
(2005) 12 GAU CK 0007
In the Gauhati High Court

Rina Dey

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 17-12-2005

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2007) 1 GLR 398 : (2006) GLT 201 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—I have heard Mr. S. Talapatra, learned senior advocate, for the petitioner, and Mr. T.D. Majumder, learned Government Advocate, appearing on behalf of the State respondents.

2. The petitioner herein, who has been serving the Government of Tripura as a school mother and falls in the category of Group "D" employees under the Department of Social Welfare and Social Education Department, became a patient of heart disease. On examining the petitioner, the Standing Medical Board of GBP Hospital, Agartala, referred the petitioner to SSKM Hospital, Kolkata, for ASD Closure. The SSKM Hospital, Kolkata, is a hospital, which is recognized by the State Government for obtaining treatment for Government employees, who are referred for treatment outside the State. Though the petitioner reported to SSKM Hospital, Kolkata, on 20.5.2004, for requisite treatment, the said hospital gave 20.7.2004 as the tentative date for her admission. While the petitioner was planning to come back to Agartala, she received message from her nephew that she was ill at Bangalore. On the quest of her parents and other relatives, the petitioner went to Bangalore to attend to her said ailing nephew. While at Bangalore, the petitioner felt severe pain in her chest and, on the advice of the doctor, she was, immediately, rushed to Narayana Hrudayalaya Institute of Cardiac Science, where the doctor took decision for ASD Closure, i.e., open heart surgery, in order to save the life of the petitioner. The petitioner was accordingly admitted in the said Institute on 11.6.2004 and after thorough check-up, she

was operated there. The petitioner was operated, as indicated hereinbefore, on a package declared by the said hospital at Rs. 90,000, though ordinarily, the charge would have been Rs. 1,10,000. On being released from the said Institute on 22.6.2004, the petitioner came to Agartala and submitted, on 1.8.2004, the medical bills for reimbursement. On repeated representations made, in this regard, by the petitioner, the respondents, particularly, respondent No. 2 refused to reimburse the medical expenses. As the petitioner's repeated representations yielded no fruitful result, she has come to this court, with the help of present writ petition, seeking issuance of appropriate writ(s) directing the respondents to make payment of the requisite medical expenses to the petitioner.

3. The respondents have resisted the claim of the writ petitioner by contending, inter alia, that according to the relevant rules/policies, Narayana Hrudayalaya Institute of Cardiac Science, not being a recognized hospital under the Government of Tripura, the petitioner is not entitled to receive reimbursement of her medical expenses.

4. While considering the case of the present writ petitioner, what is pertinent to note is that there was an order published by the Government of Tripura, Department of Health and Family Welfare, on 20.12.2002, whereunder the Government employees were eligible for medical reimbursement even if they took treatment at a hospital or health care institute of their own choice subject, however, to the condition that the reimbursement would be made at the rate of referable hospital on similar treatment and facilities ; but if the expenditure incurred for the treatment in the hospital other than the referred hospital is less than the rate of the referred hospital, reimbursement will be made on actual basis. This facility was available to Group C and Group D employees. Clause (d) of the Government Order No. 21, dated 20.12.2002, aforementioned read as follows:

(d) In case of a Govt. Official and/or entitled member of the family going outside normal duty station for any reason and requiring medical treatment, they are eligible to obtain treatment from the Govt. and other Hospitals/Dispensaries recognized under CS(MA) Rules. In such cases also, if treatment is received in a private recognized hospital, reimbursement will be made as per rate of SSKM Hospital, Kolkata or the hospital of choice, whichever is less. It should be necessary in such cases to show that it would not have been possible for the person to obtain reference from the Medical Board, Govt. of Tripura.

5. Subsequently, however, another order, known as Government Order, No. 08 has been published, on 25.9.2004, by the Department aforementioned. This Government Order is in supersession of the earlier Government Order No. 21, dated 20.12.2002, aforementioned. Clause (c) of the order, dated 25.9.2004, reads as follows:

(c) In cases where the above category of officials do not undertake treatment/ investigation(s) at the referred institution and instead receives those treatment/

undergoes investigations for which referral was made, at an health institution of their own choice at any place, treatment/ investigation expenses shall be reimbursed at the rate fixed by the hospital to which referral was made or the actual treatment/investigation expenses whichever is lower. They will be entitled to get reimbursement of travelling expenses also as per existing pattern but up to the referred institute only.

6. Clause (f) of the Government Order, dated 25.9.2004, aforementioned makes it clear that Group C and Group D employees are not, normally, entitled to medical reimbursement facilities; but the same would become available to them if prior approval, in this regard, from the Finance Department, Government of Tripura, is obtained. Since the petitioner was operated on 26.2.2004 and the Government Order No. 8 aforementioned came into force on 25.9.2004, it is clear that the Government Order, dated 20.12.2002, too would apply to the case at hand.

7. A microscopic reading of the Government Order No. 21, dated 20.12.2002, shows that the facilities, which are available to Group A and B employees, had also been made available to Group C and D employees, such as, the petitioner. As per this Order, a Government employee was eligible for reimbursement of medical expenses including the travelling allowances if he was referred by the Medical Board of the State Government to a hospital, recognized under the Civil Services (Medical Allowances) Rules, 1944, SSKM Hospital, Kolkata, being one of such recognized hospitals. The fact that SSKM Hospital, Kolkata, stands on the approved recognized list of hospitals for treatment of the Government employees, who are referred by the Medical Board of the State Government, is not in dispute. This apart, the fact that in terms of the Government Order No. 21, dated 20.12. 2002, the petitioner herein, being a Group D employee, was eligible to receive treatment at SSKM Hospital, Kolkata, on being referred by Medical Board is also not in dispute nor is the fact that the petitioner was referred to SSKM Hospital, Kolkata, for ASD Closure, i.e., open heart surgery, is in dispute. Further, more, the petitioner reported to SSKM Hospital, Kolkata"as early as on 20.5.2004, but was unable to get admission there, because of the heavy rush to the said hospital. The petitioner could not, therefore, be treated at SSKM Hospital, Kolkata, for reasons beyond her control. It was in such a situation that the petitioner, on account of severe pain, which developed in her chest, had to be examined by doctors, at Bangalore, and, on their advice, she had to undergo an emergency operation for ASD Closure in order to save her life. In the context of the facts of the present case, was the petitioner entitled to receive reimbursement of the medical expenses incurred by her and if so, what would be the extent of such reimbursement are the principal questions, which need to be answered in the present writ petition.

8. While considering the above aspects of the matter, it may be pointed out that a careful reading of Clause (c) of the Government Order No. 21, dated 20.12.2002, shows that when a Government employee is outside his normal duty

station for any reason and requires medical treatment, he may undergo such treatment in a recognized hospital; but the reimbursement will be at the rate of SSKM Hospital, Kolkata, or the hospital of the choice, whichever is less. Hence, if even a Group D employee shows that it was not possible for him or her to obtain order of reference from the Medical Board before leaving for treatment, such a person would still be entitled to receive reimbursement at the rate of SSKM Hospital, Kolkata, provided that the treatment is received, in a recognized hospital, outside the State.

9. In short, under the Government Order, No. 21, dated 20.12.2002, aforementioned, the medical reimbursement was possible for even a Group D employee provided that the treatment was received in a recognized hospital. However, the Government Order No. 08, dated 25.9.2004, aforementioned is liberal inasmuch as under the Government Order No. 08, dated 25.9.02004, when a person, who is a Group D employee undergoes treatment, at a health institute of his or her choice at any place, he or she would be entitled to reimbursement at the rate as indicated hereinbefore. Thus, unlike the Government Order No. 21, dated 20.12.2002, it is not necessary, under the Government Order No. 08, dated 25.9.2004, that to enable an employee to receive reimbursement, he must have undergone treatment in a recognized hospital. However, for the Group D employees, such facilities would be available only with the prior approval of the Finance Department, Government of Tripura.

10. From a combined reading of the Government Order Nos. 21 and 08, dated 20.12.2002 and 25.9.2004, respectively, it is abundantly clear that even for Group D employee, it is possible to receive, on being referred by the Medical Board, treatment outside the State of Tripura, at a hospital other than the recognized hospitals, subject to the condition that when the employee is a Group D employee, he must obtain prior approval, in this regard, from the Finance Department and the reimbursement would be possible, apart from travelling expenses, only at the rate at which the treatment would have been provided to such patients at SSKM Hospital, Kolkata.

11. In the case at hand, the petitioner was, admittedly, referred to SSKM Hospital, Kolkata ; but she did not get admission there. Thus, the inability to obtain treatment at SSKM Hospital, Kolkata, was not on the petitioner's own volition. In such a situation, when the petitioner was at Bangalore, she had to undergo treatment as indicated hereinabove. Should the petitioner be held entitled to receive reimbursement in the facts and circumstances of such a case ? The answer to this question is not very far to seek. Made it clear the Supreme Court in *Surjit Singh Vs. State of Punjab and Others*, 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 and this right, being fundamental in nature, is sacred, precious and inviolable. In *Surjit Singh (supra)*, an employee of Punjab Government, who had been suffering from cardiac problem, went, without requisite approval, to London on his own and submitted, on his return from

London, his medical bill for reimbursement. The Government of Punjab refused to pay the medical expenses on the ground that no prior approval from the Government was obtained in this regard and that the case of the said employee had not been referred by the Medical Board as per the requirement of the relevant Rules. Dealing with this aspect of the matter, the Apex Court observed as follows:

12. The appellant, therefore, had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the meaning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognized list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having, been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

12. The decision in *Surjit Singh* (supra) makes it clear that it is possible in certain circumstances for a person, who may not have been able to obtain approval of the Medical Board for receiving treatment outside the State, to receive such a treatment and claim reimbursement. This decision also makes it clear that a person may undergo treatment at a health institute of his own choice, but he cannot claim reimbursement above the approved rate.

13. In the light of the law laid down in *Surjit Singh* (supra), when we consider the facts of the present case, it clearly transpires that the petitioner's case was approved by the Medical Board for treatment at SSKM Hospital, Kolkata, and though the petitioner reported there, she was unable to receive treatment for over-booking at the said hospital. In such situation, when the petitioner felt pain in her chest and was examined by the doctor at Bangalore, she was forced by the circumstances to receive treatment at Narayana Hrudayalaya Institute of Cardiac Science Institute. Since the petitioner's action was to save her own life, which is concomitant of the right to life enshrined in Article 21 of the Constitution of India, there is no reason why the State respondents shall not bear the

expenses of the treatment of the petitioner at the rate at which the expenses were reimbursable to the petitioner. In the peculiarity of the facts of the present case, the Finance Department of the Government of Tripura ought to have accorded the requisite permission/sanction ex post facto even if the Government Order No. 08, dated 25.9.2004, was taken resort to. It is true that the petitioner has not received treatment at a recognized hospital or recognized health-care institute ; but the principle of self-preservation, as ennciated by the Supreme Court in Surjit Singh (supra), would override this policy and it would be unjust, on the part of the State, to ref se to reimburse the expenses incurred by the petitioner, at least, to the extent as is permissible under the relevant rules/policies.

14. Considering, therefore, the matter in its entirety and in the interest of justice, the State respondents, particularly, the respondent No. 2 is thereby directed 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. The petitioner shall also be paid travelling allowances up to Calcutta from her place of posting at the relevant time. The whole exercise, so directed, shall be completed within a period of two months from today.

15. With the above observations and directions, the writ petition shall stand disposed of. No order as to costs.