
(2014) 02 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11888/2008

Omprakash Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : (2014) 02 RAJ CK 0028

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Ajeet Maloo, Advocates for the Appellant; Anurag Kalavatiya for J.M. Saxena, Additional Advocate General, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been preferred by petitioner Omprakash Jain, who retired from the post of Senior Reader from the Court of Additional District Judge No. 2, Bharatpur on 31/3/2008, challenging the order dated 28/1/2008 (Ann. 3) by which, the respondents declined to reimburse the amount of Rs. 1,13,039/- towards the medical bills submitted by the petitioner for reimbursement. It has been prayed that the said order 28/1/2008 (Ann. 3) be quashed and set-aside directing respondents to reimburse the same with interest @12% p.a. from the date of submission of application for reimbursement of the medical expenses dated 6/10/2007 till its realization.

2. Shri Ajeet Maloo, learned counsel for the petitioner has argued that petitioner had suffered mild heart attack on 14/5/2007. His angiography was conducted in S.M.S. Hospital on 22/5/2007. He thereafter again suffered major heart attack on 28/6/2007. The members of his family took petitioner to the Sawai Man Singh Hospital, Jaipur (for short, "SMS") however, they were informed that the machines for angiography and angioplasty were not functioning in the said hospital on that day. This fact was published in the newspaper Rajasthan Patrika on 2/7/2007. In those circumstances, petitioner was got admitted in Santokbha Durlabhji Memorial Hospital, Jaipur (for short, the "SDMH") on 29/6/2007. He was advised for urgent bye-pass surgery. Dr.Ravindra Sharma, Cardiothoracic &

Vascular Surgeon of the SDMH operated upon him for bye-pass surgery on 2/7/2007. He was discharged from the SDMH on 10/7/2007. Petitioner remained hospitalized in SDMH from 29/6/2007 to 10/7/2007. He has incurred total medical expenditure of Rs. 1,13,039/- for his treatment. After recovery, petitioner submitted application to the Additional District Judge, Bharatpur on 6/10/2007 claiming reimbursement of the aforesaid medical expenses. His application was forwarded to the Registrar General, Rajasthan High Court, Jodhpur. Secretary, Law Department, Jaipur and then to the State Government vide letter dated 28/1/2008 informed the Registrar General, Rajasthan High Court, Jodhpur that claim of the petitioner cannot be reimbursed because there is no provision in the Rajasthan Civil Services (Medical Reimbursement) Rules, 1970 (for short, the "Rules of 1970") for treatment in a non-government hospital. The Registrar General in turn sent this communication to the Additional District Judge, Bharatpur on 17/3/2008. Copies of those letters are on record. Petitioner thereafter submitted a representation on 28/6/2008 to the Additional District Judge, Bharatpur relying on the judgment of the Supreme Court in Surjit Singh Vs. State of Punjab and Others, and prayed that he may be granted reimbursement. Learned counsel for the petitioner has submitted that the treatment had to be taken in emergent circumstances as on the date on which petitioner suffered massive heart attack; neither the machines of angiography nor angioplasty were functioning in the SMS Hospital, which fact is substantiated from the newspaper report dated 2/7/2007 (Ann. 1). Petitioner has taken this plea in para 4 of the memo of writ petition, which is duly supported by his affidavit. Learned counsel for the petitioner has submitted that the SDMH has subsequently under the Rajasthan Civil Services (Medical Attendant) Rules, 2008 has been included in the approved list of the government, where the government employees can take treatment. It is therefore prayed that the writ petition be allowed.

3. Per contra, Shri Anurag Kalavatiya, learned counsel for the respondents has opposed the writ petition and submitted that no credence can be attached to the newspaper report. Medical bills submitted by the petitioner could not have been reimbursed because as per the Rules of 1970, petitioner was entitled to take treatment only in a government hospital. The SMS Hospital, Jaipur is equipped with latest technology, machines and best doctors. If the petitioner had taken treatment in SDMH, he did so, on his own risk. The respondents were therefore justified in declining the claim of the petitioner. It is therefore prayed that the writ petition be dismissed.

4. Upon hearing learned counsel for the parties and perusing the material available on record, I find that petitioner was compelled to take treatment in SDMH in the emergent circumstance when he had suffered massive heart attack on 28/6/2007 and on that day, the machines of not only angiography but also angioplasty were not functioning in the SMS Hospital. Therefore, there was no option left for the family members of the petitioner except to take him to another hospital, or else there was imminent risk to his life. In these circumstances they

took him to SDMH on 29/6/2007, where petitioner was advised for urgent by-pass surgery, which was conducted in the said hospital on 2/7/2007. All these averments were made by the petitioner in para 4 of the writ petition, which has been replied to by respondent No. 1. In reply, it is stated that facts narrated in this para are denied for want of knowledge. So far as Annexure-1, paper cutting of Rajasthan Patrika is concerned, is not admitted and on that basis the writ petition of the petitioner cannot be adjudicated. In the newspaper report, it was stated that due to the strike of the employees in the emergency ward of SMS Hospital, the work on the machines of angiography and angioplasty could not be carried out for four days. These facts have not been specifically denied by the respondents. Now, when the Santokba Durlabhji Memorial Hospital, Jaipur has been included in the approved list of the government, where the government employees can take their treatment, respondents cannot possibly dispute that it was a genuine hospital, where treatment was taken by the petitioner.

5. In the result, the writ petition succeeds and it is hereby allowed. The impugned-order dated 28/1/2008 (Ann. 3) is quashed and set-aside. The respondents are directed to reimburse the amount of Rs. 1,13,039/- to the petitioner with interest @6% p.a. from the date of submission of application i.e. w.e.f. 6/10/2007 till its actual payment to the petitioner.

6. Compliance of the judgment shall be made within two months from the date, copy of this judgment is produced before the respondents.