

(2009) 11 PAT CK 0057
In the Patna High Court

Ran Vijay Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Constitution of India, 1950 — Article 21, 41, 47

Citation : (2009) 11 PAT CK 0057

Hon'ble Judges : Navin Sinha, J; Kishore K. Mandal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the appellant and learned Counsel for the State.
2. Separate counter affidavits have been filed on behalf of the Deputy Director, Health Services and the Circle Officer, Aurangabad. The counter affidavit of the Deputy Director, which is completely noncommittal and evasive, casts a responsibility on the Revenue and Land Reforms Department. The latter has not considered it necessary to file any affidavit.
3. Learned State Counsel acknowledges that he represents both the Departments. Whether it be one wing of the State or another, this Court is not the agency for coordination between them.
4. The counter affidavit of the Circle Officer, Aurangabad states that the Joint Director, Health Services had rejected the claim for reimbursement of medical expenses as prior permission was not obtained before going to a private Hospital. It then reiterates the counter affidavit filed in the writ application. The counter affidavit filed in the writ application reiterates absence of prior permission before having proceeded for treatment outside the State.
5. The impugned order acknowledges the right of the appellant under Article 21 of the Constitution of India read with Articles 41 & 47 of the Directive Principles of the State Policy of the responsibility of the State to make quality medical

treatment available to its citizens. However, the writ petition came to be dismissed on the premise that it was not a case of urgency and, therefore, invocation of relaxation power under Rule 26 of the Bihar Medical Attendants Rules was not warranted in the facts and circumstances of the case.

6. The petitioner is an employee of Aurangabad Collectorate. His wife was admitted at a local Hospital for removal of Uterus on 21.1.2004. During surgery she was suspected to have cancer and advised to proceed to Mumbai for immediate treatment. She was examined by the Doctor at Jaslok Hospital, Mumbai when on 13.2.2004 she was diagnosed of having cancer of Ovary of fourth stage. She was immediately operated upon on 14.2.2004 followed by a second operation on 17.3.2004. The petitioner is stated to have sent intimation by registered post to the Director-in-Chief, Health Services, Government of Bihar as also mentioned in his letter dated 20.7.2005.

7. Learned Counsel for the appellant on that basis submitted that it was a case of emergency and that the order impugned was not sustainable.

8. Cancer is one of the diseases to which a complete remedy is yet to be found by mankind. This Court takes judicial notice of the fact that Jaslok Hospital at Mumbai is one of the premier nationwide institutions for treatment of cancer. The matter pertains to the year 2004. It is not the case of the Respondents in their counter affidavit either before the learned Single Judge or before us that the State has presided adequate facilities for treatment of cancer much less on the date that the petitioner's wife was diagnosed.

9. A Bench of this Court in Ram Sagar Ram and Another Vs. The State of Bihar and Others has held as follows:

Before I part with this case I may observe that the Bihar Medical Attendance Rules framed in 1947 i.e. more than five decades ago have become archaic. Without going into the question as to whether there was any justification for not making any provision for outside State treatment at the relevant time, a judicial notice can be taken of the fact that most of the serious ailments which are hazardous to life require specialized treatment which is not available in the State of Bihar much less in Government Hospitals, and therefore the patient perforce has to go to New Delhi, Mumbai, Vellore or the like for better treatment. It is therefore only appropriate to make suitable amendments in the Rules. As a matter of fact need of the hour is to frame a comprehensive policy or rules as done in the State of Punjab, referred to above, rather than supplement them by executive orders and circulars from time to time. Rule 26 empowers the Government to permit outside State treatment and attendance as a matter of discretion. Inasmuch as guidelines are not laid down the discretion is more often than not abused. While persons close to the powers that be manage to get permission, the lesser mortals are not so fortunate to get such permission resulting in heart burning and frustration. So far as the requirement of prior approval of the Medical Board is concerned, in cases of emergency the provision

is totally unjustified, meaningless and unworkable. These things can be taken care of in a well laid down policy be consistent with not only Articles 21 and 47 but also Article 14 of the Constitution.

10. We are satisfied that the petitioner's wife suffering from fourth stage of cancer of ovary, nothing more is required to demonstrate that it was a case of urgency. We are fully supported in our view in the opinion of the experts at Jaslok Hospital Mumbai, who not only operated the wife of the petitioner forthwith but it required a follow up operation also. We, therefore, find it difficult to uphold the judgment under appeal.

11. The treatment vouchers of the petitioner's wife are stated to have already been signed by the District Magistrate and forwarded to the Government. We, therefore, direct that the treatment vouchers submitted by the appellant be processed forthwith and for which purpose We further direct that should the State-Respondents require any clarification or verification from the Jaslok Hospital at Mumbai, considering that the appellant is a Clerk in Auranbagad Collectorate with limited resources, when the State has plethora of resources available at its disposal including by electronic media as also by sending an emissary, let the entire exercise be completed by the State Respondent and legitimate dues be paid to the appellant in accordance with law within a maximum period of three months from the date of receipt and/or production of a copy of this order.

12. The judgment and order dated 14.5.2007 passed in CWJC No. 15494 of 2005 is set aside. The appeal stands allowed.