

(2016) 08 PAT CK 0056

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8003 of 2014

Ramesh Sharma

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) LIC 3632 : (2016) 4 PLJR 670

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Amitesh Kumar, Advocate, for the Petitioner; Mr. Harish Kumar, GP 8, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.(Oral)—Petitioner is a constable in Bihar Military Police. He is constable No. 327. He ended up with certain complications relating to the eyes some time in the month of February, 2012 and visited Indira Gandhi Institute of Medical Sciences for medical advice and check-up as an outdoor patient. The doctor of the said institute recommended some medications but also opined that he required urgent treatment either at All India Institute of Medical Science, New Delhi or a reputed institution known as Sankara Nethralaya in Chennai. The above endorsement is available in Annexure-1. 2.

2. The Commandant. BMP-10 granted permission to the petitioner on 24.02.2012. Annexure-4 is the order in favour of the petitioner. Petitioner decided to rely on Sankara Nethralaya and obtained treatment at Sankara Nethralaya as Annexure-3 series will certify that position. From a reading of the discharge summary it is evident that it was not one of those routine kind of consultations but was in an emergent situation to save the vision of petitioner's left eye. He had to undergo some surgical intervention as well, which obviously incurred expenses under the treatment, consultation and medication head.

3. When the petitioner submitted a bill for reimbursement of the medical expenses, the same has been rejected vide order dated 21st June, 2013, which is Annexure-9 to the writ application. The reason for such rejection is that the petitioner had taken medical facility from an institution which is not in the list of approved hospitals.

4. Counsel for the petitioner submits that looking at the emergent situation where saving the eye of the petitioner was paramount, he did approach an institution which is approved but since they threw up their hands and advised further medical treatment either at All India Institute of Medical Science, New Delhi or Sankara Nethralaya, Chennai, the petitioner went by advice and also obtained the permission of the Commandant. The Commandant authorised and approved the request of the petitioner for further treatment looking at his condition and advice. Now that the petitioner has obtained medical treatment as well as medical intervention to save his eyes, the respondent authorities cannot be permitted to take a specious plea that the institution in question is not an approved institution.

5. This Court can take judicial notice of the fact that since AIIMS, Delhi is overloaded with patients beyond their capacity and ability, a common man cannot avail medical support or intervention at a short notice. That could be one of the reasons for the petitioner to impose trust and faith in Sankara Nethralaya at Chennai. The petitioner has obtained treatment. It is not a matter of dispute. Petitioner did get a reference from the approved medical institution of the Bihar i.e. IGIMS, Patna and he was also permitted to avail such a facility by the Commandant, BMP.

6. In view of the above, the bona fide of the petitioner's claim cannot be a subject matter of arguments or dispute.

7. The question arises now is whether the reason granted or assigned in the impugned order, contained in Annexure-9, requires to be interfered with or not. There are certain judgments on such issues which had been raised before the High Court even earlier and this Court has the benefit of such opinions in the case of Lal Bahadur Gupta v. State of Bihar and others, 2008 (2) PLJR 182, Rajendra Prasad Yadav v. Rajendra Agriculture University and others, 2010 (1) PLJR 505 as well as the case of Ravi Shankar Kumar v. State of Bihar and others, 2007(3) PLJR 63.

8. However, the case of Lal Bahadur Gupta seems to cover the situation being faced by the petitioner and the learned Single Judge while dealing with such issues and on placing reliance not only on some other decisions of this Court but even Hon`ble Supreme Court did come to a considered opinion and expressed its anguish in following terms:

"11. To my mind, the difference in treatment within the State of Bihar and outside the State from financial angle, is primarily one of travelling expenses payable according to the official standing of the employees along with one

companion. For such a trivial matter as travelling expenses, the State Government is at war with its employees of the category of "lesser mortals". If the same hospital of outside had set-up a branch in Patna, the expenses for such medical treatment would be the same and prior permission may not have been required, travelling expense making the entire difference. "

9. The Court further gave interpretation to Rule 26 of the Bihar Medical Attendance Rules, which deals with the power of the Government to grant concessions relating to medical attendance or treatment not authorised by these rules. The Court, therefore, read into that provision of Bihar Medical Attendance Rules, 1947 to empower the State Government to make leeway and concession in matters of such treatment having been obtained from an institution or hospital not authorised or not approved by the State of Bihar.

10. In the opinion of the Court, the ratios of the decisions, referred to above, do answer the questions raised by the petitioner and support the case for payment of the medical expenses incurred by him.

11. In view of the above, Annexure-9 is quashed. Writ application is allowed.

12. A direction is issued upon the respondent authorities to take a fresh decision and authorise payment to the petitioner of his medical reimbursement.

13. The Court further is of the opinion that keeping in view the reputation which the institution enjoys in society as such; the bills so raised by them cannot be doubted in any manner because it is not one of those private institutions or hospitals which believes in encumbering either a patient or an organisation merely because they can do so.

14. The decision in question must be taken within a period of three months from the date of production of a copy of this order.