
(2005) 07 AHC CK 0208

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13076 of 2003

Shiv Shanker Srivastava

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-2005

Acts Referred:

Citation : (2005) 6 AWC 5286

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Krishna Mohan, for the Appellant;

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri Krishna Mohan, learned counsel for the petitioner and | learned standing counsel for respondents.

2. The amendment application dated 21.3.2005 was allowed on 22.3.2005. The petitioner has carried out the amendments and has filed the amended petition. On the same date, the time was granted to the learned standing counsel to file reply amended petition. The respondent has not cared to file any reply nor have sought further time for that purpose.

3. Sri Shiv Shanker Srivastava, the petitioner died on 26.7.2004 due to heart failure leaving behind only son Sri Ajai Kumar. The substitution application filed by Sri Ajai Kumar dated 31.8.2004 is allowed. The necessary (sic) endorsement shall be made in the array of the parties.

4. Brief facts giving rise to this writ petition are that Sri Shiv Shanker Srivastava, the petitioner retired as Senior Auditor on 30.6.1993 from the office of Local Funds Account, Allahabad. He suffered a heart attack on 10.6.1995. On medical advise a permanent pace maker Simence Pace Setter Model 2040-T Serial No. 5140-62132 and Endo Cordial-G Model 1400-T Serial No. 044073252 Rs. 41,000/- was installed on the body of the petitioner. The petitioner submitted a

medical claim of Rs. 44,277/- as the total cost of the pace maker and other medical procedures.

5. The Director, Local Funds Account, Allahabad forwarded the bills on 26.6.96 for reimbursement to the Director/Additional Director (Medical Care) Swastha Bhawan, Lucknow, and on 7.11.1996 (Annexure No. CA-1) the Joint Director, Local Funds Accounts, Allahabad sent the application for medical claim of the petitioner along with original documents to Under Secretary, Finance (Local Funds Accounts) Department, Government of U.P. for orders. The Under Secretary, Finance (Local Funds Accounts) by his letter dated 4.1.1997 returned the original bills/vouchers to be examined by Additional Director (Medical Care) Swastha Bhawan, Lucknow along with essentiality certificate on prescribed forms to be counter signed by the Director General, Medical and Health, U.P.

6. Upon receipt of the letter from the State Government dated 4.1.1997 the Joint Director, Local Funds Accounts, Allahabad sent the original bills/vouchers to the Director (Medical Care) Swastha Bhawan, Lucknow along with covering letter dated 4.3.1997 with a request to send the approval to the State Government. At this stage the matter came to standstill. The documents were lying in the office of Director (Medical Care) Swastha Lucknow from March 1997 to June, 2003 (six years and three months). In between the Director, Local Funds Account, Allahabad sent number of reminders. Annexure 4 to 10 to the writ petition are these reminders dated 12.9.1997, 28.10.1997, 30.11.1998, 3.7.1999, 22.12.1999, 6.1.2001 and 18.6.2003.

7. In July, 2003 petitioner Shiv Shanker Srivastava was advised to get pace maker replaced urgently as the machine had become old, as it was installed in 1995. In these circumstances, the petitioner filed this writ petition with the prayer to direct to respondents to re-reimburse the medical bills relating to the pace maker along with 18% interest. On 16.7.2003 this Court passed following orders;

" A counter affidavit has been filed by Sri Satendra Kumar Srivastava, Joint Director, Local Fund Account, Audit Department, U.P. Allahabad stating that petitioner's request for purchase of pace maker has been accepted on the recommendation of the Medical Specialist and for which a bill for a sum of Rs. 44,527/- was submitted to the State Government. The entire documents have been sent on 7.11.1996. The State Government has required the department vide its letter dated 9.1.1997 to send the original bills/vouchers for examination by the Additional Director (Chikitsa Upchar) Swasthya Bhawan, Lucknow and to submit the essentiality certificate counter signed by the Director General of Medical & Health. The Department has send the original bills/vouchers along with essentiality certificate to the Additional Director (Chikitsa Upchar) on 4.3.1997, and thereafter reminders have been sent on 12.9.1997, 28.10.1997, 30.11.1998, 3.7.1999, 22.12.1999, 6.1.2001 and 18.6.2003 but no response has been received from the office of Director General, Medical Health/Additional Director (Chikitsa Upchar) Lucknow. It is contended that pace maker was

installed in the year 1995 and it needs urgent replacement on receipt of payment of old pace maker which was installed in 1995, and in case petitioner does not receive the amount he will not be able to purchase new pace maker. Petitioner is facing serious financial difficulties.

Looking to the facts and circumstances of the case, as an interim measure, a direction is issued to the Director General Medical and Health Services U.P. at Lucknow to issue necessary orders in this regard for examination of original bills and vouchers and to countersign the essentiality certificate within a week of service of certified copy of this order upon him. In case any untoward thing happens to the petitioner, in the meantime, the Director General Medical & Health, U.P. shall be held responsible for which his office is already responsible for unreasonable delay.

List on 31.7.2003"

8. A counter affidavit of Sri Satendra Kumar Srivastava, Joint Director, Local Funds Accounts, U.P. Allahabad was filed on 15.7.2003. In paragraph 3 it was stated that inspite of repeated reminders Director General, Medical and Health/ Additional Director (Medical Care) did not return the bills/vouchers after verification on which further action could not be taken. The reminders sent to Additional Director (Medical Care) Swastha Bhawan, Lucknow dated 4.3.1997, 12.9.1997, 28.10.1997, 30.11.1998, 3.7.1999, 22.12.1999, 6.1.2001 and 18.6.2003 have been annexed to Annexure CA-2 to CA-10 respectively.

9. Sri Shiv Shanker Srivastava died on 26.7.2004 due to heart failure. Dr. Gopal Ji Srivastava certified that Sri Shiv Shanker Srivastava died at his residence on 26.7.2004 at 08.10 AM due to heart attack. His son Sri Ajai Kumar has applied for substitution, which has been allowed.

10. The paragraph 11-A to 11-3 of the amended petition, the writ petition as follows:-

"11-A That due to inaction/action of the respondents above referred the medical claims of Shiv Shanker Srivastava (now deceased) was not paid to him consequently no replacement of pace maker could be possible due to paucity of funds by the petitioner from his own source. Ultimately Shiv Shanker Srivastava died due to heart failure on 26.7.2004. Dr. Gopal Ji Srivastava issued death certificate dated 28.7.2004. The true and correct photocopy and its typed copy of death certificate dated 28.7.2004 is filed as Annexure-I of this application.

11-B That Shiv Shanker Srivastava prior to his death was subjected medical examinations time to time which reflected that his heart was not healthy. The applicant undertakes to place all the documents before this Hon"ble Court as and when it is required for its perusal.

11-C That the facts as have been stated above are sufficient to demonstrate that Shiv Shanker Srivastava (now deceased) met his death only due to inaction/ action of the respondents as they did not release medical claims inspite of

Hon"ble High Court"s order dated 16.7.2003 as such due to paucity of funds no replacement of the out lived pace maker could be done by the petitioner from his own source.

11-D That Shiv Shanker Srivastava (now deceased) died due to collousness of the respondents. Their action/inactions compelled the dependants of Shiv Shanker Srivastava (now deceased) to suffer financially and emotionally as his financial supports was only source of the lively hood of the dependants and his family.

11-E That Shiv Shanker Srivastava was getting Rs. 4308.50 paisa pension per month and died at the age of 69 years. The father of Shiv Shanker Srivastava the petitioner died at the age of 78 years and his mother died at the age of 82 years. In case the due replacement could be provided, Shiv Shanker Srivastava would have lived at least 10 years more. Thus the dependants of the deceased Shiv Shanker Srivastava are entitled to get compensation to the tune rupees six lakhs from the respondents."

11. The petitioner has also amended the prayers and has prayed for compensation to a tune of Rs. 6 lakhs. The Director General, Medical and Health, U.P. Lucknow respondent No. 2 is represented by learned standing counsel. He has not cared to file any counter affidavit. The petitioner has filed an application on 31.8.2004 for a direction to the respondents to send sanction orders for payment to respondent No. 5. Along with this application, a letter of Joint Director, (Medical and Care) dated 25.5.2004 addressed to the Director, Local Funds Accounts, U.P. Lucknow has been annexed, in which it is stated that on 30.8.1997 by letter No. 114/4893 the original documents were sent to the Director, Local Funds Accounts, Allahabad for removing objections. The office of Director, Local Funds Accounts has denied the receipt of the letter.

12. The Joint Director has given his opinion that the claim has been misplaced in the transit and in, compliance with the orders dated 16.7.2003, photocopy of the essentiality certificate for Rs. 44,272/- has been returned with a caution that carte must be taken that double payment may not be made.

13. The Joint Director, Medical Care has not denied the receipt of various reminders. His first letter dated 25.5.2004 does not refer to any of these reminders. He has made a mention of his letter dated 30.8.1997 by which the bills/vouchers were sent back for removal of objections. The letter dated 30.8.1997, however, has not been filed on record nor/details of the objections which were sought to be removed have been mentioned. The Joint Director, Medical Care has also not disclosed the source from which he received photocopy of the essentiality certificate. This circumstances clearly demonstrates that having realised the delay caused in his office, the Joint Director, Medical Care has in order to comply with the orders of this Court sent the letter dated 25.5.2004 to cover up the gross negligence caused by his office.

14. The Court in its order dated 16.7.2003 made it absolutely clear that in case

essentiality certificate is not given within a week of service of certified copy of this order upon the Director General, Medical & Health, U.P., he shall be held responsible for any untoward happening, which unfortunately happened.

15. The fact and circumstances clearly without any doubt demonstrate that the office of Director General, Medical and Health, UP. was responsible for delay of seven years in medical reimbursement of the pace maker, The petitioner could not get the medical reimbursement within his life time and on account of which new pace maker could not be installed and the petitioner in the meantime died due to heart attack. The office of Director General, Medical and Health, U.P. did not wake up inspite of the warning issued by the Court on 16.7.2003.

16. It is now accepted by the Supreme Court that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. In *State of Gujarat v. Menon Mahomed Haji Hasam* AIR 1967 SC 1885 , the order of the High Court directing payment of compensation for disposal of seized vehicles-without waiting for the outcome of the decision in appeal was upheld both on the principals of bailee's "legal obligation to preserve the property intact and also the obligation to take reasonable care of it to return it in the same condition in which it was seized" and also because the Government was "bound to return the said property by reason of its statutory obligation, or to pay its value if it had disabled itself from returning it either by its own act or. by act of its agents and servants. In *Bishambar Nath and Others Vs. The Agra Nagar Mahapalika, Agra* and Another, the Supreme Court held that where: the authorities could not have taken any action against the dealer for withholding flour for sale and their order was illegal, it is immaterial that the respondents had acted bonafide and in the interest of preservation of public health. Their motive may be good but their action was illegal and thus in tort they would ordinarily be liable for any loss caused to the appellants by their actions.

17. The concept that King can do no wrong has been abandoned in England, and the State is now held responsible for tortious act of its servant. The old distinction between sovereign and non-sovereign functions is no longer invoked to determine State liability. In *Geddis v. Proprietors of Bann Reservoir* (1878) 3 AC 430 (HC) it was observed that no action would lie for doing that which the Legislature has authorised, if it be done without negligence, although it does not occasion damage to any one; but an action will lie for doing what the Legislature has authorised if it be done negligently, and causes loss to a person.

18. The word "compensation" is of very wide connotation. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. It has to be construed widely to enable the Courts to determine compensation for any loss or damage suffered by a person. The State Government has not denied that the retired employees have a right for medical reimbursement, subject to admissible deductions and limits.

19. The present case can be brought within the purview of misfeasance in public

office, which has been explained by Wade in his book of Administrative Law as follows;

"Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrongdoing, There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

20. In *Rooks v. Barnard* (1964) 1 All ER 367, it was observed by Lord Devlin, "the servants of the Government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of such power but its abuse. No law provides protection against it. He, who is responsible for it, must suffer it. There is, however, an exception and that is where the public functionary has discharged his duties honestly and bonafide.

21. In *Ghaziabad Development Authority Vs. Balbir Singh*, the liability of the State authorities to pay compensation for misfeasance in public offices has been given due recognition and the State liability in tort has been accepted. Taking the case in hand, I find that Sri Shiv Shanker Srivastava, a retired servant, was not only deprived of the basis medical facilities, he was also rendered helpless. He could not fight the red tapism and the corruption prevalent in the system. Had he gone to the office of the Director General, Medical and Health at Lucknow and bribed the concerned persons, he may have been reimbursed with the cost of the pace maker and saved his life. This is the way the Government function these days. The Court takes judicial notice of the state of affairs prevalent in the offices of the government of Uttar Pradesh. If the Courts also sit silent and be mute spectator to such harassment by public authorities, the citizens will have no place to lodge complaint and seek redressal.

22. In the matter of medical reimbursement the Government officers must be made responsible for the delay in settling the claims. The Court is not aware as to how many such claims are pending and does not intend to cause any enquiry as office of Director General, Medical and Health, U.P. must take care of such delays in his office. The death in this case could be avoided if the medical reimbursement due to the deceased was allowed within reasonable time. The life expectancy in the family of the petitioner given in the amended paragraph 11-J of the writ petition has not been denied. Sri Shiv Shanker Srivastava-died at the age of 69 years whereas his father and mother has died at the age of 78 and 82 years respectively. Not only his life was cut short, he must also have suffered a lot. The harassment caused to a retired employee suffering with ailments, in the delay of reimbursement of his medical bills, which are claimed as a matter of right can hardly be measured in terms of money. In this case the Joint Director, (Medical Care) Government of U.P. who works under and in the office of Director

General, Medical and Health , Government of U.P. was authorised to verify the bills/vouchers and to countersign the essentiality certificate. He was squarely liable for delay, for hardships and harassment caused to the petitioner and the consequential loss to his family. The petitioner has prayed for damages of Rs. Six lakhs for untimely loss of his father, and the hardship caused to him before his death. I find that half the amount of the damages would compensate, for the loss caused to the family on account of negligence of the office of Director General, Medical and Health, U.P. shall be sufficient in the interest of justice. This would also have deterrent effect on the officers and warn them of such claims in future.

23. The writ petition is allowed. The respondents are directed to pay Rs. 44,2727- as cost of the pace maker installed in 1995, along with 9% simple interest per annum to the petitioner. A writ of mandamus is also issued to the respondents to pay compensation to the family of the petitioner of Rs.

24. Three Lakhs for the untimely loss of his father harassment, mental agony and hardships caused to the family to be paid to his son substituted as petitioner in this writ petition. The entire amount shall be paid to him for the benefit of the family of the deceased, within three months from the date of production of certified copy of this order before the respondents. It will be open to the State Government to fix the responsibility on the officers for the delay and damages, and to take appropriate disciplinary action for punishment/recovery against such persons.