
(2008) 01 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 55 of 2007

Ranjit Kr. Debnath Baidya

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2008) GLT 816 Supp

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : P.R. Bauman, for the Appellant; T.D. Majumdar, for the Respondent

Judgement

U.B. Saha, J.—By filing this writ petition, the Petitioner has approached this Court for a direction to the Respondents for making payment, as per policy of the Govt. of Tripura, of bills submitted by him amounting to Rs. 1,16,225/- on reimbursement towards medical expenses, which he incurred for his open heart bypass surgery (CABG) and purchase of medicines and also for declaring the Memo dated 9.8.2005 of the Finance Department, Govt. of Tripura as illegal, arbitrary and contrary to the provisions of the Constitution.

2. Heard Mr. P.R. Barman, learned Counsel for the Petitioner and Mr. T.D. Majumdar, learned Additional Govt. Advocate for the State Respondents.

3. The facts stated in the writ petition, in short, are as follows:

The Petitioner was serving as an Assistant Teacher in the Radhamohanpur High School (Primary Section) under Jirania School Inspectorate of the Directorate of School Education, Government of Tripura. On 27.4.2005 while he was suffering from severe chest pain, he was admitted to the G.B. Hospital, Agartala and he was discharged from the hospital on 7.5.2005. Again on 18.10.2005, he suffered from severe chest pain and attended G.B. Hospital, Agartala as an out door patient and he was advised to attend the Medical Board of G.B. Hospital on 24.10.2005 and on attendance to the Medical Board, he was referred to SSKM

Hospital, Kolkata for further treatment. Thereafter, the Petitioner went to Kolkata and got admitted into SSKM Hospital on 19.11.05. On 23.11.05 Coronary Angiogram (CAG) of the Petitioner was done and on the report of CAG, he was referred to Surgical Unit of SSKM Hospital for bypass operation (CABG) and from there he was discharged by Medical Unit of SSKM Hospital, Kolkata on 26.11.2005 with direction to attend CTS OPD for CABG and Cardio OPD after four weeks on Saturday or E/R SOS. The Petitioner attended the Surgical Unit of SSKM Hospital, Kolkata on 30.11.2005 where he was advised admission for bypass operation (CABG). But the Surgical Unit advised him to meet the Medical Officer, Surgical Unit with the report of Angiogram (CAG) on next Saturday i.e. on 3.12.2005 and no admission was given on 30.11.2005. No date for bypass operation (CABG) was also fixed for want of accommodation at that time in the Surgical Unit of the SSKM Hospital.

4. While the Petitioner was staying in a hotel with his wife and son, on 1.12.2005, the Petitioner again suffered a serious attack of heart pain and he was admittedly taken to Peerless Hospital & B.K. Roy Research Centre, Kolkata (hereinafter referred to as "Peerless Hospital"). Considering deterioration of the health and the urgency and severeness of heart disease and massive pain, he was admitted there. To provide urgent medical aid the date of operation was fixed on 3.12.2005 on the basis of report of various tests done in the SSKM Hospital, Kolkata and other tests and the CABG operation of the Petitioner was done; the said Hospital on that day. He was discharged thereafter from Peerless Hospital on 10.12.2005.

5. After completion of his treatment in Kolkata, the Petitioner returned to Agartala and submitted bills of (1) Rs. 9,074/- for his treatment in the SSKM Hospital, (2) Rs. 1,06,215/- for his treatment and CABG operation in Peerless Hospital, (3) Rs. 936/- towards cost of medicines, in total Rs. 1,16,225/- and also a T.A. bill of Rs. 11,633/- to the Director of School Education, Government of Tripura through the Head Master, Radhamohanpur High School, after those were duly certified by the Medical Officer of G.B. Hospital as well as the Head of Department of Agartala Medical College. The bill for Rs. 9,074/- towards the cost of treatment in the SSKM Hospital was sanctioned by the Director of School Education, the Respondent No. 2 herein, vide Memo dated 19.8.2006 but the other bills were not paid and returned on the ground that the treatment and operation had not been availed by the Petitioner in the Govt. approved Hospital as well as in the referred Hospital.

6. It is the case of the Petitioner that being an Assistant Teacher of the High School (Primary School), he is in the category of "C" of the Government employees and under Memorandum of the Finance Department dated 9.8.2005, he is entitled to medical reimbursement facility for treatment as referred case outside the State of Tripura.

7. Being aggrieved by the aforesaid action of the Respondents-authorities, the Petitioner has filed the instant writ petition. The State-Respondents by filing a

detail counter-affidavit tried to resist the claim of the Petitioner taking a definite stand in paragraph 10, 11, 13 and 17 wherein it has been contended, inter alia, that the Petitioner did not fulfill the condition of Clause 2A(i) of Memorandum dated 9.8.2005, Annexure-12 to the writ petition, as he did not treat himself wholly in the referred hospital.

8. Mr. P. Roy Barman, learned Counsel for the Petitioner submits that the case in hand is fully covered by the decision of the Apex Court as well as of this Court. But even then, the Respondents-authorities are denying the claim for reimbursement of the medical expenses of the Petitioner which he is entitled to according to their own scheme. In support of his contention, he has referred to the decisions of the Apex Court in the case of Surjit Singh Vs. State of Punjab and Others, and also the decisions of this Court in the case of Runu Rajkumari (Phukan) Vs. State of Assam and Others, and Rina Dey v. State of Tripura and Ors. 2006 Supp GLT 201. Mr. Roy Barman further submits that even if an employee is willing to treat himself in the referred hospital, he may not get admission in the said hospital for his treatment in case of emergency for want of accommodation, but to save his own life, he may require to rush to any other hospital nearer to him and he has the right to take steps in self-preservation, without waiting in queue in the referred Hospital for shortage of accommodation. In the instant case also, the Petitioner was suffering from an acute cardiac problem and to save his life, he was brought urgently to an alternative Hospital, namely, Peerless Hospital, though he was referred to SSKM Hospital, where there was shortage of accommodation. Mr. Roy Barman has further contended that such urgent necessity does not require to follow any prescribed norms as self preservation is the necessary condition and it is difficult to receive further instructions at that relevant time. Mr. Roy Barman has further pointed out that in similar cases, this Court again and again gave direction to the State Respondents-authorities not to withhold such type of bill, if the same is admissible in terms of the Memorandum dated 9.8.2005. Annexure-12 to the writ petition of the Finance Department, Government of Tripura.

9. While resisting the submissions of Mr. Roy Barman, Mr. T.D. Majumder, learned Additional Govt. Advocate has tried to submit that the Petitioner is not entitled to the amount as he claimed by submitting those bills because he did not treat himself in the referred hospital as required by the Memorandum dated 9.8.2005. In support of his contention, he relied on a decision of the Apex Court in the case of Chhotu Ram Yadav v. State of Haryana (2005) 13 SCC 393.

10. This Court has given anxious consideration to the submissions of the learned Counsel for the parties and has gone through the records available before this Court, including the Reports cited by the learned Counsel for the parties. It appears from the record that the Petitioner was admittedly referred to SSKM Hospital, Kolkata and he was admitted in the said hospital, but when he was suggested for bypass surgery operation (CABG), he could not get admission in the said hospital and he had to stand in queue for want of accomodation. But he

again suffered from massive chest pain, for which his immediate treatment was required.

11. Now question arises whether he is deprived of getting reimbursement of the medical bills, which he submitted claiming for reimbursement. Answer to the aforesaid question is not at all resintegra after the decision of the Apex Court in the case of Surjit Singh (supra) wherein it is held 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." In that case, an employee of Punjab Government who had been suffering from heart problem got himself admitted and operated upon in a hospital in London for a bypass surgery without subjecting himself to medical examination as per policy of the Government and on such return he submitted a bill for medical reimbursement. The Govt. of Punjab refused to pay the said bill on the ground that no prior approval from the Govt. was obtained in this regard. The Apex Court found the claim of the Appellant as a valid one. Following the decision in the case of Surjit Singh (supra), this Court in the case of Rina Dey (supra) directed the Respondent No. 2 in that case to reimburse the medical expenses of the Petitioner to the extent that the same would have been available to her, had she undergone treatment at SSKM Hospital, Kolkata and the Petitioner shall also be paid travelling allowances up to Calcutta from her place of posting at the relevant time. In this case, the Petitioner, Rina Dey was referred to SSKM Hospital, Kolkata by the Medical Board of GBP Hospital, Agartala, but she treated herself at Bangalore as she suffered from severe pain in her chest and on the advice of the doctors there, she had to undergo ASD Closure i.e. open heart surgery, in order to save her life. In similar situation, this Court again in the case of Anil Kr. Sarkar v. State of Tripura and Ors. W.P. (C) No. 426 of 2006, after considering the aforesaid Memorandum dated 9.8.2005. Annexure-12 to the writ petition, observed that the Petitioner shall be entitled to reimbursement in terms of the memorandum of the Finance Department as the rate of the SSKM Hospital prevalent at the relevant time. The Respondent concerned shall within a period of one month from the date of receipt of this order re-examine the bill to be resubmitted by the Petitioner and allow re-imbursement of the amount which is admissible as per the SSKM Hospital rate prevalent at the relevant time irrespective of the fact that whether the Petitioner of that case was treated himself either in the referred hospital or in any other hospital. This Court also in the case of Runu Rajkumar Phukan (supra) directed the Respondents-Govt. of Assam to reimburse the medical expenditure incurred by the Petitioner in that case for her treatment at a hospital in Madras though the said hospital was neither a referred hospital or a recognized hospital under the Assam Medical Attendance Rules, 1976 and the Amendment Rules, 1995. This Court has also gone through the decision of the Apex Court rendered in the case of Chhotu Ram Yadav(supra) and is of the considered opinion that being the fact of that case is different than the fact of the case in hand, the same has no application.

12. In view of the aforesaid settled position, this Court has no hesitation to come

to a conclusion that the Petitioner did nothing wrong admitting himself for bypass operation (CABG) in the Peerless Hospital, Kolkata on 3.12.2005 as the said operation was urgently required to save his life. There is no doubt that an employee supposed to follow the Rules/Scheme/administrative order passed by the authorities relating to reimbursement of medical bill(s). But that does not mean that even if his bypass operation (CABG) or any other treatment was emergently required to save his life, he should not go for that and he has to stand in queue in the referred hospital and has to wait till his turn will come for admission and treatment in the referred hospital to follow the Memorandum of the authority at the cost of his life.

13. With the aforesaid observation, this Court is of the considered opinion that the Petitioner shall be entitled to reimbursement in terms of the impugned Memorandum of the Finance Department dated 9.8.2005 at the rates of the SSKM Hospital, Kolkata prevalent at the relevant time. The Petitioner is directed to re-submit the bills as returned by the authorities within fifteen days from today and on resubmission of the aforesaid bills, the Respondents-authorities shall re-examine the bills and allow re-imburement of the amount which is admissible as per the SSKM Hospital, Kolkata prevalent at the relevant time.

14. The writ petition stands disposed. No cost.

15. This Court again and again gave direction to the State Respondents not to withhold such bills if admissible in terms of the Memorandum of the Finance Department. Even then, such medical bills of the Government employees claiming for reimbursement of the medical expenditure get rejected. This Court hope and trust that the concerned State Respondents-authorities will not withhold the genuine medical bill(s) of the Government employees submitted for reimbursement of the medical expenditure, if the same is admissible in accordance with the theme.