
(2002) 05 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 3249A of 1997

M.D. Chauhan and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2002) 3 AWC 2096 : (2002) 3 UPLBEC 2483

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—This writ petition has been filed by two retired Government servants, who are now about 80 years of age. It is stated by petitioner No. 1 that he retired on 23.2.1981. He claims that he had suffered from chest pain on 30.6.1994 and had consulted Dr. D. K. Agarwal, Assistant Professor Cardiology, Moti Lal Nehru Medical College, Allahabad on 7.7.1994 and was referred to All India Institute of Medical Sciences, where he was admitted and was treated by Dr. U. Kaul, Professor of Cardiology. All India Institute of Medical Sciences. New Delhi. Thereafter he got himself regularly checked up by Dr. B. B. Singh, Superintendent of T. B. Sapru Hospital, Allahabad. It is alleged that he made request for reimbursement of medical expenses incurred by him and further to refer his case to Dr. U. Kaul, Professor of Cardiology, All India Institute of Medical Sciences, New Delhi, for further treatment. The representation was made by him to the Superintendent/Medical Officer Incharge, T. B. Sapru Hospital, Allahabad with copy of the C.M.O./ Additional Director Medical Health, Allahabad, and the Secretary Medical Health. It is alleged that the medicines were not supplied by the Government Hospital and he had to purchase the medicines from the local market worth Rs. 1,500 per month, which is not being reimbursed by the State.

2. Petitioner No. 2 joined on the post of Assistant Teacher in Government

Education Department at Queens College, Varanasi and retired from the post of Principal, Government Inter College, Faizabad. It is alleged that he was suffering from "Parkinson" disease and was taken to Delhi and Bangalore for treatment, but to no avail. His general physical condition deteriorated to an extent that he could not lead normal life and was dependent on others. The grievance in the petition, is that the medicines were not supplied to him from the Government Hospital and he had to purchase medicines from the local market every month.

3. The grievance of the petitioners is that both the petitioners were Government servants and were employed in Government jobs and were governed by the provisions of the U. P. Government Servant (Medical Attendance) Rules, 1946. It is claimed that they are entitled to the reimbursement of local purchase in pursuance of the G.O. No. 2854/Five-7-1004/80, Chi. Anu. 7, dated 3.6.1980 (Annexure-5 to the writ petition) and supply of drugs/ medicines which are essential for their life, but this facility is being denied to them.

4. It is contended on behalf of the petitioners that the Government is under obligation to provide free health care to its employees including retired personnel and that it is an integral part of Article 21 of the Constitution of India. It is alleged that the respondents have miserably failed in discharging their obligation as the respondents are neither supplying adequate medicines nor providing requisite medical facility to the petitioners. Both the petitioners are senior citizens and have moved the Court for following reliefs :

(a) to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay a sum of Rs. 50,000 to each of the petitioners separately in order to meet atleast last three years medical expenses,

(b) to issue a writ, order or direction in the nature of mandamus commanding the respondents to refer the case of petitioner No. 1 to All India Medical Sciences for Coronary Angiography followed by Surgery, if need be,

(c) to issue a writ, order or direction in the nature of mandamus commanding the respondents to supply medicines regularly to the petitioners as per their need,

(d) to issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case,

(e) to award costs of the petition to the petitioners.

5. Counter-affidavit has been filed by the Chief Medical Superintendent, T. B. Sapru Hospital, Allahabad, stating that under the rules and the Government orders, the reimbursement of the medical bills is admissible (i) if the treatment is not possible in the concerned Government hospitals and in process of treatment, matter is referred and (ii) for purposes of the medicines, if any medicine is not available in the Government hospital stock and if the local purchase orders are passed by the concerned doctor for the said medicines only. The reimbursement are made to the concerned medical store where the medicines are supplied. It

has been stated in paragraph 5 of the counter-affidavit that in the present case, the petitioners have purchased the medicines and submitted the bills which have no concern with the Government or with the Government hospitals for reimbursement.

6. In paragraph 8 of the counter-affidavit, it is stated that as per rules, the medicines prescribed by the hospitals, are supplied to the patients, and in the case of non-availability of the medicines and on being purchased by the Government employee, the cost of the same is reimbursed on request by the parent department of the employee to which he belonged. It is further stated in the counter-affidavit that considering the condition of the patient, the doctor can refer the matter to a higher specialised institution, but the claim of reimbursement of the cost of such treatment is made when referred by the parent department. Since the petitioners have not followed the instructions of the U. P. Government Servant (Medical Attendant) Rules, 1946, in preferring their claim of reimbursement from their parent department, it cannot be allowed and the medical department need not make the reimbursement.

7. Our attention has been drawn by the learned counsel for the petitioners to the averments made in paragraphs 5 to 9 in the rejoinder affidavit, wherein it has been stated that the respondents have made vague and evasive averments inasmuch as neither relevant particulars, title and date of rules and Government orders for reimbursement of the medical bills have been disclosed to enable the petitioners to admit or deny the allegations nor they have been supplied the medicines. The petitioners had to run from pillar to post in their advanced age. They have stated that on all the occasions, slips as per normal practice were handed over by the clerk concerned to the hospital and they were asked to come to the hospital to collect the medicines on the following day but the petitioners were never supplied the medicines as per prescription and on some occasions, were offered only one medicine and informed that the said Medical Store is not in a position to supply the other medicines. It is further stated that on making enquiry from the proprietor of the Medical Store from where the local purchase has been made by T. B. Sapru Hospital, they were informed that the said Medical Store is not in a position to supply the medicines, as they are costly or it had already supplied the medicines on credit but were not paid hence the doctors of the Hospital have refused to permit local purchase on the pretext that the medicines are not available. It has been stated that in the aforesaid circumstances, the petitioners had no option but to make purchase in open market and the petitioners are entitled for reimbursement in these circumstances.

8. Our attention has been drawn to the letter dated 29.2.1996. From a perusal of the said letter, it appears that the petitioner, on the advice of the Superintendent, Medical Officer incharge of the Hospital, and on reference being made by Dr. D. K. Agarwal, Assistant Professor of Cardiology, Moti Lal Nehru Medical College, Allahabad, visited All India Institute of Medical Sciences and was given treatment by Dr. U. Kaul, Professor of Cardiology, All India Institute of Medical Sciences,

New Delhi and thereafter he came back and was put under the treatment of Dr. B. B. Singh, the then C.M.O., Tej Bahadur Sapru Hospital. He was not supplied the medicines from the hospital regularly on the plea of shortage of funds and his case was referred to Dr. U. Kaul. Thus, the case of the petitioners was referred for specialised treatment.

9. We have given serious thought to the difficulties of the employees particularly of senior citizens.

10. In the case of State of Punjab and others Vs. Mohinder Singh Chawala, etc., , the Apex Court held that it is a constitutional obligation of the State Government to provide free health care to its employees including the retired persons and meet expenditure of hospital incurred by them, in view of Article 21 of the Constitution which provides :

"21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

11. In the case where a person complains of the deprivation of his life or personal liberty, the Court in exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation in the given case, and such law is reasonable, fair and just and not arbitrary, whimsical and fanciful,

12. The right to life enshrined in Article 21 means something more than keeping body and soul together. It would include the right to live with human dignity. It includes all those aspects of life which go to make a man's life meaningful, complete and worth living. Treatment and health are integral component to this right. In the case of Parmanand v. Union of India, AIR 1989 SC 2039, it has been held that it is the obligation of the State to preserve the life of every person by offering medicines to each and every patient and even to the criminal whether he is innocent or guilty person.

13. The wide scope of Article 21 of the Constitution includes medical aid even to the criminals. It is certainly a necessity of life to a person, who is in immediate need of medical care including supply of medicines or reimbursement of treatment for purchase of medicines from outside, if necessary. It cannot be denied. The condition that reimbursement for a Government servant will be made only when his case is referred and local purchase is authorised, is not absolute and mandatory. It can be modified in deserving cases. Any person in need of immediate medical aid cannot be made to run from pillar to post for getting medicines from Government hospitals. Genuine cases and urgency cannot be ignored on the ground of procedural requirements in matter of right to life. A senior citizen such as petitioners at this old age are not expected to run to get the medicines from the Government hospital or reference by authorised medical attendant in immediate need of treatment, which are unable to provide, the medicines due to mismanagement and alleged financial crises.

14. Giving purposive interpretation of the word "life", immediate medical aid to the person can be liberally interpreted. A citizen cannot be denied right to life in any condition.

15. Now it has to be seen whether the procedure prescribed for treatment of the senior citizen and reimbursement of medical bills in the instant case is reasonable, fair and just. The procedure for reimbursement has been provided for preventing misuse of the facility with all good intention and avoid fraudulent payments, but all the same genuine cases cannot be overlooked in the name of procedure. The Apex Court in the case of State of Karnataka v. Appa Balla 1995 (4) SCC 469, in paragraphs 34 and 35 said that Judges should respond to meet the felt necessity of time and social needs to make meaningful the right to life and give effect to the Constitutional mandate.

16. In the circumstances of this case, we allow this petition and direct that the respondents should forthwith reimburse the medical bills of petitioner No. 1 ignoring the objections of the respondents. Petitioner No. 2, has died on 8.11.2000 and no substitution application has been filed, and hence we are not passing any order in respect to him. No order as to costs.