

(2007) 05 PAT CK 0052

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 3778 and 3781 of 2006

Md. Ahad Raza and Rekha Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Bihar Medical Attendance Rules, 1947 — Rule 26
Constitution of India, 1950 — Article 14, 21, 47

Citation : (2007) 2 BLJR 2101 : (2008) 1 PLJR 337

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Advocate : Akhileshwar Pd. Singh, in in CWJC No. 3778/06 and Anand Kumar Ojha, in CWJC No. 3781/06, for the Appellant; Nirmal Kumar Sinha, J.C. to A.A.G. II in CWJC No. 3778/06 and Nivedita Nirvikar, G.P. 16 in CWJC No. 3781/06, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Kumar Katriar, J.—The two writ petitions raise a common question of medical reimbursement by the State of Bihar. The petitioner of C.W.J.C. No. 3778 of 2006 is a serving employee, and the petitioner of C.W.J.C. No. 3781 of 2006 is the widow of a deceased employee. The respondents have placed on record their counter affidavits and have opposed the writ petitions. In view of variation of facts in the two writ petitions, I will dispose of the two one after the other by the present judgment.

C.W.J.C. No. 3778 of 2006:

2. I shall first take up C.W.J.C. No. 3778 of 2006. The facts are not in dispute. The petitioner was at the relevant point of time posted as Statistical Compiler, Department of Animal Husbandry, Begusarai. He suffered a massive heart attack in the first half of 2002, and was rushed to the Cardio-thoracic & Neuro Sciences Centre of All India Institute of Medical Sciences, New Delhi (hereinafter referred to as "AIIMS"), on an emergency basis to save his life. Angiography was done on

him in AIIMS on 7.6.2002. A photo copy of the document showing angiography and the money receipt showing payment of Rs. 4,000/- is marked Annexure-1 to the writ petition. The petitioner had undergone coronary Artery bypass grafting 28.8.2002, and is supported by the documentary evidence dated 3.10.2002 (Annexure-2), including payment of the charges of Rs. 75,000/-. Photo copy of the voucher showing payment of a further sum of Rs. 24,531.40P. to AIIMS is marked Annexure-3. The petitioner submitted his claim for reimbursement before the appropriate authorities which was forwarded to the State Government along with letter No. 557/ Begusarai, dated 18.7.2003 (Annexure-4), with the note that "

;g ckr lgh gSa fd eks? jtk] lkaaf[;dh x.kd ds vpkud chekj gks tkus ds dkj.k bUgsa vf[ky ?kjr; IL?ku] ubZ fnYyh] esa djkuh IkMh A

Respondent No. 8 (The District Animal Husbandry Officer, Begusarai) forwarded the claims of the petitioner for reimbursement of a sum of Rs. 1,03,531.40P. to respondent No. 7 (The Dy. Director, Animal Husbandry, Government of Bihar, Patna), vide his letter No. 310, dated 23.3.2004 (Annexure-5). It appears that respondent No. 7 made certain queries from respondent No. 8 by his letter No. 2498, dated 10.6.2004 (Annexure-6), followed by another query, vide letter bearing memo No. 2133, Patna, dated 2.6.2005 (Annexure-7). On a consideration of the materials, respondent No. 6 (The Joint Director, Health Services, Government of Bihar, Patna) has refused to accord sanction for medical reimbursement by the impugned letter No. 2388, dated 12.11.2005 (Annexure-8), on the ground that ?----- iqokZuqefr izkIr fd;s losPNk ,oa euekus a+x ls jkT; ls ckgj djkh x;h fpdfRlk ,oa ml ij O;; dh izfriwfrZ ds fy, jkT; ljdkj ck/; ugha gSA?

This was followed by the consequential letter No. 4441, dated 2.12.2005 (Annexure-9), from Respondent No. 7 to Respondent No. 8, and impugned herein.

3. I have perused the materials on record and considered the submissions of learned Counsel for the parties. It is manifest that the petitioner had suffered a massive heart attack in the first half of 2002, and had to be rushed to AIIMS. The petitioner has made averments to that effect in paragraphs 5 and 11 of the writ petition which has not at all been answered in the counter affidavit. Consequently the emergency involved in the matter stands admitted by non-traverse. The very fact that angiography has taken place on 7.6.2002, and on the heels of which Cardiac Surgery was done on 28.8.2002, is by itself more than adequate evidence of the emergency involved in the matter. This was fully supported by the recommendation of respondent No. 8, vide letter dated 18.7.2003 (Annexure-4), and quoted in paragraph No. 2 hereinabove.

4. This Court had the occasion to deal with a similar situation and the relevant rule of the requirement to obtain prior permission for treatment outside the State surely twice. Reference may be made to the judgment reported in Ram Sagar

Ram and Another Vs. The State of Bihar and Others , whereby two writ petitions bearing C.W.J.C. No. 2060 of 2003 (Ram Sagar Ram v. The State of Bihar and Ors.), and C.W.J.C. No. 3019 of 2003 (Neena Verma v. the State of Bihar and Ors.), were disposed of by a common judgment dated 22.7.2003. The petitioner of C.W.J.C. No. 2060 of 2003 had underwent coronary artery bypass graft surgery in the Escorts Heart Hospital, New Delhi, on 21.9.2001. The request for reimbursement of Rs. 2,46,084/- was rejected on the ground that outside state treatment in private hospital without prior approval is not permissible under the Rules.

4.1 The petitioner of C.W.J.C. No. 3019 of 2003 was the widow of the late employee. In the year 1999, he was detected cancer in his cheek. After treatment in Patna, he was referred to Tata Memorial Hospital, Mumbai, or AIIMS, New Delhi, for specialised treatment. He was rushed to AIIMS but admission was not possible as a result of which he was treated in private hospitals of Delhi. He returned to Patna, his foray for transfer to Patna failed and had again to be rushed to Delhi for further treatment. Admission to AIIMS once again was not possible and was treated in private hospitals including chemotherapy cycle. He ultimately died on 10.11.2000. The widow submitted original papers claiming reimbursement of a sum of Rs. 2,92,791.98P, which were rejected at the level of the Chief Minister.

4.2 The State Government took a common stand in both the writ petitions that prior permission of the appropriate authorities had not been obtained for treatment outside the state of Bihar. Relying on two judgments of the Supreme Court and one of this Court, the stand of the State Government was rejected on the ground that medical treatment undertaken outside the State of Bihar in the circumstances did not permit prior permission at such a short notice, the respondent authorities were directed to reimburse the amount with the following observations 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 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 lesser 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 consistent with not only Articles 21 and 47 but also Article 14 of the Constitution.

(Emphasis added)

The respondent authorities have not informed the Court of the steps taken in pursuance of the observations made in the judgment.

5. I had the occasion to deal with a situation which combined in substance the circumstances of both the cases, in my judgment dated 8.2.2006, in C.W.J.C. No. 5646 of 2003 (Ravi Shankar Kumar v. The State of Bihar and Ors.). That was a case where the petitioner's late father (Banshidhar Jha) was posted as Village Level Worker in Supaul Circle Office. He vomited blood on 30.9.2001, and became unconscious. He was rushed to Indira Gandhi Institute of Medical Science, Sheikhpura, Patna, on 2.10.2001, and was treated upto 17.10.2001. He was discharged on 18.10.2001 and was referred to the Cardiothoracic Unit of the All India Institute of Medical Sciences, New Delhi, for further treatment. He was examined in AIIMS on 24.10.2001, was admitted as indoor patient on 27.10.2001, and discharged on 10.12.2001, after full treatment. He had, during the period of hospitalisation in AIIMS, undergone Aortic Stent Grafting. After treatment, he returned to his place of posting. During the period of convalescence, his condition deteriorated and he had to be re-admitted in AIIMS, where he died on 15.6.2002. In such circumstances, this Court held that there was no time to obtain prior permission for treatment outside the State of Bihar and the respondent authorities were directed to reimburse the medical bills along with interest from the date of the bills till the date of payment.

6. Coming back to the present case, the admitted position is that the petitioner had suffered a massive heart attack in the first half of 2002, had undergone angiography on 7.6.2002, and underwent cardiac surgery on 28.8.2002. The close proximity of these clinical events cumulatively establish the emergency involved in the matter, and there was no time for the petitioner to obtain prior permission for treatment outside the State of Bihar. It has to be read with the statements made in paragraphs 5 and 11 of the writ petition, admitted by the respondent authorities by non-traverse, as well as the recommendation of respondent No. 8 set out hereinabove. The respondent authorities failed to realise that, in such a situation medical reimbursement does not come to the mind of family members and the anxiety above all is to save the life of the bread-winner of the family. I feel very unhappy at such an unreasonable, arbitrary and inhuman approach of the authorities which is equally violative of Articles 21 and 47 of the Constitution of India. The petitioner has been denied the benefit because he is a "lesser mortal". The respondent authorities are reminded of the observations made in paragraph 8 of the judgment in Ram Sagar Ram v. The

State of Bihar and Ors. (supra).

7. It was obviously a case where the respondent authorities should have invoked Rule 26 of the Bihar Medical Attendance Rules which is reproduced hereinbelow for the facility of quick reference:

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 may be read to mean that it confers a wider power of giving medical benefits not indicated elsewhere in the Rules. The entitlement for reimbursement for medical treatment of the deceased employee outside Bihar is not in dispute. Therefore, the requirement of seeking prior permission, which was not possible in view of the emergent situation obtaining in the present case, and ought to have been relaxed by invoking Rule-26.

8. The impugned order is hereby set aside. Respondent No. 3 (The Secretary, Animal Husbandry, Government of Bihar, Patna) is hereby directed to ensure full payment of the claims made by the petitioner supported by vouchers issued by the AIIMS, apart from other claims including journey expenses along with the companion permissible in accordance with the established procedure along with interest at the rate of 9% (nine) from the dates of the vouchers/the dates of journey till the date of payment.

C.W.J.C. No. 3781 of 2006

9. I shall now deal with C.W.J.C. No. 3781 of 2006. The petitioner is the hapless widow of one Madhurendra Kumar Sinha who was, at the time of his death, Supply Inspector, Department of Food and Civil Supplies, Government of Bihar. The late employee died on 21.8.2005, at the age of 49 years, leaving behind his widow who was then 41 years of age. I am informed at the Bar that the petitioner is without a child of her own. The respondents have placed on record their counter affidavit and have opposed the writ petition.

10. The basic facts necessary for adjudication of the issues involved in this writ petition are not in dispute. The late employee was treated in the Radium Institute of Patna Medical College and Hospital, Patna, from 1.4.2004 to 14.4.2005. He was discharged with the endorsement "Wants to be checked at C.M.C., Vellore, hence referred to Radiotherapy Department, C.M.C., Vellore." Photo copies of the prescriptions of P.M.C.H. are marked Annexures-1 series and 2 to the writ petition. He immediately reported to the Christian Medical College, Vellore (hereinafter referred to as "the C.M.C.") for diagnosis and treatment. He was diagnosed for chronic myeloid leukemia with lymphoid blast crises. A photo copy of the certificate dated 2.5.2005 given by the Department of Haematology of C.M.C. is marked Annexure-3 to the writ petition. The certificate dated

19.5.2005 (Annexure-4), issued by the same department shows estimated cost of the treatment including chemotherapy and possible stem cell transplantation pegged at Rs. 10,00,000/- (rupees ten lacs). Annexure-5 series are the vouchers showing payments made to C.M.C.

11. It appears that the late employee had submitted an appropriate application before the parent department for advance money for treatment at C.M.C. The same was sanctioned by the parent department as well as the Health Department, but the Finance Department refused to accord sanction on the ground that prior permission for the treatment was not obtained, vide letter dated 17.9.2005 (Annexure-6), from the Health Department to the parent department, and impugned herein. The employee in the meanwhile died on 21.8.2005, in a private hospital in Patna, vide death certificate dated 21.8.2005 (Annexure-7). In view of rejection of the claim, the present petitioner submitted a representation dated 1.12.2005 (Annexure-8), to respondent No. 6 (The Commissioner-cum-Secretary, Food, Supply and Commerce Department, Government of Bihar, Patna), with a copy thereof to respondent No. 5 (The Commissioner-cum-Secretary, Department of Finance, Government of Bihar, Patna), inter alia, stating therein that the authorities of the parent department were informed of the treatment from time to time and, in view of sudden deterioration in the health of her late husband who was battling for life at P.M.C.H., was taken to C.M.C. where appropriate treatment was possible. The representation further stated that the Finance Department refused to accord permission and grant advance amount of treatment inspite of the recommendation of the parent department and the Health Department, as a result of which he could not be fully cured leading to his death. The petitioner, therefore, requested for reconsideration of the matter. There is no material on record to show that respondent No. 5 applied his mind to the grievances raised in the representation and no reply was sent to the petitioner. Hence the present writ petition.

12. I have perused the materials on record and considered the submissions of learned Counsel for the parties. The learned Government Counsel has raised the only objection that prior permission of the State Government was not obtained. A competent and experienced Doctor of the Bihar Government has been consulted during the course of the present proceedings and he is, of the view that it is manifest from the prescriptions of the P.M.C.H. that the consultant Oncologist was unable to diagnose the ailment, as a result of which he had to rush to Vellore in precarious condition. The Doctor has requested for anonymity because he fears the wrath of the State Government and its senior functionaries. It is beyond doubt that the employee was at C.M.C., was diagnosed for "chronic myloid leukemia with lymphoid blast crises". Lymphoid blast crises is a kind of chronic myloid leukemia (Blood Cancer). In other words, lymphoid blast crises is a specious of the genus of blood cancer. It, therefore, follows as a matter of corollary that the spent by the employee, and the treatment in P.M.C.H., was absolutely waste of time leading to drastic and irritrievable decline in his health.

It establishes a case of inexcusable negligence and medical incompetence. Learned Counsel for the petitioner has, therefore, rightly relied on the judgment of the Supreme Court, reported in AIR 1996 SC 2964 (Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr.). Relying on Article 21 of the Constitution, the Supreme Court observed that failure of Government hospitals to provide timely emergency medical treatment results in violation of his right to life. So much for the condition of the hospitals of the Bihar Government, and the treatment given to a critical patient of blood cancer.

13. The petitioner has stated in paragraphs 13 and 14 of the writ petition that the respondent authorities were made aware of the critical illness of the late employee, and request was made for advance amount on the basis of the estimate of treatment of C.M.C. This question has been answered in the counter affidavit of respondent No. 3 (The Director-in-Chief, Health Services, Department of Health, Government of Bihar, Patna) as follows:

7. That considering the case of Cancer disease, after taking approval of the Director-in-Chief, Health Services, Bihar, the proposal of sanctioning of post facto approval of the treatment and sanctioning of Medical advance was sent to Finance Department which was rejected on the ground of the treatment done at his own will.

The impugned order dated 17.9.2005 (Annexure-6) reads as follows:

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(Emphasis added)

14. It is manifest that the respondent authorities were fully aware of the critical illness of the late employee, the parent department and the health department concurred for payment of advance for treatment at Vellore which inheres in itself the permission for treatment, and the Finance Department with its usual, callous approach, declined to grant advance, let alone the question of granting sanction for treatment outside the State of Bihar. The contention advanced on behalf of the respondent authorities does not have even fig-leaf of a hair-splitting argument that prior sanction was not obtained.

15. It is beyond doubt that the late employee had for the first time reported for treatment to the consultant Oncologist, P.M.C.H., on 1.4.2004, and was during the course of one year, unable to diagnose the ailment causing severe, irretrievable deterioration in his health. In such a situation, which patient, and which wife faced with the ominous prospect of widowhood, will have the thought

and the idea to approach the Government for prior treatment. The only concern would be to save the life of the bread-winner of the family. The circumstances of the case did not at all permit obtaining prior permission for treatment at Vellore. Such an approach on the part of the respondents is grossly unreasonable, arbitrary, inhuman, callous, and violative of Articles 21 and 47 of the Constitution of India. Apart from placing reliance on the aforesaid judgment in the case of Ram Sagar Ram v. The State of Bihar (supra) and Ravi Shankar Kumar v. The State of Bihar (supra), learned Counsel for the petitioner has rightly relied on the following reported judgments:

(i) Sri Anil Kumar Singh Vs. The State of Bihar and Others, ;

(ii) Kaushal Kishor Verma Vs. State of Bihar and Others, ;

16. Annexure-A to the counter affidavit of respondent No. 3 sets out Rule 26 of the Bihar Medical Attendance Rules and is reproduced hereinabove. Respondent No. 5 has not filed any counter affidavit to inform this Court as to why Rule 26 was not invoked to grant the relief to the petitioner. It is manifest on a plain reading of Rule-26 that this is an over riding power, over and above all the remaining provisions of the Bihar Medical Attendance Rules. I have no manner of doubt that the present case is surely covered by Rule-26 and the State Government has most unreasonably refused to invoke Rule-26. Taking cue from the observations in paragraph 8 of the judgment in Ram Sagar Ram v. The State of Bihar (supra), this Court is in no doubt that the respondent authorities have denied sanction and have refused to invoke Rule-26, because it related to a lesser mortal.

17. In the result, the impugned order is hereby set aside. The respondent authorities are directed to make full payment of the claims of the petitioner supported by the vouchers/bills of the Patna hospitals, that of C.M.C. along with other claims like journey expenses along with the companion and such other expenses as per the established procedure. The entire dues of the petitioner shall carry interest at the rate of 12 (twelve) per cent from the dates the amounts became due till the date of payment. In view of the gross negligence shown by the consultant oncologist of P.M.C.H., the petitioner shall also be entitled to further amount of Rs. 5,00,000/- (rupees five lacs) with interest at the same rate with effect from 1.4.2004 (the date of admission to P.M.C.H.) till the date of payment.

18. Both the writ petitions are accordingly allowed.

19. Let a copy of this judgment be handed over to the Advocate General to be placed before the Chief Minister of the State to ensure that appropriate rules are framed in accordance with the directions of this Court in Ram Sagar Ram v. The State of Bihar and Ors. (supra) to obviate the present practice of discrimination and arbitrariness, to prevent abuse of discretion, and to ensure justice to the lesser mortals.