
(2015) 03 GAU CK 0052
In the Gauhati High Court
Case No : Writ Petition (C) No. 6219 of 2013

Uttam Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309

Citation : (2015) 2 GLT 197

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : D.P. Borah, for the Appellant; B.J. Talukdar, G.A., J.M.A. Choudhury, SC and R.K. Neog, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J.

1. By this writ petition under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondent authorities to reimburse his medical bills amounting to Rs. 1,98,654.88. Heard Mr. D.P. Borah, learned counsel for the petitioner. Also heard Mr. B.J. Talukdar, learned State Counsel, appearing for the respondent Nos. 1 and 4, Mr. J.M.A. Choudhury, learned Standing Counsel, Health, appearing for the respondent Nos. 2 and 3 and Mr. R.K. Neog, learned Standing Counsel, Accountant General, appearing for the respondent No. 5.

2. The petitioner retired as Deputy Commandant of Assam Commando Battalion, Mandakata, North Guwahati on 31.07.2010.

3. The case projected in the writ petition is that on 30.04.2011, while the petitioner was traveling by an auto rickshaw, accompanied by his wife, he suddenly felt dizziness and fell down inside the auto rickshaw and the wife took him to the nearest hospital, i.e., Hayat Hospital at Udalbakra in the said auto rickshaw.

4. The attending doctors at the Hayat Hospital admitted the petitioner into the Intensive Critical Care Unit (ICCU) of the hospital. Due to critical condition of the petitioner, he had to be kept in the hospital from 30.04.2011 to 07.05.2011 in the Intensive Care Unit (ICU) and during this period, he was advised by doctor for implantation of permanent pacemaker and accordingly, implantation of pacemaker was done. The procedure resulted in an expenditure of Rs. 1,98,654.88, including the hospital bills.
5. The petitioner had submitted medical bills and documents in original to the Commandant, Assam Commando Battalion, Mandakata, for grant of ex-post-facto approval as well as for reimbursement of the expenditure of the treatment. He, in his turn, forwarded the medical bills and documents to the Assam Police Headquarters.
6. The Deputy Inspector General of Police (A), Assam forwarded the said bills and documents vide letter dated 29.07.2011 to the Director of Health Services, Assam requesting grant of ex-post-facto approval for consideration of reimbursement to the petitioner.
7. The Director of Health Services, Assam forwarded the aforesaid letter to the Secretary to the Government of Assam, Health and Family Welfare Department vide his letter dated 25.08.2011 stating that the Directorate was not in a position to issue ex-post-facto approval for the treatment of the petitioner in Hayat Hospital since the said hospital was not a referral hospital. He, accordingly, requested the Secretary to the Government of Assam, Health and Family Welfare Department to accord ex-post-facto approval.
8. The Deputy Secretary to the Government of Assam, Health and Family Welfare (A) Department wrote a letter dated 22.09.2011 to the under Secretary to the Government of Assam, Home (A) Department requesting him to examine the proposal under the provision of Assam Medical Attendance Rules, 2008 and to furnish his views.
9. In the meantime, as the original proposal was misplaced in the Department of Home (A), the petitioner had to again re-submit the proposal on the basis of photocopies but the case of the petitioner was not considered and was gathering dust.
10. It is in these circumstances, the instant writ petition is filed praying for a writ of mandamus directing the respondent authorities to pay the medical reimbursement bills amounting to Rs. 1,98,654.88.
11. In the affidavit of the respondent No. 4, it has been admitted that original proposal in respect to the petitioner could not be traced out in the Home (A) Department.
12. In the affidavit filed by the Director of Health Services, Assam, a stand is taken that the petitioner is not entitled for medical reimbursement of his treatment at Hayat Hospital as the hospital was not a referral hospital.

13. The Accountant General (A and E), Assam, the respondent No. 5, in the affidavit, had taken a stand that the respondent No. 5 is in no way involved in the matter of sanction and payment of medical reimbursement bills of the petitioner.

14. Mr. D.P. Borah, learned counsel for the petitioner had submitted that the petitioner had to be admitted because of an emergency in Hayat Hospital. Though at the relevant point of time, Hayat Hospital was not a referral hospital, learned counsel submits that as the petitioner had to be hospitalized and treated because of his critical condition, the petitioner is entitled to be reimbursed. He has also submitted that subsequently Hayat Hospital was recognized as a referral hospital vide Notification dated 24.09.2012 (Annexure-A of the affidavit-in-opposition filed by the respondent No. 3). In support of his contention, learned counsel has placed reliance on a judgment of this Court in the case of Runu Rajkumari Phukan Vs. State of Assam and Ors., reported in 2000 (3) GUT 27.

15. Mr. J.M.A. Choudhury, learned Standing Counsel, Health Department has submitted that Hayat Hospital was not a referral hospital. Accordingly, he submits that as the petitioner had undergone medical treatment in a hospital, which was not a referral hospital, he is not entitled to medical reimbursement.

16. Mr. Talukdar, learned State Counsel has submitted that due to non-receipt of admissibility report and approval from the Director of Health Services, Assam, the amount of reimbursement bill could not be sanctioned.

17. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

18. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Assam was pleased to make Rules governing medical treatment of Government servants, pensioners and their eligible family members, called Assam Medical Attendance Rules, 2008, for short, the Rules. It will be worthwhile to take note of the provisions of the Rules relevant for the purpose of this case. Rule 4(3)(i) provides for a Medical Referral Board to be set up in each of the Government Medical Colleges of the State. On the recommendation of the patients who require treatment outside the State of Assam or in private health institutions shall make a claim before the Medical Referral Board. Authorised Medical Attendant is defined in Rule 4(b) to mean the Doctor in charge of the Government Hospital in which a person seeks medical treatment and in case of the Government servant working in the government establishment outside Assam, the Medical Officer appointed by the Government in Assam House/Assam Bhawan for this purpose. The Medical Referral Board will then proceed to examine the claim and if found eligible, make a referral to a private/Government institution preferably of the choice of the patient depending upon the condition of the patient. On the basis of the referral issued by the Medical Referral Board, the patient can proceed to the referral institution and obtain treatment. Rule 5(i) provides for an Admissibility Board (AB) with Director

of Health Services as Chairman and two other Medical Officers as Members to examine claims of medical reimbursement and to furnish Admissibility Report (AR). The AB shall have at least one sitting a fortnight. Rule 6(a) provides that the patient after obtaining treatment shall submit bills for reimbursement to the Controlling Officer who then shall forward the case to the Administrative Department of the Government. The Administrative Department shall consult the AB as regards the admissibility of the claim. On receipt of the claim, the AB within a period of not exceeding 45 days shall furnish the Admissibility Report (AR) to the referring department. Rule 6(b) provides that based on the AR of the AB, the Administrative Department shall issue necessary sanction at the earliest but not exceeding 45 days. Rule 6(c) provides that in case where a patient obtains treatment without referral and makes a claim to his Department, the concerned Administrative Department shall refer the matter with specific recommendation on the extenuating circumstances in the nature of extreme emergency to the Government in Health and Family Welfare Department within a period not exceeding 45 days. The Health and Family Welfare Department shall consider such cases thoroughly and carefully and within a period not exceeding 45 days return the case to the Administrative Department with their views/remarks. Rule 6(d) lays down that in case the Health and Family Welfare Department concurs, the concerned Administrative Department shall refer the matter to the AB for admissibility. Thereafter, the AB shall furnish an AR within a period not exceeding 45 days.

19. The Government of Assam had declared by Notification dated 15.11.2008 certain health institutions, both outside and within the State of Assam, as referral hospitals as per provision of Rule 10(d) of the Rules in connection with treatment for serving and retired employees, including eligible dependant family members.

20. The petitioner was admitted to the nearest hospital available, which happened to be Hayat Hospital and he was immediately put into ICCU and subsequently, he remained in ICU for the next 7 days for implantation of permanent pacemaker. The certificate of the Hayat Hospital dated 22.07.2011 leaves no manner of doubt that the petitioner came to the hospital in a very critical condition and he was found to be afflicted with Symptomatic Sick Sinus Syndrome. Due to critical condition of the petitioner, he could not be shifted to any other hospital, including Gauhati Medical College and Hospital and implantation of permanent pacemaker was done in the Hayat Hospital. It is not that the petitioner, on his own volition, had admitted himself into the Hayat Hospital in a deliberate and planned manner to treat a chronic illness. Going by the report of Hayat Hospital, it was a .life threatening situation, which brooked no delay in hospitalization and treatment. In situation of this emergent nature, any delay in treatment could have endangered the life of the patient. It is also worth mentioning that the respondents have not disputed that there was a medical emergency, which necessitated immediate hospitalization and implantation of the pacemaker and they have also not doubted the genuineness of the claim made by the petitioner.

21. In a case of acute medical emergency, necessitating immediate hospitalization and treatment of the patient, the Medical Referral Board may not have occasion to examine the claim of the patient for referral to a private/ Government hospital. To deal with a situation involving extreme emergency, Rule 6(c) visualizes consideration of the claim made by a patient for medical reimbursement after he obtains treatment without referral.

22. But what happens in a case when because of acute emergency, a Government servant or a pensioner, needs to be treated in a hospital, which is the nearest hospital available but which is not a referral hospital, is not specifically provided for in the Rules. However, Rule 19(ii) provides that nothing in the Rules shall be deemed to prevent the Government from granting to a Government servant including All India Service Officers any relief relating to treatment, attendance and journey for the purpose of treatment which is not specifically authorised under the Rules. Thus, the Government has the power to grant medical reimbursement even in a case where hospitalization and treatment was done in a hospital which is not a referral hospital.

23. Power has to be exercised in a fair and reasonable manner consistent with the mandate of Article 14 of the Constitution of India and not in a manner which results in discrimination. In the instant case, the Government failed to exercise power in a fair and reasonable manner resulting in gross discrimination to the petitioner.

24. This Court in *Runu Rajkumari* (Supra), on the facts of the case, had also taken a view that denial of reimbursement on the grounds that no prior approval was taken from the authorities before hospitalization and that the hospitals where treatment was taken were not recognised, is violative of Article 14 of the Constitution of India.

25. In view of the above discussions, the respondents are now directed to make payment of the medical bills of the petitioner amounting to Rs. 1,98,654.88 within a period of 45 days from the date of receipt of the certified copy of this order.

26. The petitioner may obtain certified copy of this order and produce the same before the Director of Health Services, Assam as well as other authorities for their doing the needful in terms of this order. The writ petition stands allowed as indicated above.