

(2020) 02 J&K CK 0081

In the Jammu And Kashmir High Court

Case No : CM No. 431, 432 Of 2020, Condonation Of Delay No. 8 Of 2018

Union Territory Of J&K And Others

APPELLANT

Vs

Bader Hussain

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 41, 47
Jammu And Kashmir Civil Service Medical Attendance And Allowance Rules, 1990 — Rule 6

Citation : (2020) 02 J&K CK 0081

Hon'ble Judges : Rajesh Bindal, J; Sindhu Sharma, J

Bench : Division Bench

Advocate : Raman Sharma

Final Decision : Dismissed

Judgement

1. Prayer in the present application is for restoration of the application for condonation of delay filed in appeal against the order passed by the learned

Single Judge dated 17.05.2017 in SWP No. 2097/2013. The issue raised in the writ petition was regarding medical reimbursement for treatment of son

of the respondent.

2. The appeal was delayed by 206 days. When the same was taken up for hearing on 10.04.2018, on account of non-appearance of counsel for the applicant/appellant, the same was dismissed for non-prosecution.

3. The applicant thereafter kept quiet till such time the application in question was filed for restoration of the application for condonation of delay filed

along with the main appeal. The aforesaid application is accompanied by an application seeking condonation of delay of 619 days in filing thereof. On

the face of it, there cannot be any reasonable ground made out seeking

condonation of delay in filing application seeking restoration of the application for condonation of delay, which was dismissed in default on 10.04.2018.

4. Be that as it may, we have also gone through the order passed by the learned Single Judge which directed reimbursement of the medical expenses

incurred by the respondent for treatment of his son from Apollo Hospital at Ludhiana.

5. A perusal of the order passed by the learned Single Judge shows that in para-15 thereof, reference has been made to Note-I attached to the proviso

to Rule-6 of the J&K Civil Service Medical Attendance-cum-Allowance Rules, 1990 (for short "the Rules of 1990"), where reference has been

made to the treatment from Apollo Group of Hospitals (Delhi, Madras, Hyderabad) for the purpose of reimbursement of actual expenses incurred.

6. In the case in hand, the treatment of the son of the respondent was in Apollo Hospital in Ludhiana. Rejection was on the ground that it is not one of

the approved hospitals as provided in the Rules. But the fact remains that Apollo Hospitals at Delhi, Madras and Hyderabad have been mentioned in

the aforesaid Note as appended to the Rules of 1990. Apollo Hospital at Ludhiana must have been constructed thereafter. Hence, even in the

absence of name of Apollo Hospital, Ludhiana in the Rules, the claim for reimbursement of the expenses incurred on medical treatment of son of the

respondent cannot be denied on the ground that it is not one of the approved hospitals. There is no error in the order passed by the learned Single

Judge even on merits.

7. Hon'ble the Supreme Court in *Surjit Singh v. State of Punjab and others*, (1996) 2 SCC 336, while dealing with the case of medical reimbursement,

quoted certain passage from Garuda Purana on self preservation of one's life. Paragraph 11 thereof is extracted below:

"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 recognised

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 canpurushartho 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.

19. Sharirarakshanopaayaah kriyante sarvadaabudhaih 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.

20. 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.â??

8. Part-III of the Constitution of India gives a picture of various fundamental rights available to citizens of India. Whereas Part-IV indicates the areas

in which the State has to render service to the people in general and to weaker sections in particular. Article 21 speaks of protection of life and

personal liberty. Article 41 requires the State to make effective provisions within the limits of its economic capacity and development for securing right

to work and right to education and to better assistance in cases of unemployment, old age, sickness etc. Article 47 declares raising of the level of

nutrition and the standard of living of its people and improvement of better health, as among primary duties of the State.

9. In Waryam Singh vs State of Punjab 1996(2) PLR 339, High Court of Punjab and Haryana observed as under:

20. From the above discussion, it is clear that the Courts have unhesitatingly read the provisions of part-IV of the Constitution as integral part of

various fundamental rights enumerated in Part-III of the Constitution. Therefore, it must be held that Article 47 of the Constitution which declares that

raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties as well as

Article 41 which obliges the State to make effective provision for securing among other things public assistance in cases of sickness and disablement

within the limits of its economic capacity and development forms part of Article 21 of the Constitution. It is the duty of the State to provide adequate

assistance to the people in cases of sickness. Various finer aspects of life would be rendered meaningless if one cannot get adequate medical

attention. In fact, providing of medical assistance to sick and disabled is an integral part of the obligations of the State to improve public health.

Therefore, every provision made by the State legislature or executive for providing medical assistance will be deemed to have their source in Articles

21, 41, and 47 of the Constitution and in appropriate case the citizen will be entitled to enforce such provisions and it will be no answer to such a claim

that the provisions of Articles 41 and 47 are not enforceable by virtue of Article 37. After having given effect to the provisions contained in Part-IV of

the Constitution, the State cannot back track and deny the benefit of the legislative measure or executive orders passed by it for giving effect to the

contents of the Directive principles of the State Policy, which as already held above, form part of the right to life enshrined in Article 21 of the

Constitution.

10. Hon'ble the Supreme Court in *State of Punjab and others vs Mohinder Singh Chawla and others*, (1997) 2 SCC 8.3 held 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 where the government servant had undergone such treatment therein, it

is 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. Reference can also made to judgment of Hon'ble the Supreme Court in *Balram Prasad vs Kunal Saha and others* (2014) 1 SCC

384.

11. In *State of Punjab vs Ram Lubhaya Bagga*, (1998) 4 SCC 117, the right of a citizen to life 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.

12. In view of our aforesaid discussions, we do not find it necessary to deal with the applications in question. The same are accordingly dismissed.

13. However, before parting with the order, we direct the Principal Secretary, Home Department, UT of Jammu and Kashmir to get the enquiry

conducted in the matter and to fix responsibility of the lapse on the part of the officers/officials of the department who had slept over the matter firstly

by not filing the appeal against the order passed by the learned Single Judge in time and further by not taking care of the application filed when it was

dismissed for non-prosecution and thereafter huge delay in filing the application for restoration thereof.