

(1999) 10 GUJ CK 0071

In the Gujarat High Court

Case No : Special Civil Application No. 800 of 1998

Madhavdas Bhagwandas Khushiramani

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-10-1999

Acts Referred:

Citation : (1999) 10 GUJ CK 0071

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : V.M. Dhotre, for the Appellant; S.K. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—What the Welfare State and its officers contend is that the petitioner has to undergo by-pass surgery of severe triple vessel coronary artery at Civil Hospital, Ahmedabad and not at the Hospital of his confidence and belief. It is unfortunate that the respondents have insisted to undergo for this serious operation at the Civil Hospital, Ahmedabad. But they are not appreciating that despite of the fact that the State Government invests huge amount of public money for this Civil Hospital it could not gain that much reputation, faith, belief and confidence of the ailing citizens of the city to prefer this Hospital for this type of serious operation i.e. to undergo by-pass surgery of triple vessel coronary artery. It is not a matter of going to a restaurant to have lunch or dinner or a breakfast or to go to law garden to have a chat or dabeli or hot dog etc.. It is a very serious thing and as it pertains to the life of a human being, the person concerned will not like to take any risk and at all the cost he will like to have this operation to be undertaken by a senior, experienced and reputed Doctor and at the hospital of high reputation and confidence. Though the material is not produced on the record of this special civil application and it is not possible to give any final finding, it comes from the different corners that the higher ups of the society, offices and officers of the Government do not prefer to go for all these major operations at the Civil Hospital. Even for angiography, the higher

class of officers and the high dignitaries of the State Government, as what it comes from the different corners, do not prefer to go to Civil Hospital. They prefer either to go to Escort, Delhi or Apollo, Madras or Bombay Hospital, Bombay or even at Ahmedabad to the Gujarat Research and Medical Institute (Rajasthan Hospital). If for angiography this class of persons do not prefer civil hospital how it is desirable and reasonable of the officers of the Gandhinagar to expect that the petitioner had to go for this serious operation at the Civil Hospital, Ahmedabad.

2. The State Government permits its employees/ officers to go for this operation at the institution other than the Civil Hospital, Ahmedabad though on prior sanction of the concerned department. Though material is not there on the record of this special civil application, but it comes from different corners that for higher-ups in the services and the offices where they have undergone operations outside the State of Gujarat, the post-facto sanctions are being given or immediately the sanctions are being made or even advance finances are arranged or bills of hospitals are paid directly. I am constrained to observe that for the employees lower in ladder all rules and regulations are to be strictly complied with and made a rule. In the matter of engaging the services of a professional, whether it is a case of engaging an advocate in the High Court or the District courts or subordinate courts or Doctors for medical treatment or for undergoing operations, the person shall prefer to engage the best professional more so, when it is a case of life of a person concerned, as stated earlier, he will not like to take any risk or chance. It is true that the people are going to civil hospital for these operations but the people of the category who have no means and money are going there. They are the poor persons who have no means to arrange the money to pay fees of the professionals at other institutions. The State Government provides free medical facilities to its employees and officers and in case where they go outside the State for operation on prior approval of the concerned department of the State Government their bills of operations are reimbursed. In a case where employee is serious and desires to go to the hospital outside the State for operation and which he had also made it clear by making an application, if we go by the defence of the respondents, then he has to wait till the sanction has been granted before he proceeds to Chennai (Madras) and the possible result would have been in majority of the cases death of that person. In such matters, it is not unknown that the officers of the State Government do not expeditiously deal with such applications.

3. The petitioner having cardiac problem got his angiography done at the Gujarat Research and Medical Institution (Rajasthan Hospital) on 12-7-1996. He consulted cardiologist of the Gujarat Research and Medical Institution (Rajasthan Hospital) Dr. Rakesh Gupta on 22-7-1996 who advised him to undergo earliest by-pass surgery. The petitioner has also consulted cardiologist of Institute of Cardiologist and Research Centre, Civil Hospital, Ahmedabad. On 24th July, 1996, he was examined by the cardiologist of the institution aforesaid who also advised him to undergo immediately for coronary by-pass surgery as the

petitioner was found to be suffering from triple vessel coronary artery disease.

On 26th July, 1996, the petitioner made an application to the respondent No.2 praying for grant of permission to him to have his by-pass surgery at Apollo Hospital, Chennai. The petitioner waited for sanction of respondent No.2 to permit him to undergo his by-pass surgery at Apollo Hospital at Madras. In the mean time he suffered acute heartache. Two options at this stage were open to him either to go for by-pass surgery at the Civil Hospital where he did not want to go for the reason that that much of reputation, confidence and faith has not been acquired by this hospital and/or was to die. Second option normally a man does not prefer and immediately he rushed to Apollo Hospital, Madras where on 5th August, 1996 he was operated for severe triple vessel coronary artery. The respondent No.2 vide his letter dated 6th August, 1996 intimated to the petitioner that his application for permission/sanction to get his operation aforesaid at Apollo Hospital, Madras has been turned down on the ground of not obtaining advise/certificate from authorised Medical Practitioner, Civil Hospital, Ahmedabad.

4. The petitioner paid Rs.1,19,475/- for his this operation and treatment to the Apollo Hospital, Madras. The petitioner submitted this bill to the respondent No.2 on 17th October, 1996 with an application and requested for reimbursement of the same. The District Primary Education Officer, District Panchayat, Junagadh requested to the Director, Health and Treatment, Gujarat State, Gandhinagar and the respondent No.3 to grant post-facto permission to the petitioner for his operation at Apollo Hospital, Madras and to sanction payment of the amount of bills. The petitioner vide letter dated 10th April, 1997, approached to the then Hon'ble Cabinet Minister, Shri Jasabhai Barad, in charge of Food and Civil Supplies who in turn by his letter dated 21st April, 1997 addressed to the Hon'ble the then Chief Minister requested to do the needful in this regard. In the meanwhile, the Section Officer of the Education Department of the Government of Gujarat, Gandhinagar vide his letter dated 10th June, 1997 informed to the petitioner that his representation has been forwarded to the respondent NO.3. The Principal of the school where the petitioner was posted informed to the petitioner on 13th June, 1997 that the Taluka Development Officer vide his letter dated 30th May, 1997 informed to the Principal that his request re: treatment outside the State made in letter dated 26th March, 1997 can not be granted. The petitioner made a representation on 15th July, 1997 to the Secretary, Health and Family Planning Department and drew his attention that there is no reply to his request for reimbursement of bills of the Apollo Hospitals. It is followed by the letter on 25th October, 1997 to the said Secretary and reiterated his request to reimburse his claim amount of Rs.1,19,475/=. But when nothing has been done, the petitioner felt himself helpless in the matter and approached to this court by filing this special civil application. The special civil application is presented in the court on 6th February, 1998 and it was admitted on 30th April, 1998.

5. Learned counsel for the petitioner relying on the two decisions of the Hon'ble

Supreme Court contended that it is not a case where the respondents are doubting that the petitioner has undergone the operation at Madras. They are also not doubting the bill amount of the Hospital. Carrying this contention further, he submits that in the matter of undergoing by-pass surgery for the disease aforesaid utmost confidence and belief in the professional who has to undertake this operation as well as for after care in the Hospital are very very essential. It is a case of life and death of a person and he will not like to undergo for this serious operation at the Hospital in which he has no confidence, faith and belief in the professional's and institutional efficiency. Shri Dhotre, learned counsel for the petitioner urges that only poor persons who have no means to go to other Hospitals are going to Civil Hospitals. Low paid employees are only insisted to go there otherwise the higher-ups in the services and the offices prefer only to go, earlier to U.S.A. and now in the three or four renowned institutions of this country. In his submission the petitioner applied for grant of permission to him to go outside the State for this operation but because of the seriousness in the matter he could not have indefinitely waited otherwise he would have died. He had gone to Madras with the hope and belief that permission shall be granted. Shri Dhotre refers that post-facto sanction can be granted by the Government and in a case where it believes that the petitioner had to undergo immediately this operation such post-facto sanction shall have to be granted. He next submitted that his request for grant of permission to go outside the State for this operation has been turned down on the ground that he has not produced the certificate of the Doctor of the Civil Hospital, which is wholly unjustified. Referring to pleadings made in para-5 of the special civil application he submitted that the petitioner has approached to the Civil Hospital where on 24th July, 1996 he was examined by the Doctor and he was advised to immediately go for this by-pass surgery. He submits that the respondents have not controverted these facts and the same are to be taken to have been accepted. Even as per their own circular produced on the record of this special civil application, the petitioner was entitled for Rs.70,000/= for this operation and Rs.8000/= for angiography, this amount should have been paid to the petitioner forthwith. Lastly, it is contended that the bonafide of the employees is utmost relevant and important and where it is not doubted then post-facto sanction should have been granted.

6. Shri Patel, as usual, as what the Government advocates are doing i.e. harping on technicalities, and what he did in the present case also. He urges that under the court's order, Rs.40,000/- with interest has already been paid to the petitioner. So far as grant of post facto sanction is concerned, in his submission it cannot be granted. However, he has nothing to say on what the learned counsel for the petitioner contended for the reputation, confidence and belief of the people in the Civil Hospital at Ahmedabad. Lastly, he contended that at the most, the petitioner can be given Rs.70,000/and out of which Rs.54,000/- has already been paid to him.

7. I have given my thoughtful consideration to the submissions made by the

learned counsel for the parties.

8. In the facts of this case, I find that the Doctor of the Civil Hospital has also accepted that the petitioner has to undergo this operation. As usual, reply to the special civil application in detail has not been filed. The averments made by the petitioner in para-5 of the special civil application have not been controverted and the same are to be taken as admitted more so when in support of those averments, the petitioner produced the documentary evidence also as annexure 'B' (Colly). It is true that there is no certificate from the Civil Hospital that the petitioner has to undergo this by-pass surgery at Apollo Hospital at Madras but that cannot be given in all the cases as it will otherwise add further to the reputation which the Civil Hospital carries. But the substance is that both the Rajasthan Hospital as well as the Civil Hospital found it to be necessary that the petitioner has to undergo this operation. Angiography has also been done, which also confirmed this opinion of Doctors. The petitioner has applied for grant of sanction i.e. he also applied for grant of permission to him to go for this operation at Apollo Hospital at Madras. There is all possibility that in the meanwhile he could have suffered acute heartache and shall have to undergo the operation immediately. In such a case, under the hope that sanction will be granted he has to wait for this sanction and there is all possibility where the Government sits over this matter and in the meanwhile he could have died of this disease. The bonafide of the Government servant has to be considered and keeping in view the overall facts of this case, i.e. the angiography report, the advise of cardiologist Dr. Gupta as well as of the cardiologist at the Civil Hospital, Ahmedabad and when the respondents accepted that the petitioner has undergone this surgery at Apollo Hospital at Madras and naturally it is known to the respondents that what is the package of that Hospital at the relevant time at Madras. It is a case where the respondents should have considered the application of the petitioner for post-facto sanction for this operation at Apollo Hospital at Madras. It is not the rigidity of the rule or regulation or resolution or standing order which is to be the only consideration. The respondent - State of Gujarat is a Welfare State and its officers are the officers of a Welfare State. Their approach should have been to see that where the Government servant puts a bonafide claim for reimbursement of his medical bill it should not be taken lightly and approach in such matters should have been justice oriented. It is true there are complaints after complaints that the employees are putting false bills of medical claims but merely because the officers of the State Government are weak or they are not in a position to stop these false claims of medical bills by the employees it is most unreasonable, unjustified and arbitrary to reject mechanically the bonafide medical claim of the employee. The package of this operation at Apollo Hospital, Madras as well as the fact that the petitioner has undergone this operation is not disputed and coupled with the other facts, in my considered opinion it is the fittest of the fit case where the State of Gujarat should have considered the matter for grant of post-facto sanction or permission to the petitioner to undergo this operation at Apollo Hospital, Madras. Whatever

may be worth of the reply filed by the respondents, but nothing has been stated by them therein as to why post-facto sanction or permission to the petitioner to undergo by-pass surgery at Apollo Hospital, Madras can not be granted. This approach of the officers deserves to be deprecated. They should not have acted in a manner more so where it is not unknown in the cases of higher-ups in the services as well as the offices post-facto sanctions are being granted for these operations from time to time. As per the resolution of the Government dated 26th March, 1999 the petitioner is entitled for Rs.70,000/= for this operation. So far as angiography is concerned, he is also entitled for Rs.8000/- as what is provided in this resolution. Thus the petitioner is entitled for Rs.78,000/= out of which amount, Rs.40,000/= has been paid to the petitioner by the respondents. It is true that total amount paid to the petitioner by the respondents is of Rs.54,000/- but Rs.14,000/- has been awarded as interest by this court to the petitioner. Rs.40,000/= has only been paid to the petitioner towards his medical expenses. The respondents are directed to pay Rs.38,000/= to the petitioner within a period of two weeks from the date of receipt of writ of this order. The respondents are further directed to pay interest on this amount of Rs.38,000/- to the petitioner at the rate of 12% p.a. from the date of resolution dated 26th March, 1999. The respondent NO.2 is directed to consider the case of the petitioner for grant of post-facto sanction to him to undergo this surgery at Apollo Hospital, Madras in light of the observations made in this judgment and this exercise has to be undertaken and completed within a period of one month from the date of receipt of writ of this order. In case still the authority feels that it is not a fit case where the post-facto sanction has to be granted to the petitioner to undergo this surgery at Apollo Hospital Madras, a reasoned order be passed and copy of the same may be sent to the petitioner by registered post A.D..

9. As a result of the aforesaid discussion, this petition succeeds and the same is allowed in the aforesaid terms. Rule is made absolute accordingly. The respondents are directed to pay Rs.2000/- as costs of this petition to the petitioner. Liberty is granted to the petitioner for revival of this special civil application in case of difficulty.