
(2009) 01 RAJ CK 0024
In the Rajasthan High Court

Shantilal Nyati

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 WLN 10

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annex.6 dt. 30.12.2004 and Annex.7 dt. 20.09.2004 and a direction to the respondents to reimburse the medical bills submitted by him with interest.

2. I have heard learned Counsel for the parties.

3. It is contended by learned Counsel for the petitioner that the petitioner is a Pensioner having been retired from the Govt. service. In the month of March, 2004 the petitioner went to Ahmedabad (Gujarat) where he suffered heart ailment as the petitioner was having the heart ailment problem being heart patient. He was taken to hospital namely Krishna Heart Institute, Ahmedabad in emergency on 26.03.2004 and admitted therein. After undergoing the various investigations and testings, the petitioner underwent heart surgery i.e. Coronary Artery Bypass Grafting on 26.03.2004 itself. The petitioner submitted his claim for reimbursement of the medical bills along with the certificate dt. 10.04.2004. The petitioner was asked to submit the original certificate dt. 10.04.2004 vide communication dt.14.07.2004 (Annex.3) which he submitted vide letter dt. 05.08.2004 (Annex.4). The total bills submitted by the petitioner was for a sum of Rs. 1,10,238/-. The treasury Officer, Chittorgarh vide letter dt. 30.12.2004 informed the petitioner that Krishna Heart Institute, Ahmedabad is not approved

by the State Govt. and claim can be only made if the treatment is taken in an approved hospital on the recommendation of the Medical Board in view of the Scheme of the Rajasthan State Pensioners Medical Concession Scheme and thus rejected his claim vide communication dt. 20.09.2004. Hence this writ petition.

4. It is contended by learned Counsel for the petitioner that the petitioner has taken the treatment in an emergent situation and therefore, there was hardly any time for the petitioner to have approached to the Medical Board seeking approval to undergo treatment. Similar controversy came to be considered by a Division Bench of this Court in *Anil Kumar Surolia v. State of Rajasthan and Ors.* 2005 (3) WLC (Raj.) 396. In that case, the petitioner therein had to go to Ahmedabad to meet his brother Anupam Surolia in August, 2000, where he suffered another heart attack and was taken to Rajasthan Hospital at Ahmedabad where due to non-availability of heart surgeon, he was taken to Krishna Heart Institute where his Angiography and Angioplasty was done. Krishna Heart Institute charged a sum of Rs. 78,000/- towards Angiography and Angioplasty and other medical expenses. The petitioner therein submitted his representation for reimbursement of his mediclaim, however, after process, the authorities refused to sanction the reimbursement of mediclaim of the petitioner. The petitioner again moved by way of representation to Principal, SMS Medical College. His case was referred to the Registrar General of this Court who once again referred the case of the petitioner to the Secretary to Govt. Law and Legal Affairs. The Principal, SMS Medical College once again refused to grant sanction for reimbursement of mediclaim on the ground that Krishna Heart Institute was not an approved institute of the Govt. of Rajasthan. The Deputy Secretary to Govt. Law Department also refused the mediclaim of the petitioner on the ground that he was not referred out of the State for treatment and Krishna Heart Institute was not approved hospital under the Rajasthan Civil Services (Medical Attendant) Rules. On a writ petition before this Court, the Division Bench of this Court held that the petitioner was entitled to the medical treatment in a hospital which was not a Government hospital necessitated on account of circumstances beyond the control. The Division Bench observed as under:

6. In the factual background as detailed above, we are of the firm view that even if the required treatment was available in SMS Hospital at Jaipur or other approved hospitals in the State of Rajasthan, the petitioner was indeed entitled to medical reimbursement if he had got the treatment elsewhere necessitated on account of circumstances beyond his control. Self preservation is the first instinct in every human being. Person having suffered heart attack is not expected to await treatment at a far off distance as time is the essence in saving valuable life in such matters. There is every risk of a person breathing his last if he has to await treatment of heart attack. In the circumstances, even if such medical treatment as obtained by a Government employee be available in the State itself, he shall be still entitled to medical reimbursement for the treatment obtained elsewhere if the same is necessitated on account of circumstances beyond his control. In emergent situation thus it is not incumbent for a patient to obtain

medical treatment only in approved hospitals of the Government. We would have discussed the matter in further details as per provisions of the Rajasthan Civil Services (Medical Attendant) Rules, but it is conceded during the course of arguments that if the petitioner was to obtain medical treatment at SMS Hospital at Jaipur or other Government approved hospitals in the State of Rajasthan, he would have been paid the same amount for the treatment he ultimately got from Krishna Heart Institute. If that be a fact, and which as mentioned above, is concerned, we are of the view that the stand taken by the State Government is obdurate and wholly uncalled for. We could imagine if perhaps the petitioner had spent far more and was claiming the same while getting treatment in a non-approved hospital. Government in any case had to pay the same amount spent by the petitioner at Krishna Heart Institute even if the petitioner was to get treatment in SMS Hospital or other approved hospital in the State of Rajasthan. This Court cannot but deprecate the attitude of the Government in rejecting justified claims in teeth of the recommendations made by this Court. Registrar General of this Court indeed supported the cause of the petitioner but the favourable recommendation made by this Court have been turned down on wholly untenable grounds.

5. Relying on the decision of this Court in Anil Kumar Surolia's case (supra), a Division Bench of this Court in State of Rajasthan and Ors. v. Surendra Kumar Kalra 2008 (2) Western Law Cases (Raj.), 430 observed that in an emergent situation, the Government cannot insist upon a Government servant to get himself treated at Government recognized institution and therefore, held that a Government servant having suffered a severe cardiac problem or heart attack cannot wait for being taken to a Government hospital as for him every second is precious and delay of few minutes in the treatment may be fatal and while agreeing with the view taken by the Division Bench in Anil Kumar's case (supra) held that in a situation like this where a Government servant is required to be treated in a emergency, the Government cannot insist upon its employee to get himself treated at the Government hospital and the Govt. must reimburse the concerned employee at the rates that may be applicable in the recognised/ approved Government institutions/ hospitals.

6. Thus, the rules regarding reimbursement of the medical claim of an employee of the State when he obtains treatment from a hospital of his choice can be made limited and limiting such reimbursement cannot be said to be against the provisions of law. Such Rules framed under the provisions of Article 309 of the Constitution of India, constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognised Government hospitals and on the other hand, he at his option, may get himself treated from other recognized hospitals/ institutions subject of course to the condition that the reimbursement by the State therefore would be limited.

7. Keeping in view the two Division Bench decisions of this Court and the fact

that in the instant case the petitioner after having gone to Ahmedabad suddenly suffered chest pain and was immediately taken to Krishana Heart Institute, Ahmedabad for his treatment in emergent situation and looking to his deteriorating condition as he was otherwise heart patient, the treating Doctor advised for the urgent Coronary Artery Bypass Grafting and the petitioner has no option except to undergo surgery at Krishna Heart Institute, Ahmedabad which was nearest hospital for treatment and the persons attending the petitioner also took him to said hospital and got him treated and therefore, in my view, the petitioner is entitled for reimbursement at the rate applicable for such treatment in the recognized/ approved Govt. Hospital/ Institutions. The rate prescribed for such treatment in the approved Govt. Hospital/ Institutions is Rs. 44,000/-. In this view of the matter, the orders impugned deserve to be quashed.

8. Consequently, the orders impugned dt. 30.12.2004 and 20.09.2004 are quashed. The respondents are directed to reimburse a sum of Rs. 44,000/- towards the mediclaim of the petitioner within a period of two months from the date of production of certified copy of this order.

9. The writ petition is allowed to the extent above. No order as to costs.