
(1988) 05 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No. 467 of 1988

R.K. Bordia

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-05-1988

Acts Referred:

Constitution of India, 1950 — Article 47

Citation : (1988) 2 RLW 560 : (1988) 1 WLN 669

Hon'ble Judges : Milap Chandra, J; Ashok Kumar Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has sought a writ of mandamus that the respondents may be directed to take necessary steps to release foreign exchange to the extent of Rs. 1,50,000/- as sanctioned by the Urban Improvement Trust, Jodhpur for treatment of the petitioner and not to cause any impediment in the payment of the said sum for treatment of the petitioner abroad.

2. The facts giving rise to this writ petition are that the petitioner was appointed as Assistant Engineer in the Urban Improvement Trust, Jaipur. Thereafter, gradually the petitioner was promoted to the post of Superintending Engineer which he is holding at present. The petitioner while in service developed an ear disease known as "Menier"s disease". On account of this disease the petitioner suffers from vertigo attacks and it is slowly & slowly impairing the faculty of hearing of the petitioner. If this disease is not properly checked in time, it may ultimately result in total loss of hearing. The petitioner took treatment at various places first at Alwar, then he was examined at Jaipur in the S.M.S. Hospital and thereafter he was also sent to Bombay for further treatment and surgery. The specialists of E.N.T. at Bombay examined and found that the petitioner is actually suffering from disease known as "Bilateral Menier"s". Some treatment was given but without any result. The panel of Doctors examined the petitioner ultimately

suggested that this treatment will require "shunt surgery" and this surgery is not available in India, therefore, the petitioner should have the surgery done in U.S.A. where the same is available at two places--Los Angeles and Detroit. The case of the petitioner was accordingly recommended by the Principal and Controller of S.M.S. Medical College, Jaipur to the Government of Rajasthan and advised that the petitioner may undertake this treatment at abroad. The matter was referred to the Finance Department and the Finance Department directed that the petitioner should obtain necessary certificate from the Bombay Hospital, Bombay. Meanwhile the Government of Rajasthan declined to sanction any financial assistance and it was communicated to the petitioner on 6-6-1987 vide Annex. 4. The Urban Improvement Trust, Jodhpur expressed its willingness to make a sum of Rs. 1,50,000/- available for the purpose of undertaking treatment at USA. leaving the petitioner to meet the rest of the expenses. Since the matter involved release of foreign exchange, therefore, it was referred to the Government of Rajasthan in the Urban Development and Housing Department. The request of the Urban Improvement Trust to grant necessary sanction for release of Rs. 1,50,000/- to the petitioner did not find favour with the State of Rajasthan, therefore, the petitioner approached this Court by filing the present writ petition.

3. The respondents filed returns and submitted that the Urban Improvement Trust should not have sanctioned this amount and secondly it was submitted that the disease with which the petitioner is suffering is not imminently dangerous to life. Therefore, as per the policy of the Government, the Government cannot sanction or approve the amount as granted by the UIT, Jodhpur for the treatment of the petitioner. In this connection, the respondents referred to circulars which have been issued by the State of Rajasthan from time to time and emphasised that it is only where the treatment is considered to be absolutely essential the Government grants sanction. Reference was also made to circular dated 22-3-1985 (Ex. Rule 6) wherein it is ordained that the treatment abroad could only be financially assisted provided it is absolutely essential. Mr. Vyas, learned Counsel appearing for the State has also invited our attention to document dated 5-11-1986 issued by the State Enterprises Department to Chief Executives of all the State Public Sector Undertakings emphasising that the State Government has permitted its employees to undertake treatment abroad in cases of by-pass surgery and some other categories of ailments like kidney transplant operations.

4. We have heard both the learned Counsel for the parties at length.

5. The State of Rajasthan has framed the Rajasthan Civil Services (Medical Attendance) Rules, 1970 (here in after referred to as "the Rules") and these Rules laid down that how medical assistance to the employees of the Government of Rajasthan should be given. Rules 7 and 7A which have a special bearing in the case read as under:

7. Treatment of a Disease for which treatment is not available in the State: (1) A Government servant and the members of his family suffering from a disease for

which treatment is not available in any Government Hospital in the State shall be entitled to medical attendance and treatment to the extent indicated in Sub-rule (2) of this rule in a Hospital/Institution out-side the State recognised by the Government provided that it is certified by the Principal of a Medical College/ Director of Medical & Health Services on the basis of opinion of the Authorised Medical Attendant to the effect that the treatment of a particular disease from which the patient is suffering is not available in any Government Hospital in the State and it is considered absolutely essential for the recovery of the patient to have treatment at a hospital out-side the State;

[2] The following charges/expenses shall be reimbursable:

[a] Cost (including Sales Tax) of Allopathic Drugs, Medicines, Sera or other therapeutic substances reimbursable under these rules;

[b] Sums actually paid to the Hospital/Institution account of medical attendance and treatment including charges for surgical operations and ordinary nursing facility;

[c] Travelling allowance for journey by rail/road from duty point at the station at which the patient falls ill to the place of treatment out-side the State and back to a single fare of the class to which his classification entitles him under the Rajasthan Travelling Allowance Rules. Such travelling allowance shall also be admissible for an attendant, if the Authorised Medical Attendant certifies in writing that it is unsafe for the patient to travel unattended and that an attendant is necessary to accompany the patient to the place of treatment and back.

[3] The facility of medical attendance and treatment in the type of cases mentioned in Sub-rule (1) can be had at any of Hospitals/Institutions mentioned in Appendix 11;

[4] For the purpose of reimbursement, the original receipts issued by such Hospital/Institution and vouchers of medicines, etc., shall be countersigned by the Authorised Medical Attendant of Government Hospital on whose advice the treatment out-side the State was undertaken.

7A. Grant of advance for medical attendance and treatment outside the State:

(1) A Government servant and members of his family, who are entitled to medical attendance and treatment outside the State under Rule 7, may be granted advance not exceeding Rs. 5,000/- to meet the expenses of treatment in respect of the following diseases:

(i) Kidney transplantation

(ii) Cardio Vascular Surgery including/providing a Pace-maker of heart;

(iii) Cancer Surgery including brain tumor;

(iv) Body Scanner as diagnostic method for identifying the location of the disease

for proper diagnosis, etc.

[2] The advance shall be sanctioned by the Head of office on the basis of a certificate issued by the Principal of Medical College/Director of Medical & Health as envisaged in sub rule (1) of Rule 7 of these rules.

[3] The advance shall be debited to head of account to which pay and allowances of the Government servant are debited;

[4](i) After the advance has been sanctioned under Sub-rule (1) above further advance shall not be sanctioned unless the medical reimbursement claim to the extent, admissible under rule 7(2) has been submitted in adjustment against the previous advance.

(ii) The entire amount of advance shall finally be adjusted against the due medical reimbursement claims under these rules not later than the expiry of a period of one month from the date of release of the patient from hospital. The unspent amount of advance, if any, shall invariably be paid in cash.

The rule 7 deals with the diseases which have been suffered by the Government servant or members of his family and for which a treatment in the Government hospital in the State is not available then in that case if it is certified by the principal of the Medical College/Director of Medical and Health Services on the basis of opinion of the Authorised Medical Attendant to the effect that the treatment of a particular disease from which the patient is suffering is not available in any Government Hospital in the State and it is absolutely necessary to have the treatment at a hospital outside the State. Then Sub-rule (2) lays down that how charges will be reimbursed. It also lays down that the treatment can be had in the hospital/institutions mentioned in Appendix 11. Appendix 11 enumerates the hospital available in the country and where the treatment can be had. Rule 7-A deals with grant of Advance in certain specified diseases. Rule 12 reserves to the Government all the powers to reimburse any cost incurred in respect of medical services obtained by the incumbent and for undertaking for any journey. The Government has issued circulars from time to time i.e. Annexures Rule 5 and Rule 6 which read as under:

ANNEXURE-R. 5

Government of Rajasthan

Medical & Health Department (Gr-II)

No.F.8 (2) MPH/84/GR-II Jaipur, dated 23-7-1984 CIRCULAR

Subject: Permission to State Government servants for undertaking treatment at out-side the State/abroad for specialised treatment

It has come to the notice of the Department that the cases of State Government Employees with serious and special ailments are generally being referred so outside the State/Abroad to the recognised/non-recognised Medical Institutions

for specialised treatment by the Medical Officers of our State. It has now been decided that in future all such cases should be examined carefully by all Specialist Doctors concerned and convey their advice to the Director, Medical & Health Services, Rajasthan, Jaipur if treatment outside the State Abroad is considered absolutely essential. The Director, Medical & Health Services should then obtain the views of a panel of 3 Specialists and send his recommendations to the Government indicating clearly that facilities for the proposed treatment are not available in the State/India Cases recommended otherwise will normally not be considered for reimbursement purpose.

Sd/-

Secretary to Government

ANNEXURE-R. 6

Government of Rajasthan

Medical & Health Department (Gr-II)

No.F.8 (2) MPH/84/GR-II Jaipur, dated 22-3-1985 CIRCULAR

Subject: Permission to State Government servants for undertaking treatment at outside State/Abroad for Specialised treatment.

In continuation of this Department circular of even number dated 23-7-1984 the following amendment/clarification is hereby made with immediate effect:

(1) In future serious and special ailments should be examined carefully by all Specialist Doctors concerned and convey their advice to the principal of the nearest Medical College or the Director, Medical and Health Services, Rajasthan, Jaipur if treatment outside the State in the recognised institution is considered absolutely essential. The Principal, Medical College/Director, Medical & Health Services should then obtain the views of a panel of 3 Specialists Doctors and recommend the case to outside the State in the recognised institutions as per rule 7(1) of R.C.S. (M.A.) Rules, 1970 indicating clearly that facilities for the proposed disease are not available in the State.

(2) In such cases where adequate facility for a particular disease is not available in the State but is available in the country, even then a Government servant chooses to go abroad for treatment in these cases, reimbursement should only be made on and equal amount that would have been incurred for equivalent treatment in any of the recognised institutions in India where reasonable facilities exist.

Sd/-

Secretary to Government

6. Mr. Mridul, learned Counsel for the petitioner submitted that the Government by the circulars issued from time to time has laid down a procedure for treatment

of the Government servant and member of his family out-side the State/Abroad and the paramount consideration which has been laid down by these circulars is that where the treatment is absolutely essential. Mr. Mridul submitted that the petitioner has undertaken all this drill and Doctors have advised treatment abroad still the State of Rajasthan has arbitrarily denied him the facilities.

7. Mr. Vyas, learned Counsel appearing for the State has contested the position and submitted that only in rare cases medical facility abroad is permitted and only in cases of Cancer, Kidney transplantation and by-pass surgery this facility was extended and for no other treatment. As is apparent from Annexs. Rule 5 and Rule 6 that if the panel of three Doctors appointed by the Principal or Director of Medical & Health Services recommends that it is absolutely essential to have the treatment abroad then and then only the Government will consider the matter. In the present case, the petitioner was first advised to go to Bombay and at Bombay it was found that since the petitioner is suffering from Bilateral Menier's which requires "shunt surgery" and this surgery is not available in India, therefore, there was no option but to refer the matter of the petitioner for treatment abroad and for which two centres were suggested i.e. Los Angeles and Detroit. It is not only the Bombay Hospital which has expressed this opinion but the panel of three Doctors appointed by the Principal by the communication dated 19-3-1987 (Annex. A/1) i. e. Dr. D.L Chhangani, Prof & Head E.N.T., Dr. A.S. Bafna, Reader in E.N.T, and Dr. N.V. Krishnan Reader in E N.T. also recommended that since the petitioner is suffering from bilateral maniere's disease and this requires early management abroad and hence his case is strongly recommended for early necessary action in the matter so as to conserve whatever possible hearing left by above surgery. The recommendation of the Doctors dated 5-4-1987 (Annex. A/2) reads as under

Looking to the above facts, it would be in the fitness of the matter to state that Shri R.K. Bordia who is suffering from Bilateral Meniere's disease requires early management abroad and hence his case is strongly recommended for early necessary action in the matter so as to conserve whatever possible hearing left by above surgery.

8. Thereafter, the Principal Medical College, Jaipur also recommended that the petitioner may be permitted to undertake treatment at Detroit or Los Angeles. The recommendation of the Principal, S.M.S. Medical College, Jaipur dated 13-4-1987 (Annex. A 3) reads as under

Hence, on the recommendation of the panel constituted by this office vide No. 12603-81 dated 23-3-1987, I strongly recommend that Shri R K. Bordia may kindly referred to proceed to abroad at Detroit and Los Angeles (California) U.S.A. the two well known centres for this kind of surgery, it would be in the fitness of the mutter to state that Shri Bordia who is suffering from Bilateral Meniere's disease requires early management in the matter so as to conserve whatever possible hearing left by above surgery.

In spite of these recommendations, the respondent State did not approve the sanction of the Urban Improvement Trust for undertaking this treatment by the petitioner. The action of the State Government does not appear to be justified when they had laid down in the circulars a particular method for recommending the treatment abroad, the incumbent having undertaken the whole of this exercise still the State Government has denied him this facility does not appear to be consistent with the practice. The two circulars referred to above i.e. Annex. Rule 5 and Rule 6 do not lay down that only these three ailments referred to by Mr. Vyas can only be recommended for treatment abroad. The expression used in both these circulars is that "the treatment is absolutely essential." Both these circulars purported to have been issued under the saving clause i.e. Rule 12 of the Rules. The expression "absolutely essential" clearly lays down that where ever it is recommended by the specialists that the treatment of a particular disease is absolutely essential and treatment is not available in the country then normally the State Government shall bear the expenses for treatment abroad. In the present case the panel of three Doctors constituted by the Principal & Controller, S.M.S. Medical College, Jaipur has recommended that the treatment for this disease is absolutely essential and it has also been clearly mentioned that the 'shunt surgery' which has to be undertaken for treatment of this disease is not available anywhere in the country then there was no option with them but to recommend the remedy for this malady abroad. In these circumstances, there is no justification for the State to resile from these circulars and to say that they only permit treatment in only one or two ailments. The ailments which have been pointed out by Mr. Vyas are not exhaustive. Life is a strange combination and it is not known that what disease may become fatal at what stage. After all the State is a welfare State and it is a solemn duty of the State to look for the welfare of its citizens. This is a benign duty of the State, the State cannot shirk from this obligation.

9. Mr. Vyas, learned Counsel has placed reliance at the circular issued by the State Public Enterprises Department, Government of Rajasthan. This only directs the State Public Undertaking and is not in turn applicable to the UIT. Be that as it may, this circular also mentioned certain kind of disease but this also is not exhaustive in itself. The expression "the State Government has been permitting its employees to undergo treatment abroad in cases of by pass surgery and some other categories of ailments like kidney transplant operations." This circular only by and large lays down that such an ailment like kidney transplantation or like that nature the State Government is permitting the treatment abroad. In this view of the matter, it cannot be said that it lays down an exhaustive list of ailments. As observed by us above that life is a curious combination and it is not known a particular disease may prove fatal for a person. Therefore, it is not possible for the State to lay down an exhaustive list and precisely for this reason the expression which has been used by the State Government in both the circulars Annex. Rules 5 and 6 is "absolutely essential." It is not possible to lay down administratively all the ailments, therefore they have

been well advised to left out is to the discretion of the specialists to assess and recommend the same. In the present case, in terms of circulars it has been recommended that the petitioner suffers from an ailment for which treatment is not available in any of the Institutions/Hospitals in the country and there are only two places, i.e. Detroit and Los Angeles where "shunt surgery" is available. It is difficult to understand the stand of the state to deny this facility of reimbursement to the petitioner. It is true that the grant or with holding of the financial sanction is a discretion of the State Government. But when the State Government has issued the circulars from time to time & consistently followed the same, if any departure is made then a cogent and justifiable reason has to be assigned for such departure. In this connection, we would like to quote the useful observations made by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 which have been quoted by their Lordships of the Supreme Court in *Gurdial Singh Fijji Vs. State of Punjab and Others*,

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

10. Now, when the circulars have laid down that in an absolutely essential cases the Government will permit the treatment of its employees abroad on so recommended by the panel of experts appointed by the Principal/Director of Medical & Health Services then there is no reason why this facility is denied to the petitioner. Mr. Vyas, only took the position that the State Government as a policy does not permit any of its employee for treatment abroad except in cases of Cancer, Kidney transplantation or bypass surgery does not hold good. It may be that the State Government was not approached for treatment of such ailments abroad but the circular of the State Government clearly lays down that in an ailment the treatment abroad is absolutely essential, the State Government will reimburse the employee. With the advancement of the medicine and surgery the complicated ailments has also arisen and the management of all the ailments is not necessarily available in the country. Thus, simply because people have not approached the State Government for the treatment of a specific ailment like the present one it could not mean that the circulars issued by the State Government should be over-looked because the Government is only permitting treatment abroad for only there ailments. The circular is well balanced circular and leaving the management of the peculiar ailments to the experts for their advice.

11. The expression "bilateral meniere" disease has been defined in Merritt's Text-book of Neurology (VIIth Edition) by Lewis P. Rowland as under:

Hearing loss in the involved ear is sensorineural in type, usually with a decrease in the perception of low tones. The hearing loss typically fluctuates, often

abruptly, but if the condition is not treated, it progresses slowly to severe cochlear damage and total deafness.

12. Mr. Mridul, learned Counsel for the petitioner has submitted that the expression "life" has received a judicial interpretation in series of judgments and has invited our attention to Kharak Singh Vs. The State of U.P. and Others, and submitted that the "life" means not merely the right to continuance of a person's animal existence, but a right to the possession of his organs - his arms and legs etc. It is true that a person who is suffering an ailment which ultimately results in total deafness and reduces his life worse than animal existence and such is not life. The loss of hearing capacity of an incumbent will reduce the man to worse than animal existence. It is not expected from a benign State to take such a harsh attitude may deny a man of treatment which is not available in the country to undertake the same abroad. Part-IV of the Constitution of India has also made it obligatory upon the State Government to raise the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties as enshrined in Article 47 of the Constitution of India. It is equally the duty of the State to see that the citizens have a proper public health care. Precisely for this purpose only the Government has framed the Rajasthan Civil Services (Medical Attendance) Rules. 1970. This was one of the steps in fulfilment of the sacred duty of the State as enshrined in Part-IV of the Constitution of India. Thus, we are of the opinion that the petitioner is entitled to have the medical treatment abroad as recommended by the panel of three Doctors as well as by the Principal, S.M.S. Medical College, Jaipur.

13. In the result, we allow the writ petition, direct the State Government to accord necessary financial sanction as recommended by the Urban Improvement Trust, Jodhpur by its communication dated 19-1-1988 (Annex. 12) within a period of one month from today.