
(2016) 08 JH CK 0112
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4194 of 2016

Shabana Khatoon

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRJharR 47 : (2017) 1 JCR 109

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Anshuman Kumar, J.C. to A.G, for the State; Mr. Krishna Murari, Mr. Ahmed Raza and Mr. Mohammad Asghar, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J. - The facts of the present case have posed a question which raises more humanitarian issue than a legal question. Petitioner is the wife of one Md. Zahid Ansari a 40 year old person who is suffering from CA Bladder and Obstructive Uropathy. He is a resident of Naya Bazar, P.O. Dhanbad, P.S. Bank More, District Dhanbad in the State of Jharkhand but for specialised treatment was taken to and admitted in Superspeciality Hospital NH Narayana (Unit of Narayana Health) at Andul Road, Howrah on 23rd July 2016. Dr. Abhay Kumar, MBBS, MS, DNB (Urology) Consultant Urologist and Uro-oncologist of the said hospital has advised him to undergo Radical Cystectomy surgery to be done after four days by opinion contained in letter at Annexure-1 dated 27th July 2016, the cost of which as per break-up has been estimated at Rs. 3,10,000/- including post surgery, indoor treatment, medicines and consumable, investigation and diagnostics. Petitioner has enclosed a certificate of income given by the Sub-Divisional Officer, Dhanbad as part of Annexure-2 which shows that his annual income is Rs. 70,000/-. A residential certificate has also been enclosed issued by the same authority showing his residence at Naya Bazar, P.O. Dhanbad, P.S. Bank More, District Dhanbad. His identity card issued by Election

Commission of India is also enclosed as Annexure-2 along with an affidavit by the petitioner's wife in support of the aforesaid claim and that if any of the credentials are found to be incorrect, she would be liable to return the entire amount of medical aid/reimbursement.

2. It is essentially a policy of the State Government initiated in the present financial year 2016-17 as contained in Annexure-3 letter dated 13th June 2016 known as "Mukhyamantri Gambhir Bimari Upchar Yojna" under which petitioner seeks State help in the matter of expenses incurred in the treatment of her husband.

3. What has transpired from the instructions received by learned counsel for the State from the Department of Health, Medical Education and Family Welfare that under the resolutions in question including dated 17th July, 2015 produced on their behalf, the Department has prepared a list of approved hospitals where from if the treatment is undertaken for such serious diseases as indicated in the list under the same resolution, medical assistance or aid would be provided to the needy on examination by the competent committee at the District or the Directorate level of the Health Department. The applicant will have to submit the necessary supporting documents in a prescribed format also indicated therein. As it appears, the instant hospital NH Narayana is not one of the hospitals in the approved list.

4. Counsel for the respondents-State, on instructions, has made a submission that there are few hospitals named at serial No. 9 and 11 or even in the letter dated 17th February, 2016 which are situated at Ranchi, Jamshedpur or at Durgapur, West Bengal where such treatment of Cancer is reimbursable under the aforesaid scheme.

5. Learned counsel for the petitioner, however, submits that the patient may not be at a stage of being shifted to any other place in the light of the diagnosis and the opinion expressed by the treating doctor at NH Narayana, Super speciality Hospital, Howrah. It is submitted that as per his instructions surgery has been performed yesterday night itself as it could not wait. If the treatment of the petitioner is being undertaken in a super speciality hospital equipped with the facilities and the claim is found bona fide on examination by the committee in question, the respondent-State should not refuse the benefit only on the ground that the hospital does not fall in the list of approved hospitals under the said scheme.

6. Learned counsel for the petitioner has relied upon a judgment rendered by the Apex Court in the case of Surjit Singh v. State of Punjab & Ors. reported in AIR 1996 SC 1388 and also followed in a judgment rendered by the learned Single Bench of this Court in the case of Md. Maniruddin v. Bihar State Road Transport Corporation & Ors. reported in 2002(1) JLJR 95 where under it has been held that in case of an urgency situation calling for immediate medical treatment, the petitioner had the right to take steps in self preservation without waiting for

requisite formalities to be completed. Petitioner would, therefore, be entitled to reimbursement at least at the same rate as prescribed in the approved hospitals under the said scheme of the State Government.

7. The conspectus of the facts presented portray a situation of extreme urgency where the patient or his family member can not be expected to sit and take decisions in a cool and calm atmosphere for getting proper treatment at a particular hospital or wait for admission in some Government Institute. In such a situation a decision is taken forthwith by the person or his attendant if the precious life has to be saved. As has been held in the case of Surjit Singh (supra) self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. Their Lordships of the Apex Court have profusely relied upon the versus of "Garuda Purana" in the said opinion to recognise the basic instincts of self preservation inherent in a living being more so in a human being.

8. The question here is whether in such a scenario respondent would insist upon treatment of the husband of the petitioner only at the approved hospital for rendering financial assistance for treatment of such a life threatening disease or would also take a larger humane approach in the matter and examine the individual case of the petitioner as to the exigency of such a treatment undertaken at the particular hospital NH Narayana at Howrah. Should they not also consider the attendant relevant facts requiring an immediate surgery including all such investigation and diagnostic reports to arrive at an opinion whether the amount permissible under the "Mukhyamantri Gambhir Bimari Upchar Yojna" can be reimbursed or assistance can be provided to such a claimant at par with the rates at which such treatments are reimbursable at the approved hospital under the said scheme. Such humanitarian problems sometimes need a humanitarian approach instead of being caught in the pedantics or the letter of the scheme. Facts of the present case show that surgery has been already undertaken and post surgery care and indoor treatment has to follow.

9. In such circumstances, it would only be desirable that a considered thought and application of mind be given to the claim of the petitioner in accordance with law and the observation made herein above. Petitioner, however, would be required to approach the Director General, Health Services with her application duly supported with all necessary enclosures and the details of investigation, diagnostic report and treatment so that the concerned committee could examine the case of the applicant without any delay and a decision thereupon can be taken thereafter as early as possible. The petitioner is, therefore, allowed liberty to approach the Director General, Health Services itself in the special facts of the case instead of approaching the Civil Surgeon of the concerned Dhanbad District as that may avoid more wastage of time. Let such consideration be accorded to the claim of the petitioner within a period of one week.

10. Let the case appear after one week on 11th August, 2016 awaiting the outcome of the exercise.

11. Needless to say, if the respondent authorities are satisfied on such consideration and the claim of the petitioner is found to be admissible, they would not loose time in extending the financial assistance under the said scheme to the petitioner for the treatment of her husband.

12. Let a copy of the order be handed over to the counsel for the parties during course of the day.