
(1999) 08 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 2888 of 1995

R.G. Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Citation : (1999) 08 GUJ CK 0020

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

Bench : Single Bench

Advocate : N.K. Majmudar, for the Appellant; V.B. Gharania, AGP, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Heard learned counsel for the parties.

2. The petitioner, Assistant Professor in Narmada Water Resources Department, Gandhinagar by this petition praying for quashing and setting the action of the respondents in not reimbursing medical expenses incurred by the petitioner for his treatment at Apollo Hospital, Madras.

3. The petitioner, in the month of February, 1993 had fall sick. He has complained pain in chest. He consulted local doctor at Anand and he was advised to go to Madras immediately as there was emergency. The petitioner went to Madras after informing his department vide letter dated 3/3/93. The petitioner has made it clear that subject to the approval, he is going to Madras for his treatment. In the meanwhile the Accounts Officer, Medical Services, addressed a letter dated 5/3/93 wherein it was mentioned that he should first take recommendatory letter of the Civil Hospital, Ahmedabad to the effect that such treatment is not available in Gujarat and such treatment is only available outside Gujarat and without that permission for treatment outside the State cannot be granted. As usual, the petitioner made request for giving him ex post facto sanction. Be that as it may.

3. It is not in dispute that the petitioner has undergone triple vessel bypass surgery on 19/3/93. The petitioner paid Rs.1,00,399/- to the hospital of Madras for this surgery. The details of which are as under :

1. Registration Fees Rs. 30=00 2. Charges of package deal for Rs. 11,000=00
Angiography 3. Charges of package deal for Rs. 61,200=00 By Pass Surgery 4.
Doctor's Charges Rs. 15,050=00 5. Charges for period retained in Rs.
12,167=00 the General Ward over the specified period, prescribed in package
deal of Angiography and By Pass Surgery 6. Photo Enlargement of spots of Rs.
70=00 Blockage 7. Medicines Rs. 882=00 ----- Total Rs.1,00,399=00

5. The petitioner submitted this bill to the department for reimbursement of the amount, which he had spent for surgery. As usual, the plea has been taken that he has gone to Madras without first taking prior permission from the competent authority, this amount cannot be reimbursed.

6. The learned counsel for the respondents does not dispute that Apollo Hospital, Madras was one of the approved hospitals by the Government for under going this type of surgery. Today in the court it has been given out that for such surgery, as per the Government resolution the petitioner would have been entitled for Rs.75,000/-. Even if it is taken that the petitioner without taking prior approval of his going to Madras for surgery of competent authority has gone there but on his presentation of the bill he should have been paid atleast Rs.75,000/-. To this amount otherwise also the petitioner was entitled. But curiously enough even this amount has not been paid to the petitioner. That shows how arbitrarily and perversely the officers and functionaries of the welfare state are acting. It clearly exhibits prevailing of red-tapism and Baburaj in the State. It is really shocking that despite of senior officers are there sitting in the department substantially matters are not being considered or only on technicalities just and reasonable claims of the employees/officers are denied and for which they have to approach to this court by filing the Special Civil Applications, which heavily costs.

7. It is a case of a Government officer, who has unfortunately because of the serious ailment has undergone surgery. It is not a case where the petitioner had gone on pleasure tour to Madras or for some other purpose. In such matters, the approach of the officers should have been practical and justice oriented. Where the officers are satisfied that the petitioner has undergone the surgery and the bill which has been submitted is not inflated one even he has gone without taking prior permission, the matter would have been considered for grant of ex post facto permission and rule may be of grant of permission exception may be refusal thereof. In the matter of the operations or other treatments which concerns to the human life it is who to take care and concern and to decide in which hospital and by which surgeon, who is expert in this surgery he has to undergo this surgery. The full confidence and faith in the surgeon and hospital is utmost important and relevant. These are not simple matters of property dispute

or service dispute or some other dispute but it relates to human life and he will not like to take any risk. It is unfortunate that despite of the fact that Government spends huge amount in maintaining government hospitals, the peoples are not having that much of belief and confidence in these hospitals. Seldom the peoples of the category to which the petitioner belongs go for such surgery to the government hospitals. It is unfortunate that despite of heavy financial burden on the public exchequer of maintaining and running professionally these hospitals could not get the name, fame and reputation. Even the peoples feel unsafe to go to these hospitals for ordinary treatment what to say for undergoing such major surgery. These hospitals are meant only for the persons who are poor and could not afford the expenses of the hospitals which have earned name, fame and reputation and where expert surgeons of reputes are working. Insistence of the government is that only in case where such surgery is not available in the State the employee can be permitted to go elsewhere seems to be not reasonable. Many of the surgeons are there undertaking such surgery but in civil hospitals the package of this surgery would not have been less than what the petitioner had to spend at Apollo Hospital. Even if it is taken that some more amount has been spent by the petitioner then what for this surgery would have been available in Gujarat he will like to have the surgery from the surgeon of the repute. The expenses which incurred by the petitioner at Apollo Hospital for this surgery cannot be said to be an inflated or unreasonable amount which has been paid by the petitioner to the Hospital. On the face of it is just and reasonable amount and for the same should have been paid to the petitioner. It is not the case of the respondent that ex post facto sanction/permission for this surgery cannot be granted. It is also not the case of the respondent that in appropriate cases, the government has no power to grant ex-gratia difference of the actual amount spend and for which the petitioner is entitled as per the Government resolution.

8. The learned counsel for the petitioner has relying on two decisions of the apex court in the case of Surjit Singh Vs. State of Punjab and Others, and State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., contended that this petition may be allowed in toto. In my opinion in this matter, I do not consider it to be necessary to go on and decide the larger issue raised by the learned counsel for the petitioner relying on the aforesaid two decisions of the apex court. Be that as it may. Up to Rs.75,000/the claim of the petitioner could have been reimbursed.

9. In the result, this special civil application succeeds and the same is allowed. The respondents are directed to pay to the petitioner Rs.75,000/- forthwith with interest @12% thereon from the date of the submission of the bill for reimbursement to the date of payment thereof. So far as the balance amount of the bill of the Apollo Hospital is concerned, the Secretary of the Department concerned is directed to consider the matter sympathetically and with justice oriented approach to grant ex post facto permission to the petitioner to go for this operation to Apollo Hospital, Madras. In case for the reasons to be recorded ex post facto permission cannot be granted then he may consider to give the

petitioner the balance amount of the bill as a special case as ex gratia. Where any of this claim of the petitioner i.e. ex post facto permission or special sanction for the balance amount are not acceptable then a reasoned order may be passed and the copy of the same be sent to the petitioner by Registered Post AD. This exercise has to be completed by the Secretary of the Department within a period of one month from the date of receipt of writ of this order.

Liberty is granted to the petitioner for revisal of this Special Civil Application in case of any difficulty.

The Special Civil Application and the Rule stand disposed of in the aforesaid term. The respondent-State of Gujarat to pay Rs.2,000/- as costs of this petition to the petitioner.