
(2007) 08 PAT CK 0142
In the Patna High Court
Case No : CWJC No. 8723 of 2005

Navin Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Bihar Medical Attendance Rules, 1947 — Rule 24(6), 26
Constitution of India, 1950 — Article 14, 21

Citation : (2007) 4 PLJR 586

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Amber Nath Banerjee, for the Appellant; Archana Shahi for the State, for the Respondent

Judgement

J.N. Singh, J.—Initially this writ application was filed for a direction to the respondents to reimburse the medical bills of the petitioner in connection with Bypass surgery at Chennai as forwarded by the Executive Engineer by letter contained in Annexure-4. However, during the pendency of this writ application, medical bills of the petitioner was rejected by the respondents which was communicated through letter dated 17.8.2005. After rejection of the medical bills of the petitioner, a counter affidavit was filed by the respondents taking the stand that the medical bill of the petitioner has already been rejected.

2. Accordingly, petitioner filed I.A. No. 3990 of 2007 enclosing said letter of the Joint Director, Health Services dated 17.8.2005 as Annexure-6 and prayed for liberty to amend the writ petition by making additional prayer for quashing of Annexure-6.

3. I.A. is allowed. Let the same be treated as part of the main writ application.

4. Case of the petitioner is that he was appointed as Assistant Engineer in the Road Construction Department in the year 1998. In the year 2000 he was posted in Purnea where he suffered heart attack and was admitted to Indira Gandhi

Institute of Medical Sciences (I.G.I.M.S.), Patna for treatment. However, petitioner became seriously ill and he was advised for Bypass surgery in a good hospital as his case was complicated. Accordingly, petitioner in emergency condition shifted to Institute of Cardio Vascular Diseases, Madras (Chennai). Due to emergency conditions, petitioner could not obtain prior permission of the State Government for treatment outside the State. As such after returning from Chennai, petitioner submitted his application on 3.10.2001 before the Director, I.G.I.M.S. (Annexure-1) for post facto approval so that he may submit his medical bills for reimbursement. The said application was duly forwarded by the authorities of the I.G.J.M.S.

5. Due to heart problem and the operation, petitioner suffered partial paralysis and it was not possible for him to continue in Purnea, so he sought for his transfer to Patna and accordingly, he was posted as Assistant Engineer in Bridge Division No. IV, Advanced Planning, Road Construction Department, Patna.

6. Chennai Hospital gave final bill to the petitioner for his operation and treatment etc. of Rs. 1,69,700/- which was paid by the petitioner. Thereafter, petitioner submitted his documents i.e. medical bills, chart and prescription of his treatment before the authorities for reimbursement of the same.

7. In connection with Annexure-1, by letter dated 13.11.2003 of the Deputy Director, Health Services (Annexure-2) petitioner was asked to explain as to under what compelling circumstances he had to proceed for his treatment to Chennai without prior approval and permission of the authorities of the State. Petitioner was further asked to furnish original discharge summary, payment receipts in connection with his treatment along with his salary code through his controlling officer for consideration of post facto sanction and payment of the medical bills. Accordingly, petitioner submitted his reply on 17.1.2004 (Annexure-3) enclosing all the required documents, papers and informations. By Annexure-4, bills of the petitioner were also forwarded by the Executive Engineer for needful.

8. As the petitioner had to remain absent in connection with his operation and treatment, he applied for leave from 23.11.2000 to 13.9.2001. The said period was finally regularised by the respondents by order contained in Notification dated 29.3.2005 (Annexure-5).

9. As the medical bills of the petitioner remained pending with the respondents for reimbursement, petitioner filed the present writ application for a direction to the respondents to pass orders for payment of medical bills of the petitioner.

10. A counter affidavit has been filed in this case. In the counter affidavit it has been disclosed that the medical bills of the petitioner have been considered and rejected by the Finance Department which was communicated to the Executive Engineer, Design Division No. IV, Advanced Planning, Road Construction Department vide Health Department's letter no. 1793(14) dated 17.8.2005. Accordingly, petitioner filed aforesaid Interlocutory Application annexing the said

letter of the Health Department dated 17.8.2005 as Annexure-6 and prayed for quashing of the same.

11. Learned counsel for the petitioner has submitted that the petitioner had to proceed for his medical treatment to Chennai in emergent condition, as such, petitioner had no time or opportunity to apply for due sanction and approval by the authorities of the Government for his medical treatment outside the State. Learned counsel for the petitioner has further submitted that in cases of treatment under emergent conditions respondents have been granting post facto sanction and have been reimbursing the bills in connection with such treatment. Learned counsel for the petitioner further submitted that Rule 26 of the Bihar Medical Attendance Rules, 1947 has overriding effect on other provisions of the Rules and vests absolute discretion in the authorities to relax the requirements of the Rules in proper cases. Learned counsel for the petitioner submitted that there has been numerous instances of exercise of discretion as provided under Rule 26 of the Rules by the authorities in the case of Government employees from time to time. Therefore, learned counsel for the petitioner submitted that in all propriety, respondents ought to have exercised their discretion in favour of the petitioner and ought to have granted post facto sanction to the treatment received by him outside the State and ought to have reimbursed the bills.

12. In support of his submissions, learned counsel referred to the judgment of this Court in the case of Smt. Veena Sharma Vs. The State Bank of India and Others . In that case, husband of the petitioner had initially received treatment at Tara Hospital, Patna and after his condition deteriorated, on the recommendation of the Bank's doctor, he moved to Apollo Hospital, New Delhi. On tests, he was found to be suffering from AIDS. He came back when his condition improved but he had to go to Apollo Hospital again on the recommendation of the Bank's doctor and finally he died. Medical bills of the husband of the petitioner of the case were reimbursed by the Bank, However, after death of the husband of the petitioner when final bills were submitted, a substantial amount was deducted from the bills and as the same was already paid, it was realised from the Provident Fund deposits of the deceased. Same was challenged by the wife of the deceased in this Court. During the proceeding of the case, stand of the Bank was that the deceased was an officer of Middle Management Grade (MMG-III) and he was not entitled to reimbursement of more than Rs. 950/- per day a room rent as per the guidelines of the Bank. As the bills were submitted for higher amount of room rent in the Apollo Hospital, the same was rejected and deductions have been made.

13. While considering the case of the wife of the deceased, this Court relied on the judgment of the Apex Court in the case of State of Punjab vs. Mahendra Singh Chawala, reported in AIR 1987 S.C. 1225 and held that linking the limits of reimbursement with the status of the employees/Officers is violative of Article 14 of the Constitution of India. Rule 24(6) of the Rules of the Bank which was relied upon by the respondents Bank for the said classification was held by this Court to

be not in accordance with Articles 14 and 21 of the Constitution of India and the Bank was advised to amend the relevant part of the Rules so as to be in conformity with the Constitutional provisions. The writ application was allowed and the respondent Bank was directed to pay the actual room rent paid on behalf of the deceased in connection with his operation and stay in Apollo Hospital.

14. From the facts of the case it appears that the dispute was only with regard to reimbursement of actual room rent or admissible room rent as per guidelines of the Bank. This Court held that the payment of room rent of the hospital were incidental and ancillary to the treatment received by the deceased at the hospital, therefore, the same was directly connected with the medical treatment received by the deceased.

15. Case of the present petitioner is somewhat different. His medical bills have been rejected on the ground that he had not obtained recommendation of the authorised Medical Officer, previous approval and permission of the authorities. Therefore, above referred judgment of this Court is of no help to the petitioner.

16. Petitioner had relied upon another judgment of this Court in the case of Ram Narayan Sah Vs. State of Bihar and Others, . In this case, the writ petitioner while being posted at Jehanabad, on the advice of the local doctor, was admitted in the Indira Gandhi institute of Cardiology, PMCH. On the basis of certificate of authorised Medical Officer, he was referred to AIIMS, New Delhi. Petitioner, however, could not obtain reference from Medical Board for the same as he had to move Delhi in emergent conditions. As no final orders were passed on his bills, petitioner filed writ application for a direction for post facto sanction of treatment received by him and for exercise of discretion by the respondents as per rule 26 of the Medical Attendance Rules. This Court disposed of the writ application with a direction to the Director-in-Chief, Department of Health and Family Welfare to dispose of the representation of the petitioner within a fixed time.

17. Since petitioner's application for medical reimbursement has now been rejected, the decision in the case of Ram Narayan Sah (supra) is also of no help to the petitioner. However, from the impugned order (Annexure-6), it appears that the respondents have rejected the claim of the petitioner for post facto sanction of treatment received by him at Chennai on the ground that without recommendation of the authorised doctor, without prior permission of the State Government, without prior information and without compelling reasons. petitioner had received the treatment.

18. From the contents of the writ application it does not appear as to when petitioner had suffered heart attack. It also does not appear as to when he was admitted in I.G.I.M.S. for treatment. It is also not clear as to when his condition deteriorated upon which he was advised for By-pass surgery in a good hospital. The application of the petitioner dated 3.10.2001 (Annexure-1) also does not disclose any details of sequence of his ailment or treatment received by him in I.G.I.M.S. prior to his shifting to Chennai for operation. Annexure-3 to the writ

application, which is reply filed by the petitioner to the communication to him by the Deputy Director, Health Services, as contained in Annexure-2, also does not contain any details of the period prior to his shifting to Chennai for his By-pass surgery. The certificates, prescriptions etc. enclosed with Annexure-3 are also of Chennai Hospital only. Thus, it appears that the petitioner has not been able to make out a case of emergent condition in which he had to shift to Chennai for his By-pass surgery. The writ application and its enclosures lack material particulars with regard to chronology of events prior to his shifting to Chennai for By-pass surgery. It is true that in cases of emergency, respondents are obliged to exercise their discretion under Rule 26 of the Rules and relax the conditions of prior reference by the authorised Medical Officer, recommendation of the Medical Board and approval and sanction of the State Government for the treatment but an employee has to prima facie satisfy the authorities of emergent conditions preventing him from complying with the said requirements of Rules. From Annexure-6 it is apparent that the medical bills of the petitioner has been rejected only on the ground that the petitioner had not obtained prior approval and sanction by the State authorities and has not made out a case of emergency for waiving of those requirements and exercise of discretion under Rule 26 of the Rules.

19. In the circumstances, without quashing the impugned order, Annexure-6, it will be fit and proper that the petitioner is given another opportunity to satisfy the authorities with regard to emergent conditions under which he had to go to Chennai and undergo By-pass surgery. If the petitioner is able to satisfy the authorities that he had reasons beyond his control which prevented him from informing the authorities, waiting for the recommendations and approval and prior sanction before proceeding to Chennai for his By-pass surgery, it will be obligatory on the part of the respondents to exercise the discretion as per Rule 26 of the Rules and relax the said requirements and grant post facto sanction to the treatment received by the petitioner at Chennai and accordingly reimburse his medical bills and all expenses connected therewith.

20. In the circumstances, petitioner is given liberty to file detailed representation before the authorities for reconsideration of the matter, giving details of emergent conditions under which he had to proceed to Chennai and undergo By-pass surgery. If the petitioner files such a representation with all necessary details and supporting materials, respondents shall be well advised to exercise their discretion under Rule 26 of the Rules, grant post facto sanction to the treatment received by the petitioner at Chennai and sanction his medical bills and bills of other expenses connected therewith within a period of three months from the date of filing of the said representation. Respondents shall also consider whether in similar circumstances, discretion has been exercised by them in cases of other officers and employees of the State Government and will consider as to whether to maintain uniformity in exercise of said discretion, case of the petitioner is fit to be allowed for medical reimbursement. However, in case the respondents decide to refuse to exercise the discretion in favour of the petitioner

under the provisions of Rule 26 of the Rules, they will assign specific reasons for the same and communicate the same to the petitioner. In the result, this writ application is disposed of with the aforesaid observations and directions.