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**(2003) 09 JH CK 0099**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 628 of 2003**

Smt. Edlin Pratima Ekka

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 09-09-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 4 JCR 18

**Hon'ble Judges :** M.Y. Eqbal, J

**Bench :** Single Bench

**Advocate :** S.N. Prasad, for the Appellant; A. Allam and M.B. Lal and SC II, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.Y. Eqbal, J.—The petitioner who is the widow of late Chandrakant Khalkho, has prayed for issuance of an appropriate direction upon the respondents for reimbursement of the medical expenses incurred in the treatment of her late husband.

2. Petitioner's husband was in the service of the State of Bihar and was posted as Medical Officer, in-charge, Cholera Hospital, Ranch/. In 1996 all of a sudden he fell ill and was treated by a doctor of Rajendra Medical College & Hospital, Ranchi. After treatment it was found that the petitioner's husband was suffering from renal problem and immediately required dialysis. Dr. S.S. Prasad who was the professor and head of the department of medicine, advised for immediate renal transplantation and pending renal transplantation he will have to undergo dialysis. On the, basis of the said certificate an application was filed on behalf of the husband of the petitioner before he Additional-cum-Special Secretary, Health Services, Govt. of Bihar for sanction of rupees two lacs so that kidney may be transplanted. The application was recommended by the doctor and it was further recommended that renal transplantation is not possible in Bihar and he was directed to rush to Christian Medical College & Hospital, Vellore or PGI

Chandigarh. Petitioner's husband was subjected to examination by the Medical Board and the Board finally by letter dated 28.2.1996 recommended for grant of rupees two lacs for his treatment. In the meantime, the condition of the late husband of the petitioner was very much deteriorated and as per the advice, he had to rush to Christian Medical College & Hospital, Vellore and there he was treated and they issued a certificate that the total cost of theoraphy dialysis, blood transfusion and transplantation of surgery donar nephrectomy post transplantation intensive care will cost Rs. 1,75,000/-. The petitioner along with her deceased husband returned back to Ranchi for arrangement of the aforesaid amount and since he had already applied for sanction of the said amount before the State of Bihar, the petitioner was waiting to receive the amount. In the meantime the dialysis at RMCH was not in working condition and so it was advised by the attending doctor to get dialysis in a private Nursing Home and, accordingly, the deceased was put in dialysis in a private Nursing Home. Despite all the recommendations of the Medical Board the amount of rupees two lacs was not sanctioned by the respondents and for want of funds the husband of the petitioner ultimately died on 30.11.1996. After the death of her husband she submitted all the vouchers and bill incurred on the treatment of her husband at Ranchi which was duly signed by Dr. S.S. Prasad. The petitioner, thereafter, made several representations for payment of the estimated expenditures on the treatment of her late husband which was Rs. 1,50,000/-. She was requested to send the entire bills which she did but inspite of several representations the amount was not paid. Ultimately the representation of the petitioner has been rejected on the ground that payment of medical expenses incurred by the petitioner for dialysis is not permissible.

3. The respondents, in their affidavit, have stated that in terms of the Govt. resolution dated 8.12.1994 the expenses incurred on Out Door treatment of the petitioner's husband is not permissible. Since dialysis is a part of O.T. treatment, the expenses incurred in course of dialysis cannot be reimbursed. It is stated in the affidavit filed by the Commissioner and the Secretary, Health department, Govt. of Bihar that although the expenses of dialysis is not reimbursable, he observed that the case of the petitioner deserves sympathetic consideration of the Govt. It is stated that since the petitioner's husband belo"nged to Jharkhand State and died while serving the State of Jharkhand, he sent all the papers to the Secretary, Health department, Govt. of Jharkhand. In the counter affidavit filed by the Govt. of Jharkhand it is stated that the application of the petitioner against the State of Jharkhand is not maintainable inasmuch as petitioner's husband was never an employee of the State of Jharkhand. He was the employee of unified State of Bihar and during his last phase of life he worked within the territory falling in the State of Jharkhand.

4. I have heard the counsel for the petitioner, Mr. A. Allam, learned counsel for the State of Bihar and the learned SC II for the State of Jharkhand.

5. Admittedly Dr. S.S. Prasad was the Professor and Head of the department of

Medicine and Nephrology in RMCH, Ranchi. The respondent have not denied the certificate issued by the head of the department of the hospital that renal transplantation was not possible in Bihar. The respondents have also not disputed the fact that petitioner's husband was sent to Christian Medical College & Hospital, Vellore because of his deteriorating condition and it was diagnosed that the husband of the petitioner was suffering from chronic renal failure. Annexures-4 and 6 are the certificates issued by Christian Medical College & Hospital, Vellore. It has also not been disputed that the petitioner was waiting for sanction of the amount and her husband underwent dialysis in Vellore and also in Ranchi. In para 14 of the writ petition it has been categorically stated that dialysis instruments at RMCH were not in working condition and so the deceased was advised by the doctor of RMCH to get dialysis in a private Nursing Home and, accordingly, the deceased was put on dialysis in a private Nursing Home. It is, therefore, clear that it is because of the failure of the Health Department of the Govt. of Bihar to sanction the amount for renal transplantation forthwith, the condition of the deceased day by day deteriorated and in spite of dialysis he could not survive. It would, therefore, be totally unjust, and unfair to say that the expenses incurred by the petitioner in the process of dialysis cannot be reimbursed. The decision of the Department of Health, Govt. of Bihar is absolutely illegal, unfair and unreasonable. In view of the admitted facts narrated hereinabove, I am of the view that the petitioner must be paid the expenses incurred by her in the treatment of her deceased husband.

6. For the aforesaid reasons this writ application is allowed and the Secretary and the Director-in-Chief, Department of Health, Govt. of Bihar are directed to release the amount incurred by the petitioner in the dialysis done of her deceased husband. Bills to that effect were already submitted by the petitioner and, therefore, the amount must be released within 30 days from the date of receipt of a copy of this order.