

(2016) 02 RAJ CK 0042
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6447/2013

Om Prakash Upadhyay

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 309

Citation : (2016) 02 RAJ CK 0042

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : Vineet R. Dave for Rajesh Joshi, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

Jaishree Thakur, J.—1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India to claim medical reimbursement.

2. The petitioner was working as Store Superintendent at Pali Zila Dugdh Utpadak Sahakari Sangh Limited, Pali. He suffered severe chest pain and was rushed to Goyal Hospital, Jodhpur on 18.11.2010. His condition deteriorated further and he was put on ventilator, during which time he went into a coma. The Goyal Hospital referred the petitioner to the Sterling Hospital, Ahmedabad where he remained and after making recovery he was discharged on 30.11.2010. The medical expenses for his treatment at Sterling Hospital came to Rs. 1,05,911.83 and had to bear ambulance transport charges from Goyal Hospital to Sterling Hospital and back to Jodhpur amounting to Rs. 41,648/-. The petitioner being in service was entitled to recover the medical expenses from its employer and submitted his medical bills. As the same were not being released to him, he submitted a legal notice dated 17.2.2013 asking for reimbursement of the entire expenses along with interest. On failure of the State to reimburse the medical bills, the present writ petition has come to be filed.

3. It is contended by learned counsel appearing on behalf of the petitioner that

he was admitted at Goyal Hospital, which is on the approved list of hospitals at Jodhpur. Since the said hospital was not able to treat him, they referred him to Sterling Hospital at Ahmedabad. It is argued that the petitioner under normal circumstances would have to take permission to be treated at the hospital other than one approved hospital by the State but since he was in a coma, it was on the recommendation of the Goyal Hospital, who referred his case for further treatment to Sterling Hospital at Ahmedabad and as such, he is entitled to be reimbursed his medical expenditure.

4. In reply it is submitted that Sterling Hospital is not recognized by the respondent-State and as such, the expenses borne by the petitioner in his treatment shall not be met by the State Government.

5. I have heard learned counsel for the petitioner and have perused the record of the case.

6. Admittedly, the petitioner being a government employee, is entitled to receive medical reimbursement for the treatment he has undergone. The main hurdle in the release of the amount is that the treatment was undertaken by the petitioner outside Rajasthan.

7. The Rajasthan Civil Services (Medical Attendance) Rules, 2008 (for short "the Rules of 2008") framed under the proviso to Article 309 of the Constitution of India, allows for medical reimbursement to all Government Servants. The rule 10 of the Rules of 2008 provides "Treatment, including specialised treatment, outside Rajasthan in hospitals other than Government hospitals." Rule 10 of the Rules of 2008 reads as under:-

"10. Treatment, including specialised treatment, outside Rajasthan in hospitals other than Government hospitals:-

(1) With advanced medical facilities and treatment of serious diseases now being made available to government servants in Government hospitals and also approved hospitals within State, government servants shall not be provided facility of medical attendance and treatment in hospitals outside the State, without reference.

(2) Government servant and the members of his family suffering from a disease for which treatment is not available in any Government Hospital in the State, including SMS Hospital, Jaipur or any approved Hospital within Rajasthan, can be referred for medical attendance and treatment upon certification by the Principal of a Medical College on the basis of opinion of the Medical Board to the effect that the treatment of a particular disease from which the patient is suffering is not available within Rajasthan and it is considered absolutely essential for the recovery of the patient to have treatment in a specific hospital outside the State, where such treatment is available. Upon such reference and treatment being availed of, following charges/expenses shall be reimbursable:-

(i) Cost of Allopathic Drugs, Medicines, Vaccines, Sera or other therapeutic

substances inclusive of taxes paid, if any, reimbursable under these rules.

(ii) Sums actually paid to the Hospital/Institution on account of medical attendance and treatment including charges for surgical operations, nursing facilities and accommodation of entitled class.

(iii) Traveling allowance for journey by rail/road from duty point at the station at which the patient falls ill to the place of treatment outside the state and back to a single fare of the class to which his classification entitles him under Rajasthan Traveling Allowances Rules. Such Traveling allowance shall also be admissible for attendant, if the authorized Medical Attendant Certifies in writing that it is unsafe for the patient to travel unattended and that an Attendant is necessary to accompany the patient to the place of treatment and back.

(iv) In case a government servant travels by air or by rail in the class higher than his entitlement for this purpose, the Traveling allowances shall be limited to single fare of the class to which his classification entitles him under Rajasthan Traveling Allowance Rules. Similarly if he travels by Road in the class higher than his entitlement, the Traveling allowance shall be limited to single fare of the class to which his classification entitles for journey by Road under Rajasthan Traveling Allowances Rules.

(v) For the purpose of reimbursement, the original receipt issued by such hospital/Institution and vouchers of medicines etc. shall be signed by the Doctor on duty of that hospital or counter signed by the Authorized Medical Attendant of Government Hospital on whose advice the treatment outside the state was undertaken.

(3) If a Government servant undertakes indoor treatment of life threatening disease like kidney, heart and some sudden accident, in a private hospital outside the state, without reference in case of emergent circumstances, Government may allow reimbursement of the medical expenses incurred up to the cost of treatment, that would have been incurred had the treatment been taken in S.M.S Hospital Jaipur and if facility of that treatment is not available in S.M.S Hospital Jaipur up to the Cost of treatment at AIIMS, New Delhi, upon such emergent circumstances being explained satisfactorily. No Travelling Allowance shall be admissible in such cases."

Rule 10(1) specifies that government servant shall not be provided facility of medical attendance and treatment in hospitals outside the State without reference and rule 10(2) specifies that Government Servant and the members of his family suffering from a disease for which treatment is not available in any Government Hospital in the State, including SMS Hospital, Jaipur or any approved hospital within Rajasthan, can be referred for medical attendance and treatment upon certification by the Principal of a Medical College on the basis of opinion of the Medical Board to the effect that the treatment of a particular disease from which the patient is suffering is not available within Rajasthan. Upon such reference, the State of Rajasthan would then remit medical expenses.

In the present case, the petitioner was admitted at Goyal Hospital, Jodhpur which is an approved hospital. He was admitted in the Hospital with severe chest pain and eventually was put on ventilator and was in a coma. Since the doctor at Goyal Hospital and Research Centre was unable to treat, they referred to "higher centre for further management" and reference was to Sterling Hospital at Ahmedabad. Since the petitioner was in a coma, he was obviously unable to seek any approval from the Medical Board or get any certification done for referring his case to a hospital outside Rajasthan. It is to be noted that the prime concern at that relevant point of time is to save the life of the patient and time is of the essence.

8. This Court in *Gyanendra Kumar Pareek vs. State of Rajasthan & ors.*, reported in , 2009 (4) WLC (Raj.) 95 has held that when a family member suffers from cardiac ailment, the main object is to save the life of the family member and at that time, which ever hospital best suited, could be utilized to save human life in such situation. The State cannot insist that there was no reference.

9. A Division Bench of this Court in *Anil Kumar Surolia vs. State of Rajasthan* reported in , 2005(3) WLC (Raj) 396 has held that:-

"Government cannot insist upon an employee to get himself treated at recognized government institution. All that the Government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognized government institution. Reference in this connection may be made to the judgment of the Hon'ble Supreme Court in *Surjit Singh vs. State of Punjab* reported in , AIR 1996 SC 1388 and *State of Punjab & ors. vs. Mohan Lal Jindal* reported in (2001) 9 SCC 217. Consequently, the reimbursement of the medical expenses borne by the State Government employees and pensioners has to be done even if the treatment is undertaken at unrecognized hospital outside the State even though reference may not have been taken prior to treatment."

10. Similarly, in the present case, the petitioner was obviously in a coma and there was no adequate time or opportunity for his family members to seek a reference from a Medical Board. Goyal Hospital at Jodhpur being an approved hospital, referred the case of the petitioner to Sterling Hospital, Ahmedabad. Thus, the stand of the State in refusing to reimburse the medical expenses is wholly unwarranted. In such a situation when there was emergent need to refer the petitioner who was in a coma for better and proper treatment, without a referral of Medical Board or as specified under rule 10 of the Rules of 2008, the petitioner would certainly be entitled to reimbursement of medical expenses borne by him in accordance with the Rules of 2008. Rule 6(2)(d) of the Rules of 2008 provides that:-

"6(2)(d) - Ambulance charges incurred to carry patient from place of illness to a government hospital, vice versa or from one government hospitals to another for treatment or examination."

This provision also provides for reimbursement of ambulance charges.

11. Consequently, the writ petition is allowed and it is hereby directed that the respondents shall reimburse the amount of medical expenses borne by the petitioner for his treatment at Jodhpur, if not already released and at Sterling Hospital, Ahmedabad as well as ambulance charges in accordance with the Rajasthan Civil Services (Medical Attendance) Rules, 2008. The reimbursement shall be made within a period of four weeks from the date of receipt of the copy of this order. The amount shall also carry interest @ 9% per annum with effect from the date on which the bills were presented to the date of the actual payment. If the payment is delayed beyond the period of four weeks, interest shall stand enhanced to 12% per annum.