
(2007) 10 GAU CK 0028
In the Gauhati High Court

Sheri Sarif Mullah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-10-2007

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2008) 1 GLT 630

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The petitioner, who is a Home Guard, was injured in a bomb explosion that took place on 13.12.2004 in front of the Hatigaon Police Patro Post under Dispur Police Station. The petitioner received splinter injuries as a result of the bomb blast and remained as an indoor patient in the Gauhati Medical College Hospital from 13.12.2004 to 27.12.2004. He was again admitted in the Gauhati Medical College Hospital on 7.3.2005 for a surgical operation to remove the splinters, which had remained embedded in different parts of his body. Though the said operation was carried out it was not fully successful as the injuries caused to the liver of the petitioner by the splinters could not be effectively handled in the Gauhati Medical College Hospital. The said Hospital by a Reference Certificate dated 9.3.2005 advised the petitioner to attend the All India Institute of Medical Science, New Delhi for successful management of the liver injuries suffered by the petitioner.

According to the petitioner, he is a lowly paid Home Guard having a large family to support and, therefore, he does not have the means to get himself treated in the All India Institute of Medical Science, New Delhi. The petitioner contends that under a Government Office Memorandum dated 30.5.1995 he is entitled to an ex-gratia payment of Rs. 1,00,000/- (Rupees one lakh). If the said amount is paid to the petitioner he would be able to attend the All India Institute of Medical Science, New Delhi for necessary treatment. Consequently, this writ petition has

been filed seeking a direction for payment of ex-gratia amount of Rs. 1,00,000/- (Rupees one lakh) as contemplated by the Office Memorandum dated 30.5.1995 and a further direction to the State Respondents to arrange for the medical treatment of the petitioner in the All India Institute of Medical Science, New Delhi.

2. None of the Respondents except Respondent No. 5, the Senior Superintendent of Police, City, Guwahati have filed their affidavit in the case. In the affidavit filed by the Senior Superintendent of Police, City, Guwahati, the said authority has affirmed that the petitioner, indeed, was injured in the bomb blast that took place outside the Hatigaon Police Patrol Post on 13.12.2004. The Respondent No. 5 in the affidavit filed has also affirmed the period of medical treatment undergone by the petitioner in the Gauhati Medical College Hospital and that the petitioner needs further treatment in the All India Institute of Medical Science, New Delhi in so far as his liver injuries are concerned. The Respondent No. 5 has further stated in his affidavit that he had moved the Director General of Police to submit a proposal to the State Government for sanction of an amount of Rs. 1,00,000/- (Rupees one lakh) for the treatment of the petitioner and further that the Referral Board of the Medical College had certified that the petitioner needs to be treated in the All India Institute of Medical Science, New Delhi. However, in spite of the aforesaid steps taken, neither any payment has been forthcoming nor any arrangement has been made for the treatment of the petitioner in the All India Institute of Medical Science, New Delhi.

3. The other contesting Respondents, who are represented by Sri G. Soren, learned Government Advocate, Assam, though had not filed any affidavit, have contested the claim of the petitioner. According to the said Respondents, the Office Memorandum dated 30.5.1995 on which the petitioner has relied upon, has been amended by a subsequent Office Memorandum dated 20.11.2002 under which Office Memorandum the petitioner is entitled to ex-gratia payment of Rs. 25,000/- (Rupees twenty-five thousand) which amount, it is stated, has been paid to the petitioner. According to the official Respondents represented by the learned Government Advocate, Assam, beyond what is contemplated by the O.M. dated 20.11.2002, no other payment or facilities is due to the petitioner and, therefore, no further relief be granted by the Court. It is also stated that whatever is due to the petitioner in terms of the Government Notification in force had been paid and the petitioner will not be entitled to any further relief as has been claimed in the present writ petition.

4. In view of the expiry of a long period of time since the institution of the writ petition, by order dated 18.7.2007 this Court had directed for the medical examination of the petitioner by a duly constituted Medical Board and the report of such examination was required to be submitted before the Court. In compliance with the said order of this Court, on 24.9.2007, a report of the State Standing Medical Board was placed before the Court by which the Board had recorded its opinion that the writ petitioner needs to go to the All India Institute of Medical Science, New Delhi for further investigation and treatment of his old

splinter injuries of the liver and the problems arising therefrom. What emerges from the report of the State Standing Medical Board dated 24.4.2007 is that the need of the petitioner to have the specialized medical treatment in the All India Institute of Medical Science, New Delhi persists as on date.

5. The facts of the case make it abundantly clear that the petitioner received splinter injuries on different parts of his body including the liver while he was engaged in the discharge of his official duties. The petitioner has received the ex-gratia amount of Rs. 25,000/- (Rupees twenty-five thousand) under the Government Notification dated 20.11.2002. Reading the aforesaid Notification dated 20.11.2002 it would be clear that a Government servant receiving non-fatal injuries, inter alia, in an incident of bomb blast is required to be paid ex-gratia amount of Rs. 25,000/- (Rupees twenty-five thousand). The said Notification does not contemplate any medical treatment or expenses in connection with medical treatment to be afforded/paid to a victim of a non-fatal injury. The question, therefore, that is required to be answered by the Court is whether the petitioner's entitlement will be what is contemplated in the Office Memorandum dated 20.11.2002 or will the petitioner be entitled to any further relief in view of the very serious nature of injuries received by him, i.e. splinter injuries on the liver.

6. A careful reading of the Office Memorandum dated 20.11.2002 would go to show that a sum of Rs. 25,000/- (Rupees twenty-five thousand) is payable to the victim of a bomb blast on account of non-fatal injuries suffered while on duty. A non-fatal injury may take different forms. All injuries though painful need not necessarily be equally serious. From a particular perspective a non-fatal injury could be a superficial one or a grave injury or even a very serious injury. In the present case the petitioner suffered splinter injuries on different parts of his body including the liver. The splinter injuries on the other parts of the body were effectively treated in the Gauhati Medical College Hospital. However, due to lack of infrastructure and know-how, the Gauhati Medical College Hospital is not in a position to treat the liver injuries suffered by the petitioner. If the liver injuries suffered by the petitioner are not effectively handled the possibility of the petitioner's life being endangered cannot be ruled out. In such a situation, keeping in mind the fundamental rights of the petitioner guaranteed by Article 21 of the Constitution, can it be said that the State is absolved from its responsibility to attend to the liver injuries sustained by the petitioner on account of the bomb blast?

7. Instances of voluntary offer of medical treatment by the State, even in institutions outside the State, to innocent victims of bomb blast and extremists attack is not unknown. Such duties are performed by the State in view of its fundamental obligations as a welfare State and in consonance with the fundamental rights of the victims under Article 21 of the Constitution. Such obligations of the State flow from a sense of compassion. However, in cases where such compassion is not forthcoming a duty to provide medical assistance

to a victim can be understood to be an obligation flowing from the provisions contained in Article 21 of the Constitution of India. A State, responsible for the upkeep and maintenance of law and order and the welfare of its citizens, must be understood to be under an obligation to repair breaches that may occur in performance of such public duties. In a situation where on account of such a breach physical harm is caused threatening the rights of the victim guaranteed by Article 21 of the Constitution the State cannot be absolved of its responsibilities, which may extend to providing requisite and appropriate medical attention. In the present case the petitioner who suffered from splinter injuries on the liver while on duty and in the course of a bomb explosion triggered by terrorists has remained without any proper medical attention for nearly 3 (three) years. The report of the Medical Board submitted on 24.9.2007 spell out on the necessity of such treatment even as on date. The petitioner being a lowly paid employee does not have the means to undertake the treatment by himself, if the petitioner continues to remain untreated, there is every possibility that jeopardy may be caused to his life. In such circumstances, the Court is of the view that a duty must be cast upon the State to provide for the medical treatment of the petitioner in the All India Institute of Medical Science, New Delhi so as to enable the petitioner to receive due and proper medical attention for the splinter injuries suffered by him on his liver. Accordingly, this writ petition is allowed. The State Respondent shall forthwith act in the matter and impugned in the treatment of the petitioner in the All India Institute of Medical Science, New Delhi. Apart from the cost of the treatment which will be defrayed by the State, the State will also ensure that the petitioner, along with one escort of his choice, is paid for the journeys to and fro from New Delhi along with the cost of necessary medical support in form of drugs and medicine that the petitioner may have to continue with for sometime on medical prescription.

Writ petition consequently is allowed as indicated above.