

(2005) 11 RAJ CK 0003

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 964 of 2003

V.P. Saxena and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2006) 1 RLW 772 : (2006) 2 WLC 65

Hon'ble Judges : Shiv Kumar Sharma, J; Harbans Lal, J

Bench : Division Bench

Advocate : Sanjeev Prakash Sharma, for the Appellant; Mohd. Rafiq. Addl. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Since the order dated August 18, 2003 of learned Single Judge is under challenge in both these appeals, we proceed to decide them by a common order.

2. The appellant V.P. Saxena, after his retirement from Government Service in the year 1992 was recommended for Heart Surgery in All India Institute of Medical Science (AIIMS) New Delhi. However due to strike of Resident Doctors in AIIMS from February 7, 1999 the appellant, in the emergent circumstances, had to undergo the Surgery in Escorts Hospital, New Delhi on February 23, 1999. When reimbursement of medical expenses was refused the appellant filed the writ petition, which came to be decided on August 18, 2003 with the following directions:-

After having carefully considered the entire facts and circumstances of the present case, in my opinion, the denial of the relief as claimed by the petitioner, is wholly unjustified. Accordingly, the writ petition is allowed. The petitioner is held entitled for reimbursement upto amount of Rs. 1,20,000/- as per the circular dated 12.5.1998, as referred above. The respondents are directed to

make payment of remaining amount within 30 days from the date of receipt of certified copy of this order.

3. The limited prayer of appellant in the instant appeal is to award the interest. Whereas the State of Rajasthan in another appeal seeks quashing of the order of learned Single Judge.

4. Mr. Sanjeev Prakash Sharma, Learned Counsel for the appellant, urged that as per circular dated May 12, 1998 the appellant was entitled to receive 80% of Hospital expenditure or Rs. 1.20 lakhs whichever is less. Since the appellant had spent Rs. 1.60 lakhs in Escort Hospital he was entitled to receive Rs. 1.20 lakhs as reimbursement of his medical expenditure incurred for Heart Bypass Operation. The appellant had to prefer the writ petition and for the payment of expenses incurred by him he had to borrow money from the Bank. The appellant was therefore entitled to the interest at least on the same rate as has been charged by the Bank. It is further urged that the amended circular dated March 3, 1999 was not applicable to the appellant since the operation was performed on February 23, 1999 when the circular May 12, 1998 was in operation without amendment. Reliance is placed on Harbir Kaur (Smt.) Vs. State of Raj. and Others,

5. Per contra, Mr. Mohd. Rafiq. learned Additional Advocate General for the State urged that the claim made by Sh. V.P. Saxena was not as per rules therefore the same could not be accepted. The name of Escort Heart Institute, New Delhi is not included in Rajasthan State Pensioners Medical Concession Scheme. He further urged that in Rajasthan Civil Services (Medical Attendance) Rules, 1970 the inclusion of Escort Heart Institute, New Delhi is only for the serving government servants and not for retired employees, therefore Sh. V.P. Saxena is not entitled for reimbursement. It is further contended that Rs. 56,000/- had already been reimbursed and he is not entitled to receive more amount.

6. It is well settled that Article 21 of the Constitution casts obligation on the state to provide right to life to its citizens. It is the primary duty of the State to secure health to its citizens. In order to make the right to life meaningful the State to employ best talents and tune up its administration to give effective contribution. Since right to life is one of most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State every citizen looks towards the state for it perform his obligation with top priority including by way of allocation of sufficient funds. The state cannot avoid its obligatory duty on the pretext that the 1970 Rules or the circular are applicable for government servants and not for retired employees.

7. Sh. V.P. Saxena who took loan from the Bank and paid interest, in our opinion is entitled to the interest which was paid by him to the Bank.

8. Since the issues raised by State of Rajasthan in Appeal No. 23272005 have already been settled in Smt. Harbir Kaur v. State of Rajasthan (supra), we find no merit in the special appeal filed by the State.

9. For these reasons, we decide instant appeals in the following terms:-

(i) The appeal of appellant V.P. Saxena (964/2003) stands allowed. The appellant V.P. Saxena shall be entitled to interest at the rate of 12% from February 23, 1999 till full and final payment of the amount Rs. 1,20,000/-. The amount already paid by the State shall be adjusted.

(ii) The appeal preferred by the State (232/2005) stands dismissed,

(iii) There shall be no order as to cost