
(2009) 11 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 2446 of 2006

Rajendra Prasad Yadav

APPELLANT

Vs

The Rajendra Agricultural University

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0060

Final Decision : Allowed

Judgement

Jayanandan Singh, J.—Heard learned Counsel for the petitioner and learned Counsel for the respondents.

2. Petitioner has filed this writ application for quashing of letter No. 1226 dated 4.10.2005 (Annexure-1), issued under the signature of Director of Administration of the respondent-University, rejecting claim of the petitioner for medical reimbursement of expenses of his treatment and operation undertaken in Christian Medical College & Hospital (hereinafter referred to as "C.M.C"), Vellore precisely on the ground that the said Institution is a private institution and not recognized by the State Government for the purpose of medical reimbursement under the Rules.

3. It is not disputed that petitioner is a class III employee of the Rajendra Agricultural University (hereinafter referred to as "the University"). Sometime in the year 2000 he seriously fell ill with some cardiac problem. He was rushed to Indira Gandhi Institute of Cardiology, (hereinafter referred to as "the Institute") a unit of Patna Medical College & Hospital, Patna. He underwent treatment there. However, as it appeared that he was suffering from Rheumatic Heart Disease, and he required more specialized treatment and operation, the Director of the Institute referred him to C.M.C., Vellore, vide Annexure-9. Accordingly, in January, 2002 after arranging for some money, he proceeded to C.M.C. Vellore where he was examined and some treatment was advised to him for some time. A time schedule was fixed and he was advised to undergo heart surgery, for which he had to visit there again in August, 2003. The surgery there involved a

considerable cost. Therefore, he applied to the Principal of the College, where he was employed, for medical advance. The same was considered by the Principal of the College. He recommended for advance of Rs. 10,000/- as an interim measure. Accordingly, by order dated 29.08.2003 of the Director, Administration, of the University, an advance of Rs. 10,000/- was released to him. Petitioner underwent operation at C.M.C. Vellore in August, 2003 and, after recovery, returned back. He submitted his medical bills in the College, which was referred by the Principal to the Director, Administration, through his letter dated 7.6.2004 (Annexure-3). Thereafter some query was made from the petitioner and he replied to the same by Annexure-4 dated 3.6.2004. It appears that some query was made from the Principal of the College also, to which he replied through his letter dated 13.12.2004, vide Annexure-5, However, the claim of the petitioner was finally rejected by the impugned order (Annexure-1) of the respondent Director, Administration.

4. Learned Counsel for the petitioner submits that petitioner was initially admitted in the Indira Gandhi Institute of Cardiology, P.M.C.H., where it was found that the specialized treatment and operation he needed, was not possible there. Accordingly, he was referred to C.M.C., Vellore. Therefore, under the advice and recommendation made by the Institute, which was a Government Institution, he had to proceed to C.M.C. Vellore. He also submits that the said reference was taken into account and accepted as valid by the University and, therefore, an amount of Rs. 10,000/- was released as an advance to him under the orders of the Director, Administration. He submits that since petitioner was recommended by a Government Institution and the same was in the knowledge of the Administration of the University and for that advance was released to him, it was not open to the University to deny his medical reimbursement on the ground that the said institution at Vellore was a private institution and not recognized by the Government under the rules for entitlement for receiving treatment and for medical reimbursement.

5. Learned Counsel for the petitioner, in this context has referred to a number of judgments in similar circumstances, namely, judgment of the Apex Court in the case of Surjit Singh Vs. State of Punjab and Others, in the case of State of Karnataka and Another Vs. Sri R. Vivekananda Swamy, a judgment of this Court in the case of Lal Bahadur Gupta Vs. The State of Bihar and Others, and an unreported judgment of this Court dated 13.08.2007 in the case of Biresh Chandra Chatterji v. State of Bihar and Ors. C.W.J.C. No. 4485/05. He submits that when the question of life and death is before a Government servant, it will be unconscionable for the Government to compel him to get his treatment in a particular institution which only is recognized by the Government. He submits that, in the case of a serious illness of a head of the family, it is not only the survival of the government servant, but the security of his whole family is at stake. Therefore, any human being, whether a government servant or otherwise, has a right to get his treatment for any serious ailment and particularly a heart operation done in any institution of the Country in which he has faith and

confidence. He cannot be compelled to get the said operation done in an institution where he has doubts about its success. Moreover, Indira Gandhi Institute of Cardiology, P.M.C.H is a specialized institution, and when it had recommended the petitioner to get the operation done at C.M.C., Vellore, it was natural for the petitioner to believe that he could get the best treatment only there and no other place. Hence, after having been referred to C.M.C., Vellore by the authorities of the said Institute, it was not possible for him to compromise safety of his life by getting the operation done at any other institute or institution as recognized by the Government.

6. Counter affidavit has been filed in the case in which the respondents have taken the stand that, C.M.C. Vellore was not a recognized institution under the Rules. Therefore, petitioner was not entitled for reimbursement of expenses incurred in his treatment and operation there. Referring to Annexures 3 and 9, learned Counsel for the University submits that petitioner was not in a hurry and it was not a case of emergency. Therefore, petitioner was required to submit an application for permission to get his operation done at C.M.C., Vellore which only could make him entitled for reimbursement of his expenses incurred there.

7. This submission of the learned Counsel for the University is too technical to be accepted. Facts show that after initial investigation at C.M.C., Vellore, when it was clear to the petitioner that he had to undergo operation, he had applied for advance to the University, which will be evident from Annexure-2 itself. Annexure-2 shows that his application was considered by the University and an advance of Rs. 10,000/- was released to him under the signature of the Director, Administration. Hence, it is clear that the authorities of the University had full knowledge of the fact that, on being duly recommended by the said Institute, a government institution, petitioner proposed to get himself operated upon at C.M.C., Vellore only and nowhere else.

8. Learned Counsel for the University points out that the order of the Director Administration, as contained in Annexure-2, contained some conditions which included that he will get the treatment done within three months in some government hospital. As said earlier, it is always a matter of satisfaction of a patient, to get best possible treatment for his ailment, within his means and subject to availability of fund and, when the question of life and death is before him and treatment involves a complicated heart surgery, it will be inhuman approach of his employer to compel him to get his treatment only in government hospitals or in hospitals recognized by the Government which he may not believe to be the best for him.

9. It is common knowledge that everyday medical science is advancing and more and more specialized institutions are coming up. This is happening more in private sector with which most of the government institutions are not able to compete, for various reasons. Therefore, if the best possible treatment is available only in a private institution and question of life and death is before a person, he cannot be compelled to get the treatment in an institution not

appearing him as safest and best for him. The Government Rule does contain a long list of institutions recognized by it as Appendix 10. But the fact remains that every day more and more highly specialized institutions are coming up and/or developing as specialties and super-specialty in particular fields. Therefore, the list enclosed with the Government letter as Appendix 10 cannot be treated as exhaustive. The question of urgency is also not relevant when the treatment involves a complicated heart surgery involving considerable expenditure, which takes time for a class III employee to arrange. It is not the case of the University that it was ready to advance the entire estimated expenditure as advance on fulfilment of its terms and conditions by the petitioner. Right of self-preservation of one's life by getting best possible treatment has been recognized as species of the right to life enshrined in Article 21 of the Constitution of India by the Apex Court in the case of *Surjit Singh v. State of Punjab* (supra) in paragraph 10 in the following words:

It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law.

10. It may be pointed out that, from the scheme of the Rules, it is clear that, the framers of the Rules had also left the scope for consideration of the claims of those Government employees also who were not covered by the Rules in strict sense. Thus, under Rule 26 of the Rules, the State Government was bestowed with the powers to relax the provisions of the Rules and allow such treatment in exigency of the situation. Rule 26 of the Bihar Medical Attendant Rules was noticed by this Court in the case of *Bires Chandra Chatterjee* (supra) and suitable directions were issued to the respondents to exercise their jurisdiction in respect of the claim of the medical reimbursement of the said petitioner. This Court also feels it appropriate, in facts and the circumstances of this case, to direct the respondents to consider claim of the petitioner for medical reimbursement of his medical bills by relaxing the rules in exercise of their powers under Rule 26 of the Rules.

11. In the circumstances, Annexure-1 is quashed. The respondents are directed to consider the bills of the petitioner for reimbursement of his expenses incurred in his treatment at C.M.C. Vellore and for operation which he underwent there. It may be that, for travelling and accommodation, petitioner's entitlement may be governed by the Rules in reference to the post he holds. Hence, to this extent, they can consider entitlement of the petitioner under the Rules. But so far as charges of operation and medication are concerned, the expenses incurred by the petitioner incorporated in his bills have to be reimbursed in full.

12. This Court further finds that claim of the petitioner for reimbursement of his medical bills was rejected by the Director, Administration, of the University on technical grounds and mechanically without considering the genuineness of his

claim and University's power to relax the provisions of the Rules in the exigency of the situation. Therefore, this Court awards interest at the rate of 6% on the amount due to the petitioner from the date of submission of the bills till the date of its payment.

13. The writ application is, accordingly, allowed with the aforesaid observations and directions.