
(2013) 05 GAU CK 0060
In the Gauhati High Court
Case No : WP (C) No. 1109 of 2007

Sri Durgeswar Saikia

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 47

Citation : (2013) LabIC 2949

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : D. Thakur, Mr. S.M. Baruah, Mr. P.D. Nair, Mr. G. Alam and Mr. H. Rahman, for the Appellant; N.K. Singh, A. Roshid and Mr. J. Mihu, for the Respondent

Final Decision : Disposed Off

Judgement

Anima Hazarika, J.—Heard Mr. G Alam, learned counsel appearing for the petitioner. None appeared for the respondents. However an affidavit-in-opposition has been filed on behalf of respondent Nos. 2 to 8. Invoking power under Article 226 of the Constitution of India, the instant writ petition has been filed praying for a direction to the respondents to reimburse the petitioner's medical bills amounting to Rs. 1,86,133.72 (Rupees One Lakh Eighty Six Thousand One Hundred Thirty Three and Seventy Two Paise) only forthwith.

2. The petitioner's case in brief is that the petitioner is presently serving as Executive Engineer in the Brahmaputra Board, Guwahati. The National Hydroelectric Power Corporation (NHPC for short), being under the administrative control of the respondent No. 1, he was sent on deputation to the NHPC, where he served as Assistant Manager under Siang Project, Arunachal Pradesh w.e.f. November, 2001 to November, 2003. While on deputation the petitioner's wife fell seriously ill and she was diagnosed as suffering from "Myathemia Grasis-II". She was immediately admitted at the GNRC Hospital, Guwahati where she underwent "thymectomy" operation on 09.09.2002. Subsequently when her

condition deteriorated, she was shifted to the Gauhati Medical College and Hospital, (GMCH for short) Guwahati, where she eventually died on 24.10.2002. Thereafter the petitioner submitted medical bill amounting to Rs. 1,86,133.72/- alongwith relevant vouchers and the necessary certificates issued by the attending doctors/authority vide letter dated 23.12.2002. In the meanwhile, petitioner was also detected as suffering from Cancer in November, 2003. Due to the costly treatment, the petitioner is facing acute financial problem. Therefore due to non-receipt of the bills so submitted, petitioner had sent several petitions to the respondent No. 2 requesting therein to consider his case and make payment at an early date. One of such petition is quoted herein below:

Dated Guwahati, the 18th January, 2005

To

The Chairman-cum-Managing Director NHPC Ltd., Faridabad-32, Haryana

Sub: Medical Reimbursement-Shri D Saikia, AMC-regarding

Ref: 1) NH/USP/PF-Med/02-8540 dated 23/12/2002 2) NH/RO/SDBP-Med-2K3-1804 dated 10/09/03

Sir,

With reference to the above, I have the honour to lay before you the few lines for favour of your kind information and needful action.

That Sir, I was on deputation to NHPC from November, 2001 to November, 2003 and was relieved from NHPC on 4/11/03. During deputation period, I lost my wife on 24/10/2002 due to illness. She had Thymectomy operation in the GNRC Ltd., Guwahati on 9/9/2002, the date on which the circular No. 27/2002 dated 9/9/2002 was issued. I have come to know that due to this circular, the medical bill submitted for the treatment of my wife has not been reimbursed till now.

That Sir, I am a cancer patient which was detected in November, 2003 and am under treatment in the TATA MEMORIAL CENTRE, MUMBAI. Due to the costly treatment I am facing acute financial problem. Moreover, I have to undergo Bone Marrow Transplant (BMT) at TATA MEMORIAL CENTRE, MUMBAI during this month for which I need substantial amount of money. At this moment, it would be very helpful if I receive the medical bill for the treatment of my wife during September, 2002.

I therefore request you kindly to look into the matter and sanction the medical bill which is I think under your consideration.

Expecting an early sympathetic consideration please.

Yours faithfully,

(D Saikia) Asstt. Executive Engineer Pagladiya Cell, Brahmaputra Board Basistha, Guwahati: 781 029

Copy to:

The Chief Engineer, NHPC Ltd., Upper Siang Project, Yingkiong, Arunachal Pradesh for favour of kind information.

3. Unfortunately, claim so made by the petitioner was rejected by respondent No. 5 vide letter dated 27.10.2006 (Annexure E) on the ground that petitioner's wife was treated in a non-empanelled hospital. It is the further case of the petitioner that he being a cancer patient has been undergoing treatment at Tata Memorial Centre, Mumbai. The petitioner has already undergone Bone Marrow Transplant (BMT) and because of his illness he is required to visit Mumbai frequently for periodic checkup. Thus due to costly treatment, he is suffering from acute financial crisis and he is in urgent need of money. Hence being aggrieved by the order dated 27.10.2006, the petitioner has filed the instant writ petition with the aforesaid prayer.

4. An affidavit-in-opposition has been filed on behalf of respondent Nos. 2 and 3 denying the averments made in the writ petition. Paragraphs 5 and 6 being relevant are quoted hereinbelow:

5. That with reference to paragraph No. 4, it is stated that in terms of the policy of the Corporation issued vide Circular No. 17/2002 dated 08.04.2002, the petitioner was required to take treatment of his wife in empanelled hospital run by Govt. Railway, Public Sector Undertaking or local Govt. authorities of the area. Further, as per Circular No. 27/2002 dated 09.09.2002, it was reiterated that the employees and dependent family members could avail treatment in empanelled hospital only. However, in case of unavoidable circumstances, the petitioner could have availed the facility in other Pvt. Hospital with express approval of CMD. It is stated that the petitioner's wife was treated at GNRC Ltd. (a private hospital) Guwahati from 06.09.2002 to 30.09.2002 as per the medical reimbursement bill submitted by him and as per the record further treatment was taken at GMCH (Govt. Hospital, Guwahati), where she finally expired on 24.10.2002.

6. That with reference to paragraph No. 5, it is clarified that the petitioner has submitted medical reimbursement claim of Rs. 1,68,561/- and Rs. 92, 942/- for treatment in GNRC and GMCH respectively. The second bill was restricted to Rs. 94,542/- and reimbursed to the petitioner as per rule. Hence unpaid amount was Rs. 1,68,561/- and not Rs. 186,133/- as mentioned in the petition. It is stated that in spite of clear cut policy of the Corporation issued vide circulars referred to above, the petitioner's wife Late Mukta Hazarika was treated at GNRC Ltd. (non empanelled hospital). However, GNRC was empanelled w.e.f. 21.04.2004 initially for a period of two years...

5. In view of the statements made in the counter affidavit, relevant paragraphs of which are quoted hereinabove, Mr. Alam, learned counsel appearing for the petitioner in support of his submission has referred to the following decisions:

(i) Surjit Singh Vs. State of Punjab and Others,

(ii) Gouri Sengupta Vs. State of Assam and Others,

(iii) Rina Dey Vs. State of Tripura and Others,

6. In the case of Surjit Singh (supra) in a similar situation, the Hon''ble Apex Court held at paragraph 11 and 12 as thus:

11. It is otherwise important to bear in mind that 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. The importance and validity of the duty and right to self preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognized it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17. Vinaa dehena kasyaapi canpurushaartho na vidyate

Tasmaaddeham dhanam rakshetpunyakarmaani saadhayet

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam

Rakshane yatnamaatishthejje vanbhaadraani pashyati

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20. Sharirarakshanopaayaah kriyante sarvadaa budhaih

Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22. Aatmaiva yadi naatmaanamahitebhyo nivaarayet

Konsyo hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

12. The appellant, therefore, had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognized list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on

that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

7. In the case of Gouri Sengupta (supra) the petitioner, an Assam Govt. employee had undergone treatment for cancer in a private hospital outside the State of Assam wherein the petitioner's bill for reimbursement of medical expenses was not approved by the authority on the ground that private nursing home is not recognized by the State of Assam for the purpose of reimbursement of the medical expenses. Relying upon the decisions in (i) Surjit Singh (supra), (ii) State of Punjab and others Vs. Mohinder Singh Chawala, etc., and (iii) State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , this Court in Gouri Sengupta (supra), directed to reimburse the medical expenses of the petitioner with interest @ 18%.

8. While directing as such, this Court held at paragraph 2 as thus:

2.... this matter is no longer res-integra inasmuch as the Apex Court in 3 decisions has settled the matter. The first decision in this regard is Surjit Singh Vs. State of Punjab and Others,(ii) the next case of this point is State of Punjab and others Vs. Mohinder Singh Chawala, etc.,]. That of course was a case where the Punjab Govt. approved the referred case of the patient of a particular hospital as there was no specialized treatment available in the State of Punjab and permission was given to go outside the State. That was done, but only the controversy was that whether the patient shall be paid the room rent of that particular hospital. The Supreme Court allowed it. The Supreme Court said that room rent of that particular hospital is a part of the medical expenses and that must be reimbursed by the State Government. (iii) The next case on this point is State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., There a challenge was made to the policy formulated by the State of Punjab with regard to the reimbursement of medical bill. The Supreme Court said that a policy cannot be challenged, because that is wisdom of the authority. But at the same time, the Supreme Court the earlier law and the Supreme Court pointed out as follows: A right, it correlates to a duty upon another individual that is employer, government or authority. The right of one is an obligation of another. Hence the

right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. The Supreme Court further pointed out in this case as follows: "when we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up keep, maintenance and cleanliness has to be beyond as person. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen, of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

9. In the case of Rina Dey (*supra*) which also involved medical reimbursement for the treatment done at a hospital/institution not recognized under the Rules of the authority, wherein the petitioner was referred to by the State Medical Board to SSKM Hospital, Kolkata for ASD Closure but she underwent immediate ASD Closure at Narayan Hrudayalaya Institute of Cardiac Science, Bangalore and therefore, her claim for medical reimbursement was turned down since it was not done in the Government Hospital whereas the Govt. order No. 21 dated 20.12.2002 provided that the facility of medical reimbursement would be available even if treatment is taken at a hospital of choice but subject to the condition that reimbursement would be at the rate of the recognized hospital or the hospital of choice, whichever is less. This Court referring to Surjit Singh (*supra*) held at Paragraph 13 as thus:

13....It is true that the petitioner has not received treatment at a recognized hospital or recognized health-care institute; but the principle of self-preservation, as enunciated by the Supreme Court in Surjit Singh (*supra*), would override this policy and it would be unjust, on the part of the destute, to refuse to reimburse the expenses incurred by the petitioner, at least to the extent as is permissible under the relevant rules/policies.

10. I have heard the learned counsel appearing for the petitioner. Perused the affidavit-in-opposition filed on behalf of respondent Nos. 2 to 8 and also gone through the decisions cited by the learned counsel for the petitioner.

11. In the present case in hand, there was no approval obtained from the CMD but considering the case of the petitioner, whose wife was suffering from a serious disease i.e. "Myathemia Grasis-II ", probably there was no time for the petitioner to obtain the required approval from the CMD since the petitioner's first and foremost duty was to save his wife's life. To save one's life is concomitant of the right to life enshrined in Article 21 of the Constitution of India. There is no reason as to why the NHPC authority under whom the petitioner was serving at the relevant time would not bear the expenses incurred for the treatment of his wife, who eventually died on 24.10.2002, more so, the authority could have granted ex-post facto approval for treatment of the petitioner's wife considering the seriousness of the disease. Though it is a fact that the petitioner's wife was not treated at an empanelled hospital run by the Government, Railway, public Sector Undertaking or local Govt. authorities as per policy decisions of the NHPC for the purpose, but the principle of self perseverance as enumerated by the Supreme Court in the case of Surjit Singh (supra) would override this policy and it would be unjust on the part of the authority to refuse to reimburse the expenses incurred by the petitioner for the treatment of his wife, atleast to the extent as is permissible under the extant Rules/policies.

12. Considering, therefore, the matter in its entirety and in the interest of justice, as well as taking note of the fact that petitioner himself is seriously ill, suffering from cancer, the respondent authority, particularly respondent Nos. 2, 3 and 4 are hereby directed to reimburse the medical expenses of the petitioner's wife to the extent as it would have been available if she would have undergone treatment at any of the aforesaid empanelled hospital of the authority. Moreso, as per statement made on oath in the affidavit-in-opposition, filed by the respondent to the effect that when the petitioner's wife was treated at GNRC Hospital i.e. from 06.09.2002 to 30.09.2002 GNRC Hospital was not empanelled but subsequently on and from 21.04.2004, GNRC Hospital has been empanelled, there seems to be no impediment on the part of the authority to reimburse the expenses incurred by the petitioner for treatment of his wife.

The whole exercise so directed would now be completed within a period of 2 (two) months from the date of receipt of a certified copy of this order. It is further made clear that the amount already paid would be adjusted with the final payment to be made to the petitioner as ordered hereinabove. With the above observations and directions, this writ petition stands disposed of. However, there shall be no order as to costs.