
(2009) 03 GAU CK 0053
In the Gauhati High Court

Nimai Chandra Sarkar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 6 GLR 160 : (2009) 4 GLT 144

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Judgement

U.B. Saha, J.—By filing this writ petition under Article 226 of the Constitution of India, the petitioner has sought for quashing the impugned order dated 17.8.2006 (Annexure-P/6) whereby and whereunder, the Director of Health Services, Government of Tripura, Agartala, the respondent No. 4 herein, informed the Director of Fire Service, Government of Tripura, Agartala, the respondent No. 3 herein, that the medical reimbursement claim submitted by the petitioner for his treatment at Rabindranath Tagore International Institute of Cardiac Sciences, Kolkata (herein after referred to as "the RTI Institute") is not admissible as the said institution is not recognized by the Govt. of Tripura, and also for a direction to the respondents to make medical reimbursement of Rs. 1,10,119, on account of his treatment and Rs. 50,000, on account of traveling and other incidental expenses incurred in connection with his treatment.

2. Heard Mr. Somik Deb, Learned Counsel for the petitioner and Ms. A.S. Lodh, Learned Counsel appearing for the state respondents.

3. Considering the nature of the controversy involved in the matter and as agreed to by the Learned Counsel of both, sides, this matter is taken up for final disposal at the order stage itself.

4. The brief facts needed to be discussed for disposal of this case are as follows:

The petitioner is a Fireman under the Directorate of Fire Services, Government of Tripura. Having suffered from acute chest pain on 4.4.2006, he went to the GBP

Hospital and attended in the Out Patient Department for treatment. But ultimately considering that the petitioner is a cardiac patient and severity of his illness, the Medical Board of the GBP Hospital referred him to SSKM Hospital, Kolkata on 10.4.2006, for further investigation and treatment. Accordingly, as advised by the Medical Board of GBP Hospital, on 3.5.2006, the petitioner reported to the Out Patient Department of the SSKM Hospital, Kolkata, but the hospital authorities regretted the admission of the petitioner at the relevant time, as no bed was available for admission in the said Hospital. Thereafter, as the question of death and life of the petitioner is involved, the petitioner could not wait for treatment in the SSKM Hospital, and in order to get the immediate treatment of his illness, he rushed to the RTI Institute, Kolkata on 3.5.2006 and got admitted there. A major operation, namely, CAG + PTCA, was performed on the petitioner and he remained hospitalized up to 7.5.2006. In the said process of treatment, the petitioner incurred a Puget expenses amounting to Rs. 1,10,119, and in addition, he had also to incur expenses towards his attendant, escort etc., amounting to Rs. 50,000. Accordingly, on return, the petitioner prepared his medical bill and submitted the same to the respondent No. 3 for reimbursement. The respondent No. 3 referred the said medical bill to the respondent No. 4 for necessary action. But unfortunately, by the impugned order, the respondent No. 4 informed the respondent No. 3 that the medical bill submitted by the petitioner is not admissible, as the RTI Institute is not recognized by the Government of Tripura.

5. It is contended by the petitioner that though he is entitled to get medical reimbursement limited to the cost of treatment and expenses thereunder as per the existing T.A. Rules, he has been denied the same by the respondents authorities. Hence the present writ petition.

6. The respondents filed their counter-affidavit denying the claim of the petitioner.

7. Mr. Deb, Learned Counsel for the petitioner submits; that though the petitioner is entitled to reimbursement of his medical expenses according to the scheme of the Government, the respondent authorities are denying the claim of the petitioner. His further submission is that the petitioner may not be entitled to the medical reimbursement as per the rate of the RTI Institute where he was treated, but he is entitled to reimbursement of his medical expenses as per the rate of SSKM Hospital, Kolkata where he was actually referred. He submits that the petitioner was compelled to admit himself in the RTI Institute due to non-availability of bed in the SSKM Hospital, Kolkata, Mr. Deb referred to some decisions of the Apex Court including the decisions in *Surjit Singh Vs. State of Punjab and Others*, *Suman Rakheja v. State of Haryana and Anr.* (2004) 13 SCC 562; *Chhote Ram Yadav v. State of Haryana* (2005) 13 SCC 393. He also referred to the decisions of this Court in *Runu Rajkumar Phukan v. State of Assam* 2000 (3) GLT 27 and *Ranjit Kr. Debnath Baidya v. State of Tripura and Ors.* 2008 (Supp.) GLT 816.

8. Learned Counsel further submits that even if an employee is willing to treat

him in the referred Hospital, he may not get admission in the said Hospital for his treatment in case of emergency for want of accommodation. But to save his own life he may require to rush to any other hospital nearer to him and he has the right to take steps in self-preservation without waiting in queue in the referred hospital for shortage of accommodation. In the instant case also the petitioner did the same thing as he was supposed to preserve his life first then follow the procedure prescribed by the State Government. He finally contends that the impugned order dated 17.8.2006 (Annexure-P/6 to the writ petition) issued by the Director of Health Services, Government of Tripura, respondent No. 4 herein, is wholly contrary to the memorandum issued by the Government of Tripura.

9. Per contra, Ms. Lodh, learned State Counsel would contend that the petitioner is not entitled to the reimbursement of his medical expenses as per the rate of RTI institute, but obviously he is entitled to the same as per the referred Hospital, i.e., SSKM Hospital, Kolkata including the journey expenses for the purpose as per, the existing TA Rules. In support of her contention, she also referred to the decision of the Apex Court in the case of Chhotu Ram Yadav v. State of Haryana (2005) 13 SCC 393.

10. This Court has given anxious consideration to the submission of the Learned Counsel for the parties as well as the law reports cited by them. It appears from the record that admittedly the petitioner was referred to the SSKM Hospital, Kolkata, but he was admitted in the RTI institute, Kolkata as no bed was lying vacant in the SSKM Hospital at the relevant time and the SSKM Hospital regretted the admission of the petitioner at that moment though his admission in the Hospital was urgently required as he was suffering from acute cardiac problem. Record also shows that the petitioner had undergone Cardiac Surgery (CAG + PTCA) in RTI institute. Thereafter, the petitioner submitted his medical bill to the appropriate authority for reimbursement, but the authority did not accept the same on the ground that the RTI institute, Kolkata, where the petitioner had been treated is not recognized by the Government of Tripura as indicated by the respondent No. 4 in his letter dated 17.8.2006 (Annexure-P/6 to the writ petition).

11. Now, question arises whether the petitioner is entitled to get the reimbursement of his medical expenses as per the bill submitted by him in accordance with the scheme of the Government. Answer to the aforesaid question is not at all res Integra after the decisions of the Apex Court as referred to by Mr. Deb, Learned Counsel for the petitioner. This Court also in Ranjit Kumar Debnath Baidya (supra) observed that the petitioner in that case shall be entitled to reimbursement of his medical expenses in terms of the memorandum of the Finance Department dated 9.8.2005 at the rate of the SSKM Hospital, Kolkata prevalent at the relevant time and the petitioner was directed to resubmit the bills as returned by the authorities within fifteen days from the date of judgment and the respondent authorities were, directed to re-examine the bills and allow reimbursement of the amount which was admissible to the petitioner of that case

as per the SSKM Hospital, Kolkata prevalent at the relevant time irrespective of the fact that whether the petitioner treated himself either in the referred hospital or in other hospital.

12. Similarly, in *Subrata Pal v. State of Tripura and Ors.* WP(C) No. 370 of 2001, and in *Samir Kanti Sarkar v. State of Tripura and Ors.* WP(C) No. 278 of 2007, this Court directed the State respondents to re-examine the bills submitted by the petitioner of those cases and allow reimbursement of the amount contained in the bills, which, is admissible as per the rate of referral hospital, i.e., SSKM Hospital Kolkata.

13. This Court is unable to accept the submission of Mr. Deb, Learned Counsel for the petitioner that the petitioner is entitled to get his medical reimbursement as per the RTI Institute Kolkata where he was actually treated as there is no endorsement from the SSKM Hospital that the petitioner could not be admitted by them due to non-availability of bed.

14. In view of the aforesaid settled position, this Court has no hesitation to come to a conclusion that the petitioner did nothing wrong by admitting himself in RTI Institute instead of the referral Hospital i.e., SSKM Hospital as a surgical operation was urgently required to save his life. In *Ranjit Kumar Debnath Baidya (supra)*, this Court observed that there is no doubt that an employee is supposed to follow the Rules/Orders/administrative order passed by the authorities relating to reimbursement of medical bill (s). But that does not mean that even if his bypass operation (CABG) or any other treatment was emergently required to save his life, he should not go for that and he has to stand in queue in the referred hospital and has to wait till his turn will come for admission and treatment in the referred hospital to follow the Memorandum of the authority at the cost of his life. Even in the case of *Anil Kr. Sarkar v. State of Tripura and Ors.* WP(C) No. 426 of 2006, this Court noted that the petitioner of that case shall be entitled to reimbursement of his medical expenses in terms of the memorandum of Finance Department at the rate of SSKM Hospital, Kolkata prevalent at the relevant time irrespective of the fact whether the petitioner of that case treated himself either in the referral hospital or in any other hospital.

15. For the aforesaid reasons, this Court is of the considered opinion that the petitioner is entitled to reimbursement of his medical expenses at the rate of the referral Hospital, i.e., the SSKM Hospital, Kolkata prevalent at the relevant time. Accordingly, he is directed to re-submit the bills as returned by the authorities within fifteen days from today and on resubmission of the aforesaid bill, the respondents authorities shall re-examine the same and allow re-imbursement of the. amount which is admissible to the petitioner as per the rate of SSKM Hospital, Kolkata prevalent at the relevant time within two months from the date of resubmission of the bill by the petitioner.

16. In the result, the letter dated 17.8.2006 (Annexure-P/6 to the writ petition) of the Director of Health Services, Government of Tripura, respondent No. 4

herein to the Director of Fire Service, Government of Tripura, respondent No. 3 herein wherein it has been stated, inter alia, the medical reimbursement claim submitted by Sri Nirmal Ch. Sarkar, Fireman of Fire Service Department for his treatment at Rabindranath Tagore International Institute of Cardiac Sciences, Kolkata is not admissible as the said institution is not recognized at the Government of Tripura stands quashed.

17. This Court again and again gave direction to the State respondents not to withhold the medical bills of the employees, if admissible in terms of the memorandum of the Finance Department. But then also the departments are refusing the genuine medical bills submitted by the employees for reimbursement. The Chief Secretary of the State is requested to kindly direct the concerned authorities so that the poor employee belonging to Group-C and D, like present petitioner should not be forced to approach the court of law when they are entitled to the medical reimbursement according to the Government scheme.

18. With the above observation and direction, this writ petition is disposed of.

No. cost.