesaid judgment in CWJC No. 9038 of 2000 is reproduced here in below for the facility of quick reference:

11. To any mind, the difference in treatment within the State of Bihar and out side the State from financial angle, is primari1y one of travelling expenses payable according to the official standing of the employees along with one companion. For such a trivial matter as travelling expenses, the State Government is at war with its employees of the category of "lesser mortals." If the same hospital of outside had set-up branch in Patna, the expenses for such medical treatment would be the same and prior permission may not have been required, travelling expense making the entire difference.

(Emphasis added)

11. The counter affidavit states also that there is no provision in the Rules for treatment in private hospitals outside the State of Bihar the learned government counsel has for that purpose relied on Rule-26 of the Bihar Medical Attendance Rules, and is reproduced here in below:

26. Power of Government to grant concessions relating to medical attendance or treatment not authorised by these rules.- Nothing in these rules shall be as preventing the State Government from granting to any person to whom they apply any concession relating to medical attendance or treatment which is not authorised by these rules.

It is manifest on a plain of the same that it does not, even remotely suggest that treatment in a private hospital outside State of Bihar is impermissible. On the contrary, it supports the petitioner''s case, inasmuch as Rule 26 confers a wide power on the State Government to give medical benefits not indicated elsewhere in the Rules, The petitioner''s entitlement to reimbursement for medical treatment outside Bihar is not in dispute, particularly in a situation where the State Government had already sanctioned his treatment, at AIIMS, New Delhi, The impugned order has been passed without realising the state of emergency which had occurred after the State Government had accorded permission for treatment in New Delhi. Furthermore, specialised treatment in Bihar is almost, negligible. There are few government hospitals in the country where specialised treatment is possible and are, therefore, over-crowded. Private hospitals have grown up in big numbers with latest technology, gadgets, and methods of treatment. It would be anachronistic in 2007 for the State Government to deny treatment in a private hospital.

12. In the result, the impugned order dated 17.4.2006 (Annexure 12) is hereby set aside, being irrational land arbitrary. The writ petition is allowed with the following directions to the State Government:

(a) To make payment of the entire treatment charges of the petitioner in B.M. Birla Heart Research Centre, Kolkata, to the extent evidenced by the medical receipts, (b) The petitioner shall be entitled to travelling expenses with a companion to and fro as per the rules and the established procedure.

(c) The petitioner shall be entitled to interest @6% on the entire admissible claims from the date of entitlement till the date of payment.

(d) The petitioner shall be entitled to costs of this writ petition quantified at Rs. 5000/- (five thousand).

(e) The State Government is directed to carry out the direction in the aforesaid judgment in the case of Ram Sagar Ram v. State of Biahr (supra), which has been repeated in the later judgments indicated in paragraphs 8 hereinabove, and to re-frame the Rules making it consistent with the provisions of Articles 14, 21 and 47 of the Constitution with full emphasis on humane approach to medical reimbursement, treating the ''lesser mortals'' as human beings.

13. Let a copy of this judgment be handed over to Mr. Prabhakar Tekriwal, learned Government Advocate No. 1.

