
(2012) 02 GAU CK 0023
In the Gauhati High Court
Case No : W.A. No. 41 of 2011

State of Tripura and Others

APPELLANT

Vs

Sri Prangobinda Das

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

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

Citation : (2012) 2 GLD 823 : (2012) 5 GLT 315

Hon'ble Judges : Swapan Chandra Das, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : S.M. Chakraborty and Mr. J. Majumder, for the Appellant; S. Datta, Ms. D. Sengupta and Mr. S. Das, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This writ appeal is directed against order, dated 07.04.2011, passed by a learned Single Judge in WP(C) No. 43 of 2011.

As agreed to by Learned Counsel for both sides, this writ appeal was taken up for hearing and is being disposed of at the admission stage itself. Heard learned senior counsel, Mr. S.M. Chakraborty, assisted by Learned Counsel, Mr. J. Majumder for the appellants, and Learned Counsel, Mr. S. Datta, for the respondent.

2. The petitioner approached this Court, presenting WP(C) No. 43 of 2011, under Article 226 of the Constitution of India, stating, inter alia, that on 25.03.2008, the petitioner, suddenly, fell seriously ill and he was taken to Tripura Sundari District Hospital, Udaipur, for treatment. The doctors, attending him, at the said hospital, had a video conference with the "Asia Heart Foundation" and it was advised that the petitioner shall undergo, immediately, angiography and other appropriate measures be taken. Considering petitioner's serious condition, the doctor of Tripura Sundari District Hospital referred the petitioner to Rabindranath Tagore International Institute of Cardiac Sciences (RTIICS), Kolkata, for proper

treatment and he was accordingly shifted there for treatment. On his return, after treatment, the petitioner submitted medical reimbursement bill (M.R. bill) in the Public Works Department, where he was working as an employee in the post of Pump Operator, claiming reimbursement of the bill pursuant to Memo. No. F.5 (10)-FIN (G)/75-1 dated, Agartala, 9th August, 2005 (hereinafter mentioned as "Memo, dated 09.08.2005"). The Deptt. refused to allow the claim on the ground that the petitioner was not referred to by the State Medical Board for treatment outside the State. Being aggrieved, the petitioner filed a writ petition seeking direction to the State respondents for reimbursement of the bill.

3. The respondents contested the writ petition, contending, inter alia, that the petitioner was receiving treatment, in Tripura Sundari District Hospital, with the help from the RTIICS, but he was never referred to by the State Medical Board for treatment at RTIICS, Kolkata, and, hence, the petitioner was not entitled to get reimbursement of the expenditure incurred by him for his treatment.

4. The learned Single Judge, by the impugned order, dated 07.04.2011, relying on another Single Bench order of this Court in WP(C) No. 20B of 200B, dated 30.01.2009, disposed of the writ petition directing thus :

In view of the above, this writ petition is disposed of in terms of the said order dated 30.01.2009 passed in WP(C) No. 208 of 2008 directing the respondents to take necessary follow up action as expeditiously as possible, preferably within two months from today by way of paying the admissible amount to the petitioner.

5. Learned senior counsel, Mr. Chakraborty, referring to Memo, dated 09.08.2005 (Annexure-R.1) has submitted that Govt. of Tripura, as a good gesture to facilitate medical treatment to Group C & D employees of the Govt. for serious diseases outside the State, issued the Memo. and thereby extended facilities of medical reimbursement in the event a particular employee is referred to by the "State Medical Board" for treatment outside the State. In the case in hand, since the petitioner was not referred to by the State Medical Board, his claim was rightly refused by the State Govt. If the State Govt. reimburses the bill of an employee, not referred to by the Medical Board, it will open a floodgate and the benevolent scheme of the Govt. will be grossly misused. Learned Counsel, therefore, has prayed for setting aside the order passed by learned Single Judge.

6. On the other hand, Learned Counsel, Mr. Datta, has submitted that the petitioner was taken to Tripura Sundari District Hospital, Udaipur, a district level Govt. hospital, for severe cardiac arrest and the doctor, attending on him in the hospital, immediately, consulted "Asia Heart Foundation" through video conferencing system introduced in the said Govt. hospital and the said "Asia Heart Foundation" is a wing of RTIICS, which advised immediate angiography of the petitioner and the doctor of T.S. District Hospital, Udaipur, referred the petitioner and accordingly, the petitioner attended RTIICS, at Kolkata, and had undergone the treatment. The petitioner was, therefore, according to Mr. Dutta, well covered under the scheme formulated by the State Govt., under Memo,

dated 09.08.2005, and, therefore, entitled to get medical reimbursement.

7. Since Memo, dated 09.08.2005, is the bone of contention in this appeal, let us reproduce it here for ready reference and fair appreciation. The Memo, dated 09-08-2005, reads as under :

No. F.5(10)-Fin(G)/75 I Dated, Agartala the 9th August, 2005.

MEMORANDUM

Subject :-- Medical Reimbursement facility to Group- "C" & "D" Government employees for treatment as referred case outside the State and also for treatment of Cancer in the Cancer hospital of the State.

Consequent upon issue of G.O. No. 8 dated 25-9-2004 from the file No. 2(10-23A)/MS/Estt/MR/2002 (Part-III) of the Health & Family Welfare Department, a considerable number of cases are referred to the Finance Department from various Departments seeking concurrence/approval regarding admissibility of claims of medical reimbursement facilities of Group-C & D category of employees as cases" of special dispensation even when the cases are referred by the State Medical Board in terms of para(f) of the said memo. On the other hand, certain clarifications were issued in the past from the Finance Department about admissibility of medical reimbursement claim of Group-C & D employees under a few special exigencies.

2. Now it is felt that for quick disposal of the claims of medical reimbursement of Group-C & D employees admissible under aforesaid G.O. and circulations issued from the Finance Department, certain clarifications need to be issued. Accordingly, the undersigned is directed to issue following clarifications to facilitate quick disposal of the medical reimbursement claims of Group-C & D employees and for removing the ambiguities :--

A. (i) When a Group-C/Group-D Government employee himself/herself suffering from disease other than cancer is referred to Medical Institution/Hospital to which he/she is referred to, the cost of treatment in that Institution/Hospital excluding the cost of journey is admissible for reimbursement. This benefit is not admissible in respect of any member of the family of such a Government employee.

(ii) When a Group-C/Group-D Government employee himself/herself or any member of his/her family suffers from cancer and is referred to a medical Institution/Hospital outside the State by the Standing Medical Board, the cost of treatment in such Institution/Hospital inclusive of admissible journey expenses only up to referred Institution/hospital (both ways) is admissible for reimbursement. Journey expenses of the escort, if any recommended by the Standing Medical Board, is also admissible for reimbursement.

(iii) Group-C/Group-D Government employee shall continue to get reimbursement of the cost of treatment of cancer for himself/herself and his/her

members of the family for treatment in Cancer Hospital in the State vide Memo. No. F. 5(2)-FIN(G)/93 dated 14.6.1996 (Annexure-I).

B. The reimbursement facility for implanting of pacemaker as provided in Memo. No. 5(2)-FIN(G)/93 dated 26.02.1996 (Annexure-II) and No. R 5(2)-FIN(G)/93 dated 24.05.1997 (Annexure-III) for Group-"C" & "D" employees shall continue to be admissible, subject to limit fixed therein.

C. The reimbursement facility for injuries caused by extremist violence or injury sustained in course of discharge of official duties for Group-"C" & "D" employees as provided in Memo No. F.11(1)-FIN(G)/94 dated 23.02.1996 (Annexure-IV), Memo of even No. 18.03.1996 (Annexure-V) and 07.06.1997 (Annexure-VI) shall also continue to be admissible.

Sd/- illegible

Enclosed :-- As stated

(N. Das)

Joint Secretary to the Government of Tripura

8. A reading of the above Memorandum, as a whole, makes it clear that in case a Group C or D employee of the Govt. is referred to by the State Medical Board for treatment outside the State, he will be entitled to get medical reimbursement of the expenditure in terms of the Memo.

It is an admitted fact that RTIICS is an institution, recognized by the State Govt. vide G.O. No. 2, dated 30.08.2007, issued by Health & Family Welfare Department, Govt. of Tripura.

It is also not disputed that the writ petitioner was/is an employee of the State Govt. and he is entitled to the benefits, prescribed under Memo, dated 09.08.05, nor is it in dispute that the writ petitioner suffered from severe cardiac arrest and he was taken to T.S.D.H., Udaipur, a Govt. Dist. Level Hospital.

On perusal of Annexure-1 series filed by the writ petitioner, we find, at page 33 of the writ petition, a medical referral certificate, dated 25.03.2008, in the name of the writ petitioner issued by a Medical Officer of T.S.D.H., Udaipur, copy of which has also been placed along with this writ appeal at page 56 and it shows that the Medical Officer found the writ petitioner suffering from serious cardiac disease and referred him to RTIICS for treatment and, accordingly, the petitioner was shifted to the said hospital at Kolkata and undergone treatment and, thereafter, submitted M.R. bill to his Deptt.

9. Today, we are living in an era of welfare State, which has to promote the prosperity and well-being of the people. The directive principles lay down certain economic and social policies to be pursued by the various Governments in India; they impose obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.

Art. 47 of the Constitution casts an obligation on the State to secure health to its citizens as its primary duty. It is to be presumed that the State Govt., considering the economic condition of Group C and D employees, issued Memo, dated 09.08.05, assuring proper treatment for them, in case of serious diseases, outside the State and ordered reimbursement of the expenditure. No doubt, such a case should, ordinarily, be referred to by a State Medical Board as prescribed under the Notification.

10. In the case at hand, admittedly, the petitioner was under treatment at in Govt. Dist. Hospital, where video conferencing facility was made available with a wing of RTIICS and the doctor, on finding the condition of the patient serious, referred him to RTIICS for treatment and, in such a case, refusal of reimbursement by the Deptt. on the technical ground that it was not a reference made by the State Medical Board in terms of the Notification is immaterial and otiose. A cardiac patient, while in serious condition under treatment in Govt. Dist. Hospital and referred by the doctor of that hospital for outside treatment, cannot be expected to, again, approach the State Medical Board, in the State capital, for a further reference and, in our consideration, it will frustrate the very purpose of the beneficial scheme of the Govt.. To make the scheme meaningful, in a case of such serious disease, there must be such Medical Board in the Dist. Level hospitals of the State Govt. as a measure of its obligations to its citizens/employees. If the State Govt. is so serious that unless a person is referred to by the State Medical Board, medical reimbursement should not be made available, the medical officer of the Dist. Hospital should not be allowed by the State Govt. to refer a patient outside the State for such treatment. While the patient had already been referred by a doctor of the Govt. hospital and the patient was suffering from the disease for which such a reference can be made and the reference was made to a State recognized hospital, we find no reason at all for the Deptt. of the writ petitioner to reject the M.R. bill.

11. this Court and the Apex Court have already laid down the laws on the issue in a number of cases. We may refer hereto a few of such decisions.

Let us, first, refer to the case of Surjit Singh Vs. State of Punjab and Others, . It was a case filed by an employee of Punjab Govt. who was suffering from heart diseases, and even without approval of the Govt. he went to London for treatment on his own and after coming back from London, he submitted bill for reimbursement and Punjab Govt. refused to pay the bill with the plea that there was no approval from the Govt. and the case was not referred by the medical board as required under relevant medical reimbursement rules applicable in Punjab. In that case, the Apex Court has laid down the law as follows :--

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 recognised list, it is futile for it to contend that the appellant could in no event have gone to the 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.

12. We may, now, refer to the case of State of Punjab and others Vs. Mohinder Singh Chawala, etc., . In this reported case, the Govt. servant was referred for treatment outside the State and the only controversy was whether the patient shall be paid the room rent of the particular hospital. While delivering judgments in that case, the Supreme Court has held--

It is an admitted position that when specialized treatment was not available in the hospitals maintained by the State of Punjab, permission and approval having been given, by the Medical Board to the respondent to have the treatment in the approved hospitals and having referred him to the AIIMS for specialized treatment where he was admitted, necessarily, the expenses incurred towards room rent for stay in the hospital as an in-patient are an integral part of the expenses incurred for the said treatment. Take, for instance, a case where an in-patient facility is not available in a specialized hospital and the patient has to stay in a hotel while undergoing the treatment, during the required period, as certified by the doctor, necessarily, the expenses incurred would be an integral part of the expenditure incurred towards treatment. It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.

In the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , the Supreme Court has observed as follows--

Right of one person correlates to a duty upon another, individual, 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 citizens as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centers, 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 upkeep, maintenance and cleanliness has to be beyond aspersion. 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 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.

The State can neither urge nor say that it has no obligation to provide medical facility. If that were so, it would be *ex facie* violative of Article 21. Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The new policy does not leave this fixation to the sweet will the Director but it is to be done by a committee of technical experts.

We may, now, refer to a case of this Court i.e. the case of *Gouri Sengupta v. State of Assam & Ors.*, reported in (2000) 1 GLR 608. In that case, the writ petitioner was a Matron of Civil Hospital, Nagaon, and she fell ill and consulted a Gynecologist of Assam Medical College, Dibrugarh. The doctor, on preliminary examination, advised her Biopsy suspecting that she was suffering from Carcinoma of Uterus and it was found that she had been actually suffering from Carcinoma. The doctor, immediately, advised her to attend an advance Gynecological Center outside the State of Assam for further treatment. She, accordingly, went to Kolkata and there she got herself treated in Lans Down Nursing Home & Research Centre at Kolkata and Thakurpukur Cancer Hospital. After completion of treatment, she returned to Dibrugarh and submitted medical reimbursement bill, but her bill was not approved by the authority on the ground that the private nursing home is not recognized by the State of Assam for the purpose of reimbursement of the medical expenses. While disposing of the writ petition, this Court, relying on the above referred Supreme Court decisions, directed the State of Assam to pay the billed amount.

In the case of Tapan Chakraborty v. State of Tripura, this Court, in writ petition(C) 194 of 2004, in para 6 of the judgment, observed as follows :--

6. On going through the context of Annexure-5, which, as noted earlier remains undisputed by the State-respondents, all the necessary facts have been shown by the petitioner from which the only inference which can be drawn by a reasonable person is that on the condition of the patient concern at the relevant time, it would have been humanly impossible nor would it have been advisable for him to obtain a reference from the Medical Board of the State by coming to Agartala. Regarding the apprehension of the State-respondents that unless such a certificate is produced, it would open a flood gate of false medical claim, I do not think that the Government Officials dealing with this matters are not competent enough to distinguish between a false claim and genuine claim for medical reimbursement bill without production of such a certificate in a case of this nature. It will be an insult to the intelligence of the concerned Government Officials to say that on the admitted facts of this case, without such certificate, it will not be possible for them to process the bills for payment. By this, I should not understood to say that such a certificate is required at all. What I mean to say that even in the absence of such a certificate, if the applicant can furnish necessary and convincing materials to show that it would not have been possible to obtain reference from the Medical Board of Tripura State, no certificate should be insisted upon. In this case, the contents of Annexure-5 clinchingly demonstrate that it was not possible for the patient to obtain such a certificate from the Medical Board of the State. "In that view of the matter, I hold that the decision of the State respondents in rejecting the medical imbursement bill presented by the petitioner for the treatment of his son suffers from non-application of mind irrationally, Wednesbury unreasonableness warranting the interference of this Court.

13. In the present case, while the writ petitioner/ admittedly, was suffering from cardiac disease and was admitted in Govt. Dist. Hospital for treatment and while he was referred by a Medical Officer of the Govt. hospital, for treatment outside the State in a hospital/institution, recognized by the State Govt., and while the writ petitioner was, otherwise, entitled to the benefit of reimbursement, we find no reason to accept the contention of the Learned Counsel, Mr. Chakraborty, and to interfere with the order passed by the learned Single Judge in the writ petition. For the forgoing reasons, taking into consideration the facts and circumstances of the present case and the law laid down by the Apex Court and this Court, we have no hesitation in dismissing the appeal, but in the circumstances without costs.

The writ appeal accordingly stands dismissed.