

Dr. Dharendra Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-09-2007

Judge : S.K. Katriar, J.

Acts : Bihar Medical Attendance Rules, 1947 - Rules 26 and 74; [Constitution of India](#) - Articles 14, 21 and 47; Bihar Service Code - Rule 74(1)

Appeal No. : C.W.J.C. No. 7142 of 2000

Appellant : Dr. Dharendra Kumar

Respondent : The State of Bihar and ors.

Disposition : Petition allowed

Prior history : S.K. Katriar, J. 1. Heard Mr. Basant Kumar Choudhary for the petitioner, and Mr. Mithilesh Kumar Mauar, learned junior counsel to Government Pleader No. XI. This writ petition has been preferred with the prayer to quash letter No. 369 (24), dated 4.2.2000 (Annexure-1), issued by the Government of Bihar in the Department of Health, Medical Education and Family Welfare, whereby he has conveyed the decision of the Finance Department, refusing to reimburse the petitioner for the medical treatment

Judgement :

S.K. Katriar, J.

1. Heard Mr. Basant Kumar Choudhary for the petitioner, and Mr. Mithilesh Kumar Mauar, learned junior counsel to Government Pleader No. XI. This writ petition has been preferred with the prayer to quash letter No. 369 (24), dated 4.2.2000 (Annexure-1), issued by the Government of Bihar in the Department of Health, Medical Education and Family Welfare, whereby he has conveyed the decision of the Finance Department, refusing to reimburse the petitioner for the medical treatment undergone by him in Delhi on the ground that prior permission for the same was not obtained. The respondents have placed on record their counter affidavit and have supported the impugned action.

2. I have perused the materials on record and considered the submissions of learned Counsel for the parties. The facts are not in dispute and may be briefly stated. The petitioner has had a history of heart problem and he was treated in Escorts Heart. Institute and Research Centre, New Delhi (hereinafter referred to as 'Escorts'), during the period 5.7.1990 to 24.7.1990, an earlier period not really relevant in the present context. He was, at the relevant point of time, Associate Professor of Orthopaedics in the Medical College and Hospital, Muzaffarpur. There was a recurrence of his heart, problem in December 1996, and was admitted to the Heart Hospital Private Limited, Patna, on 25.12.1996, in the care of Dr. A.K. Thakur, a well-known heart Consultant of Patna, and was discharged on 4.1.1997. A photo copy of the discharge summary is marked Annexure-6 to the writ, petition which starts with the statement that 'This patient was admitted with complaint of severe chest pain, SOB & hypertension. Known case of CAD (TVD), S/P CABG in 1990 at Escorts Heart Institute'. He was discharged with the note that 'Referred to Escorts Hospital, New Delhi, for urgent coronary angiography & revascularisation'.

3. He was on emergency basis admitted to Escorts where he had undergone angiography on 6.1.1997. Photo copy of the entire length of prescription of Escorts is marked Annexure-4 series and begins with the note that Angiography discloses L.V.E.F.: 15%, and the 'right Coronary Artery shows 95% mid-stenosis' After recording further findings, it summarises it to be a case of 'Triple Vessel Disease Severe LV dysfunction'. It was thus a case of acute blockage of vital coronary arteries. The Escorts prescriptions further state that Angioplasty had taken place

on 15.1.1997, two stenting were done, and ballooning was resorted to. He had to report to Escorts four weeks after the date of angioplasty as a follow-up measure. The petitioner's history as a heart patient, and a bare reading of the discharge summary marked Annexures-1 and 4, make it clear that it was a case of grave medical emergency and any delay in its management at a Super-Specialty Centre may have resulted in mio-cardial infarction.

4. The respondent authorities have failed to realise that the petitioner, with history of heart problem, had rushed to Escorts on the advice of a leading heart Consultant of Patna. It is further manifest that the Escorts took up the matter with utmost seriousness, and the speed with which the Coronary Angiography and the Coronary Angioplasty had taken place is by itself proof of grave emergency involved in the matter, apart from the findings clearly recorded in the discharge summary. I am, therefore, convinced that it was not possible for the petitioner, except risking his life, to obtain prior permission of the State Government before proceeding to Delhi for treatment.

5. It is further relevant to state that, in any view of the matter, the State Government ought to have applied Rule-26 of the Bihar Medical Attendance Rules which is reproduced hereinbelow for the facility of quick reference:

26. Power of Government to grant concessions relating to medical attendance or treatment not authorised by these rules.- Nothing in these rules shall be as preventing the State Government from granting to any person to whom they apply any concession relating to medical attendance or treatment which is not authorised by these rules.

This is a residual clause which can always be applied in appropriate cases. This rule confers a wider power to give medical benefits not indicated elsewhere in the Rules. I have no manner of doubt that Rule 26 is clearly attracted in the facts and circumstances of the present case and refusal can only be the result of an unreasonable and arbitrary approach.

5. The judgment dated 16.5.2007, passed by this Court in C.W.J.C. No. 3778 of 2006 (Md. Ahad Raza v. The State of Bihar and Ors.), and the analogous writ

petition bearing C.W.J.C. No. 3781 of 2006 (Rekha Sinha v. The State of Bihar and Ors.), entirely supports the petitioner's case, wherein this Court had quoted with approval the following portion of the judgment, reported in 2003 (3) P.L.J.R. 729 (Ram Sagar Ram v. The State of Bihar and Ors.):

8. Before I part with this case I may observe that the Bihar Medical Attendance Rules framed in 1947 i.e. more than five decades ago have become archaic. Without going into the question as to whether there was any justification for not making any provision for outside State treatment at the relevant time a judicial notice can be taken of the fact that most of the serious ailments which are hazardous to life require specialised treatment which is not available in the State of Bihar muchless in Government Hospitals, and therefore the patient perforce has to go to New Delhi, Mumbai, Vellore or the like for better treatment. It is therefore only appropriate to make suitable amendments in the Rules. As a matter of fact need of the hour is to frame a comprehensive policy or rules as done in the State of Punjab, referred to above, rather than supplement them by executive orders and circulars from time to time. Rule 26 empowers the Government to permit outside treatment and attendance as a matter of discretion. Inasmuch as guidelines are not laid down the discretion is more often than not abused. While persons close to the powers-that-be manage to get permission, the lesser mortals are not so fortunate to get such permission resulting in heart burning and frustration. So far as the requirement of prior approval of the Medical Board is concerned, in cases of emergency the provision is totally unjustified, meaningless and unworkable. These things can be taken care of in a well laid down policy consistent with not only Articles 21 and 47 but also Article 14 of the Constitution.

(Emphasis added)

6. On account of his health problems, the petitioner has taken voluntary retirement in terms of Rule 74(b) (1) of the Bihar Service Code with effect from 1.10.2000.

7. Learned Counsel for the petitioner is right in his submission that, before taking such objections which do not have even the fig-leaf of a hair-splitting argument, the respondent authorities should examine their own track record of the time taken in granting permission to its ailing employees who have attempted to take prior

permission for treatment outside the State of Bihar, as well as those cases where prior permission was granted with alacrity or post-facto sanction was granted, and which category involved how many of the 'lesser mortals.' The State Government would be well advised to examine all such cases before the rules are framed in view of the observations made by this Court in *Ram Sagar Ram v. State of Bihar* (Supra).

8. In the result, this writ petition is allowed, the impugned order is hereby set aside, and the State Government is hereby directed to ensure full reimbursement of the medical bills of the petitioner including those evidencing his treatment in Dr. A.K. Thakur's clinic in Patna as well as Escorts, apart from his other entitlements as per the rule in force, for example, travelling expenses with a companion. The entire amount shall carry interest at the rate of 9% from the date(s) of entitlement till the date of payment.

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