
(2006) 02 PAT CK 0027
In the Patna High Court

Ravi Shankar Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Citation : (2007) 3 PLJR 63

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. S.B.K. Manglam for the petitioner, and Mr. Shatrbbhu Nath, learned junior counsel to Government Pleader No. 1. This writ petition has been preferred with the prayer to quash letter No. 14/M2-298/2001-3063(14)/Health, dated 6.6.2002 (Annexure-8), issued under the signature of the Deputy Director, Health Services, Government of Bihar, Patna, whereby the petitioner's claim for reimbursement on account of treatment of his late father, has been rejected.

2. According to the writ petition, the petitioner's late father (Banshidhar Jha) was posted as a Village Level Worker in Supaul Circle office. He vomitted blood on 30.9.2001 and became unconscious. He was rushed to Patna and was admitted in the Indira Gandhi Institute of Medical Science, Sheikhpura, Patna (hereinafter referred to as the "I.G.I.M.S."), on 2.10.2001, and was treated up to 17.10.2001. A photo copy of his bed-head ticket is marked Annexure-1 to the writ petition. He was discharged on 18.10.2001, and it appears from the discharge summary dated 18.10.2001 (Annexure-2) that he was referred to the Cardiothoracic Unit and the E.N.T. Unit of the All India Institute of Medical Science, New Delhi (hereinafter referred to as the "AIIMS") for further treatment. It is further stated in the writ petition that he had earlier undergone angioplasty in 1984. He was examined in AIIMS on 24.10.2001, was admitted as an indoor patient on 27.10.2001, and was discharged on 10.12.2001 after full treatment. He had, during the period of his hospitalisation in AIIMS, undergone

Aortic Stent Grafting and had paid total sum of Rs. 2,76,281/- to AIIMS. This position seems to be evidenced by the certificates issued by the AIIMS, photo copies of which are marked Annexures 3 to 5 to the writ petition. The petitioner in due course submitted reimbursement bill to the State Government which was forwarded by the District Magistrate, Supaul, to the Director-in-Chief, Government of Bihar, vide his letter No. 219-2, dated 23.3.2002 (Annexure-7). The same has been rejected by the impugned order dated 6.6.2002 (Annexure-8) on the sole ground that he had undergone treatment at AIIMS without reference of the authorised doctor and the Medical Board and without obtaining prior permission of the State Government. It further appears that in the meanwhile, his father's health further deteriorated and he had to be re-admitted in AIIMS, where he died on 15.6.2002.

3. The respondents have placed on record their counter affidavit, wherein it is stated that the employee's reimbursement claim has been rejected on the sole ground of absence of reference of the authorised doctor and the Board, and without obtaining prior permission of the State Government for treatment outside the State of Bihar.

4. On a perusal of the materials on record and consideration of the submissions of learned Counsel for the parties, it appears to me that the stand taken by the respondent authorities is unreasonable. There may be cases where there may not be enough time to obtain prior permission of the State Government, as indeed was the situation in the present case. The patient had history of heart problem and he had undergone Angioplasty in 1984, as is manifest from the discharge summary of I.G.I.M.S. (Annexure-2,): He had to be admitted in IGIMS. on , an emergency basis on 2.10.2001 and was treated until 17.10.2001. The Doctors in IGIMS had found his condition critical, were unable to manage the complicated case, and had forwarded him to AIIMS, where he was examined on 24.10.2001, and had undergone Aortic Stent Grafting on 28.10.2001. He was admitted in AIIMS as an indoor patient from 27.10.2001 to 10.12.2001. The patient was then posted at Supaul. It is manifest on the face of it that there was no time for the employee to obtain prior permission of the State Government before proceeding to AIIMS for treatment. The employee was although in a precarious and complicated condition of health and had to be readmitted in AIIMS where he ultimately died on 15.6.2002. He was after all referred to AIIMS by IGIMS, Patna, a Government hospital. The Discharge Summary dated 18.10.2001 (Annexure-2), issued by AIIMS, stated that "....He is being referred to Cardiothoracic Unit & E.N.T Unit, AIIMS, New Delhi, for further treatment. "

5. It was obviously a case where the respondent authorities should have invoked Rule 26 of the Bihar Medical Attendance Rules which is reproduced hereinbelow for the facility of quick reference:

26. Power of Government to grant concessions relating to medical attendance or treatment not authorised by these rules.- Nothing in these rules shall be as preventing the State Government from granting to any person to whom they

apply any concession relating to medical attendance or treatment which is not authorised by these rules.

This rule may or may not specifically deal with the issue in hand. It may be read to mean that it confers a wide" power of giving medical benefits not indicated elsewhere in the Rules. Law is well settled that a small relief can always be prayed for, and granted, if it is contained within the larger relief. The entitlement for reimbursement for medical treatment of the deceased employee outside Bihar is not in dispute. Therefore, the requirement of seeking prior permission, which was not possible in view of the emergent situation obtaining in the present case, can be relaxed by invoking Rule-26.

6. This matter was laid before the Bench on a number of occasions. The orders dated 23.9.2003, 16.1.2004, and 30.8.2004 are reproduced hereinbelow for the facility of quick reference:

23.9.2003- After hearing counsel for the parties, I do not feel satisfied with the stand of the respondents. The learned Government Pleader seeks time to take fresh instruction.

Put up after Puja holidays in the same list.

16.1.04- Learned Counsel for the respondent says that matter is under consideration. He requests for time.

List this case after three weeks under the same heading.

30.8.04- Counsel for the respondents requests for time.

List this case after ten (10) days.

7. The respondent authorities were thus given more than adequate opportunity to reconsider the matter during the pendency of the proceedings but they seem to remain unmoved. In that view of the matter, in the fact and circumstances of the case, I am convinced that it is a fit case in which the rule has to be relaxed. The deficiency, if any, of reference by the prescribed doctor and the Medical Board, is made good by the recommendation of IGIMS, a Government hospital. It was not possible for the employee to take prior permission of the appropriate authority before proceeding for treatment in AIIMS. The impugned order dated 6.6.2002 (Annexure-8) is hereby set aside. Consequently respondent No. 8 (The Director -in-Chief, Health Service, Government of Bihar, Patna) is hereby directed to ensure payment of the entire amount incorporated in the bill(s) issued by the AIIMS within a period of two months from the date of receipt and/or production of a copy of the order which shall carry interest at the rate of six per cent from the date of the bill till the date of payment, in favour of the petitioner.

8. The writ petition is accordingly allowed.