

(2000) 08 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 4792 of 1998

Runu Rajkumari (Phukan)		APPELLANT
	Vs	
State of Assam and Others		RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Assam Medical Attendance Rules, 1976 — Rule 11, 14, 18
Constitution of India, 1950 — Article 14, 226

Citation : (2000) 3 GLT 27

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : Mr. G.P. Bhowmik and Mr. A. Verma, for the Appellant; Govt. Advocate, for the Respondent

Judgement

1. This is an application under Article 226 of the Constitution relating to the claim of a Government servant of the Government of Assam for reimbursement of expenditure made by her for kidney transplantation and monthly expenses incurred by her for purchase of medicines etc. after the kidney transplantation.

2. The relevant facts as stated in the writ petition are that the petitioner has been working as Assistant Teacher in Karanga Gazipuria High School, at Gajpuria, Jorhat, since 1.1.82. In the year 1992, the petitioner fell seriously ill and she was brought to the Gauhati Medical College & Hospital, Guwahati, on 5.5.92, where she was treated as indoor patient in the Nephrology Unit. At the Gauhati Medical College & Hospital, it was detected that the petitioner was suffering from chronic renal failure and that both her kidneys were damaged. At the time of her discharge on 9.5.92 from the Gauhati Medical College & Hospital, Gauhati, she was advised to come back after seven months with a relative who could donate a kidney for her. When she returned to her home at Jorhat, her condition again became serious and she was advised by a local doctor at Jorhat to immediately go to a good hospital for kidney treatment. The petitioner accompanied by her husband immediately rushed to Apollo Hospital at Madras and the petitioner was

administered dialysis during the period from 11.6.92 to 16.6.92 at the said hospital. When her condition did not improve and it was confirmed that her both the kidneys were damaged, the petitioner was advised for kidney transplantation. At the Apollo Hospital, however, kidney transplanted with a kidney donated by relative and not by others. Since the petitioner did not have a relative donor, she was advised to try at Lady Willingdon Hospital at Madras and discharged from Apollo Hospital on 17.6.92. Thereafter she was admitted in Lady Willingdon Hospital on 3.7.92. At Lady Willingdon Hospital the petitioner was administered dialysis 27 times and in the meanwhile a non-relative donor was arranged and the patient was shifted to Guest Hospital for operation where transplantation of kidney was done by Dr. KC Reddy on 9.10.92. The petitioner remained in Guest Hospital for 25 days and thereafter she was shifted to a rented cottage at Madras for post operative treatment under the Medical and Health Care Centre, Madras. Both the petitioner and her husband remained in Madras for long seven months for the aforesaid kidney transplantation and follow up treatment and finally returned to Jorhat in January. 1993. Thereafter she has been going to Madras for check-up and review from time to time. The case of the petitioner is that for the aforesaid kidney transplantation and follow-up treatment during seven months stay at Madras she incurred expenditure of Rs. 2.75 Lakh and thereafter she has been incurring expenditure of Rs. 6000 to Rs. 8000 per month for medicines. For the aforesaid expenditure incurred by the petitioner, she received Rs. 20,000 from Prime Minister's Welfare Fund, Rs. 15000 from Chief Minister's Welfare Fund and Rs. 1000 from Teacher's Welfare Fund and she mobilised the rest of the amount by selling the scooter of her husband, from personal savings of petitioner and her husband and from loans taken from different sources as indicated in paragraph-12 of the writ petition. On 25.12.95, she submitted an application before the Director of Health Services, Assam, for reimbursement of the expenditure incurred by her for aforesaid treatment and purchase of medicines from time to time. The Director of Health Services, Assam, forwarded a proposal to the Government of Assam in the Health and Family Welfare (A) Department in his letter dated 26.12.95. But the said proposal was turned down by the Joint Secretary to the Government of Assam, Health and Family Welfare (A) Department in his communication dated 16.2.96 to the Director of Health Service, Assam, on the grounds that the petitioner underwent treatment at Apollo Hospital at Madras on her own accord and that the hospital was not recognised during the relevant period. A copy of the said communication dated 16.2.96 was marked to the petitioner who submitted another application dated 19.4.96 to the Government of Assam in the Health and Family Welfare (A) Department. But by communication dated 29.5.96, the Under Secretary to the Government of Assam, Health and Family Welfare (A) Department informed the petitioner that the Government sticks to its earlier decision conveyed to the petitioner in the communication dated 16.2.96. In the said communication dated 29.5.96 it was mentioned that the petitioner had already received financial assistance for her treatment at Apollo Hospital from some other sources, namely Prime Minister's Relief Fund, Chief Minister's Relief

Fund and Teacher's Welfare Fund. Thereafter by communication dated 15.11.97 of the Government of Assam in the Education (Secondary) Department, the petitioner was informed that the Government had regretted its inability to agree to the proposal for treatment outside the State in the two institutions, namely Apollo Hospital and Guest Hospital, Madras, in view of absence of specific approval of RMB/DHS/H&FW Department. Aggrieved the petitioner has moved this Court for quashing the said communications dated 16.2.96 and 15.11.97 of the Government of Assam in the Health & Family Welfare (A) Department and the Education (Secondary) Department respectively.

3. At the hearing Mr. GP Bhowmik, learned counsel for the petitioner, submitted that the reasons given by the State Government in the communications dated 16.2.96, 29.5.96 and 15.11.97 (Annexures - X, XI and XII to the writ petition) for not agreeing to the proposal for reimbursement of the expenditure incurred by the petitioner for transplantation of kidney and purchase of medicine for post operative treatment are not valid reasons. The first reason given under the said communications is that the petitioner went for treatment in Madras on her own accord without prior approval of RMB/DHS.H&WF(A) Department. But as the condition of the petitioner was very serious at Jorhat in May and June, 1992, she had no option but to rush to Apollo Hospital at Madras and thereafter to the Lady Willingdon Hospital and Guest Hospital at Madras for treatment and she could not possibly wait for the prior approval of the authorities. Mr. Bhowmik submitted that Rule 11 of the Assam Medical Attendance Rules, 1976, itself, provided that such prior approval was not required when delay involved in getting prior approval may entail danger to the patient. The second reason given in the said communication for not entertaining the proposal for the reimbursement of medical expenditure Incurred by the petitioner for transplantation of kidney and purchase of medicines for post operative treatment is that Apollo Hospital, Lady Willingdon Hospital and Guest Hospital at Madras were not recognised during the relevant period. Mr. Bhowmik pointed out that the Government has the power to reimburse the medical expenditure for treatment of a government servant in a hospital other than those recognised in special circumstances and in fact has exercised such power in many cases. He referred to Annexures - XIII, XIV, XV and XVI to the writ petition to show that the Medical expenses have been approved for reimbursement by the Government in the cases of Smt. Nizara Bhuyan, Sr. Accountant Assistant, Treasury Office, Sibsagar, at Willingdon Hospital at Madras, Sri Munidra Das, Assistant Engineer. PHE, Guwahati, at the Down Town Hospital at Guwahati and at the popular Nursing Home, Patna, Sri PC Gayan, UDA, Office of the Directorate of Soil Conservation Assam, at Down Town Hospital, Guwhati, Sri Makhan Chandra Baruah, Executive Engineer, PWD, at Tamilnand Hospital and Bijoya Health Centre, Madras, Smt. Guha Gogoi, Receptionist, Saha Sewa Bhawan, Dispur, at Batra Hospital, New Delhi, instead of AIIMS, New Delhi, Smt, Geetanjali Goswami wife of Sri JC Goswami, Director of Elementary Education, Assam at Breach Candy Hospital, Bombay though the said hospitals were not recognised at the relevant times and prior approval of the

authority was not taken before treatment. Mr. Bhowmik vehemently argued that refusal on the part of the State Government in the Health and Family Welfare (A) Department to allow such reimbursement of medical expenditure incurred by the petitioner at the hospitals at Madras on the grounds that the said hospitals were not recognised and that no prior approval was taken from the authority before treatment was discriminatory and violative of rights of the petitioner to equality under Article 14 of the Constitution. The Government Advocate, Assam, on the other hand, sought to support the stand of the Government of Assam in the Health and Family Welfare (A) Department in the impugned communications for not agreeing to the proposal for reimbursement of medical expenditure incurred by the petitioner for transplantation of kidney in hospitals at Madras and purchase of medicines for post operative treatment in the impugned communications.

4. It appears that the Governor of Assam has made the Assam Medical Attendance Rule, 1976 (for short "the Rules") which govern the medical treatment of a Government servant and pensioners under the Government of Assam. Rules 11, 14 and 18 of the said Rules as they stood in May and June 1992, when the petitioner went for treatment from Jorhat to Madras, are to the following effect:

"11. If a patient requires medical attendance for certain types of disease for which no treatment is available within the State, the A.M.A. may with the approval of the Director of Health Services (which shall be obtained beforehand, unless the delay involved entails danger to the patient) send the patient for treatment in an institution outside the State recognised for the purpose. The patient shall be entitled to treatment free of charge in such an institution.

Full reimbursement of the cost of medicines purchased by the patient for treatment in these Institutions shall be allowed by Government. The disease for which this facility will be available and the institutions to which the A.M.A. can refer the patients shall be decided by Govt. from time to time.

14. Govt. does not undertake any liability to reimburse expenditure incurred by a patient for medical attendance or treatment including purchase of drugs, medicines, sera, vaccines, etc. in private hospital/institution even if prescribed by the A.M.A. except as provided specifically in this Rule.

18. Nothing in these Rules shall be deemed to :

(i) entitle a member of the service to reimbursement of any cost incurred in respect of medical services obtained by him or in travelling allowance for any journey performed by him otherwise than as expressly provided in these Rules ;

(ii) prevent the Govt. from granting to a member of the service any concession relating to medical treatment or attendance or travelling allowance for any journey preferred by him which is not authorised by these Rules."

The aforesaid rules were amended by the Assam Medical Attendance

(Amendment) Rules, 1995 (for short "the Amendment Rules, 1995") notified on 9.5.95 by the Government of Assam in the Health and Family Welfare (A) Department. By the Amendment Rules, 1995, in rule 9, the following sub-rule (e) has been inserted in the Assam Medical Attendance Rules, 1976.

"(e) Reimbursement of expenses for following types of treatments upto the maximum amounts stated below may be allowed subject to the submission of certificate from the authorised Medical Attendant and the Referral Hospital concerned, where the medical treatment surgical service is actually availed of by the patient.

Note :- (1) The Administrative Department with the concurrence of the Health and Family Welfare Department, on the estimate submitted by the concerned Referral Hospital may grant an advance upto a maximum of 50% in respect of each of the above mentioned diseases, subject to the full adjustment of such advance against the final bill of reimbursement.

(2) Upper limit of the reimbursement of the cost of Pacemaker including the cost of installation of the same is fixed at Rs 50,000 if in an individual case, it costs less, only the actual cost will be reimbursed."

By the Amendment Rules, 1995, rule 11 of the Assam Medical Attendance Rules, 1976, has been substituted as follows :

"11. If a patient requires medical attendance for certain types of diseases for which no treatment is available within the State of Assam, the authorised Medical Attendant may, with the approval of the Director of Health Services (which shall be obtained before hand, unless the delay involved entails danger to the patient) send the patient for treatment in an institution outside the State, recognised for the purpose. The patient shall be entitled to treatment in such an institution, subject to full reimbursement to him the treatment charges. Full reimbursement of the cost of medicines, purchased by the patient for treatment in these institutions shall be allowed by the Government. The diseases for which this facility will be available and the institutions to which the authorised Medical Attendant can refer the patient are stated in the Annexure-1."

The Amendment Rules, 1995, were to take effect from 18.10.93, but the past cases decided otherwise were not to be re-opened.

5. On a reading of the aforesaid Assam Medical Attendance Rules, 1976, as amended by the Amendment Rules, 1995, it will be clear that where no treatment is available within the State of Assam, normally the authorised Medical Attendant may with the approval of the Director of Health Services send the patient for treatment in an institution outside the State recognised for the purpose. But in cases of emergent nature where the formalities of obtaining approval of the Director of Health Services will entail danger to the patient, he or she may proceed for treatment to a hospital outside the State without prior approval of the Director of health services and if the Government finds that the

case was really emergent in nature for which the formalities of obtaining the prior approval of the Director of Health Services would have involved delay which would have entailed danger to the patient, the Government as special case in exercise of its power under 18 can approve the treatment or attendance or travelling allowance for any journey in any hospital recognised or not. As a matter of fact, it appears from Annexure-XIII, XIV, XVI and XVI that the Government has exercised its powers and approved proposals for treatment of patients under very compelling situations as special cases even where the treatment of patients has taken place in institutions outside the State and in institutions which are not recognised and for which no prior approval was taken from the Director of Health Service. Thus, the Government has the power to approve treatment in hospitals outside the State even where the hospitals were not recognised and even where the prior approval of the Director of Health Services was not obtained and such power of the Government has to be exercised in a fair and reasonable manner consistent with the mandate of Article 14 of the Constitution and not in a manner which is discriminatory to the Government servants. The refusal on the part of the Government in the Health and Family Welfare (A) Department to agree to the proposal for reimbursement of the expenditure of treatment of the petitioner at the two hospitals at Madras on the ground that no prior approval was taken from the authorities and on the ground that the two hospitals were not recognised, in my considered opinion, was discriminatory and violative of the right of the petitioner to equality under Article 14 of the Constitution.

6. In the communication dated 29.5.96 of the Under Secretary to the Govt of Assam, Health and Family Welfare (A) Department to the petitioner, however, it has also been stated that the petitioner had already received financial assistance for the treatment at Apollo Hospital at Madras from some other sources namely Prime Minister's Relief Fund, Chief Minister's Relief Fund and Teachers' Welfare Fund. This reason was perhaps given to show that the petitioner's case cannot be equated with the other cases of the Government servants where post approval was given for treatment in different hospital as she had received assistance from the Prime Minister's Relief Fund, Chief Minister's Relief Fund and Teachers' Welfare Fund. But it has been stated in paragraph 13 of the writ petition that the petitioner has received Rs. 20,000 from the Prime Minister's Relief Fund, Rs. 1500 from the Chief Minister's Relief Fund and Rs. 1000 from the Teachers' Welfare Fund. The aforesaid amounts total to a sum of Rs. 22,500 and Rs. 22,5000 is too meager to take care of the huge expenses incurred by the petitioner for the treatment of her kidney at the hospitals at Madras. The reason given in the said communication dated 29.5.96 of the Government of Assam in the Health and Family Welfare (A) Department is not relevant for not agreeing to the proposal for reimbursement of the expenditure incurred by the petitioner for her treatment at the hospitals at Madras.

7. For the reasons stated above, I quash the orders dated 16.2.96, 29.5.96 and 15.11.97 of the Government of Assam in the Health and Family Welfare (A)

Department and the Government of Assam in the Education (Secondary) Department and direct the respondents to reimburse the expenditure incurred by the petitioner for her journey, attendance and treatment at the hospitals at Madras in accordance with the provisions of the Assam Medical Attendance Rule, 1976, as amended by the Assam Medical Attendance (Amendment) Rules, 1995, within a period of three months from the date of receipt of a certified copy of this order by the Commissioner and Secretary to the Government of Assam, Health and Family Welfare (A) Department. Regarding the cost of medicines purchased by the petitioner after the kidney transplantation, the Commissioner and Secretary to the Government of Assam, Health and Family Welfare (A) Department will also examine whether the same is also to be reimbursed under the aforesaid rules and after such examination, pass orders and communicate the same to the petitioner within the aforesaid period of three months.