Ram Sagar Ram and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-22-2003

Judge : S.N. Jha, J.

Acts : Service Law

Appeal No. : C.W.J.C. Nos. 2060 and 3019 of 2003

Appellant : Ram Sagar Ram and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : J.D. Singh, GP 1 in CWJC No. 2060/2003 and S.J. Rahman, GP 7 in CWJC No. 3019/2003

Advocate for Pet/Ap. : Maya Nand Jha, Munna Prasad Singh and Girdhar Gopal Tiwary, Advs. CWJC No. 2060/2003 and Sanjeev Kumar Verma, Adv. in CWJC No. 3019/2003

Disposition : Petition allowed

Judgement :

S.N. Jha, J.

1. These two writ petitions involving an identical dispute are disposed of by this common order. The dispute relates to reimbursement of medical expenses

incurred by a Government servant in connection with treatment outside the State.

2. The facts of CWJC No. 2060/2003 are as follows. The petitioner is retired Secretary (Technical), central Design Organisation in the Road Construction Department. While in service he underwent coronary artery bypass graft surgery in the Escorts Heart Hospital New Delhi on 21-9-2001. Earlier he was examined by Dr. R. K. Agrawal of the Indira Gandhi Institute of Cardiology Patna who advised him to go to All India Institute of Medical Sciences (AIIMS) for further treatment. In view of his condition he could not take steps for examination by a Medical Board at Patna and had to rush to Delhi on 11-9-2001. It is relevant to mention here that on 16-10-2001 post-facto permission for specialised treatment from 11-9-2001 at Delhi was granted. According to the petitioner on account of long queue of patients in the AIIMS he could not be admitted there and in the circumstances under medical advice for immediate surgery he was taken to the Escorts Heart Hospital (Escorts Heart Institute and Research Centre Limited) on 13-9-2001 he underwent surgery on 21-9-2001, as stated above. On return from Delhi he submitted bill for Rs. 2,46,0847- for reimbursement of the medical expenses incurred by him in connection with the aforesaid treatment. The request for reimbursement was rejected on the ground that outside state treatment in private hospital without prior approval was not permissible under the rules. The rejection was communicated by the Deputy Director of Health Services (Administration) by his letter No. 2256(14) dated 15-4-2002.

3. CWJC No. 3019/2003 has been filed on behalf on Anil Kumar Verma by his wife after his death. Anil Kumar Verma was Probation Officer in the Home (Jail) Department at Siwan. In the year 1999 a mass was detected on his right cheek which on examination by experts was detected as cancer, He was treated at the Mahabir Cancer Sansthan, Patna to which he was referred by the Patna Medical College & Hospital. After preliminary investigation he was referred to Tata Memorial Hospital, Mumbai or AIIMS New Delhi for specialised treatment. He along with his family members rushed to New Delhi but finding the admission in the AIIMS difficult he went to Rajiv Gandhi Cancer Institute & Research Centre, New Delhi. There he was operated upon by a panel of doctors headed by Dr. A.K. Diwan. He also underwent radiotherapy. He returned to.Siwan but the treatment

made him very weak. He sent representation to the I.G. (Prisons) Bihar for his transfer to Patna but no order was passed. After his condition started deteriorating, he had to be rushed to Rajiv Gandhi Cancer Institute, New Delhi again where it was detected after investigation that the disease had relapsed. The members of the family tried for admission in the AIIMS on 21-7-2000 for chemotherapy but failed as no bed was available. As the condition further deteriorated he was taken to Dharmshila Cancer Hospital & Research Centre for a chemotherapy cycle from 17-8-2000 to 2-10-2000. Thereafter he returned to Patna. On 2-11-2000 the Radium Institute of PMCH advised him specialised treatment outside the State at New Delhi. On 2-11-2000 he was rushed to New Delhi where he was readmitted in Dharmshila Cancer Centre for another chemotherapy cycle from 3-11-2000. He finally died on 10-11-2000. After his death the petitioner submitted medical bills along with the original papers, for Rs. 2,92,791.98 for reimbursement. She sent reminders and kept running from pillar to post. Finally on 5-12-2002 she was informed by the Assistant Inspector General (Jails) that claim for reimbursement had been rejected at the level of the Chief Minister.

4. The respondents have filed counter affidavit in both the cases. They do not dispute the facts of the two cases as briefly mentioned above. Their stand is that the Bihar Medical Attendance Rules does not provide for outside state treatment. However the Government has discretion under Rule 26 to allow medical attendance and treatment not authorised by the Rules by way of concession in special cases: In CWJC No. 2060/2003 the respondents have brought on record resolution/executive orders/circulars issued from time of time on the point of reimbursement of medical bill with respect to expenses incurred in treatment outside the State. Without referring to the resolutions, circulars etc. it may in a nutshell be stated that according to the respondents reimbursement of the expenses incurred in treatment outside the State can be allowed where such treatment or attendance was received after Medical Board i.e. on the recommendation of the Medical Board. It is this aspect of the case which falls for consideration in these two writ petitions.

5. In State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117, the Supreme Court observed that under Article 21 read with Article 47 of the Constitution it is

the duty of the State to secure healthy life to its citizens. The State can neither urge nor say that it has no obligation to provide medical facility. It that were so it would be ex-facie violative of Article 21. However the resources of a State or Country are limited and therefore, the provision regarding medical facilities cannot be unlimited. It has to be to the extent finances permit. These observations were made in the context of challenge to a policy of the Government of Punjab fixing revised norms for reimbursement of medical bills. The Court rejected the challenge and upheld the principle of fixation of rate and scale for the reimbursement. Nevertheless the Court went into the individual claims of the persons concerned and in the facts and circumstances of the case directed in one case that the amount already paid not to be refunded; in the other case the respondent was held entitled to difference amount between what was paid and the rate admissible in Escorts at the relevant time. In other words, he was held entitled to re-imbursement of the Escorts' rates. (The respondent had received treatment in the Escorts.) Following the said decision, in State of Punjab v. Mohan Lal Jindal, (2001) 9 SCC 217, the Court held that the respondent was entitled to medical reimbursement at the AIIMS rate; however the respondent's representation for reimbursement of the additional amount was ordered to be considered by the authorities on compassionate ground. The argument put forward on behalf of the respondent was that he was a teacher and he could not afford huge medical expenses which had to be incurred by him due to long queue for bypass surgery in the AIIMS and therefore he had to go to other hospital,

6. It appears that the State Government took a somewhat similar stand before this Court in the case of Anil Kumar Singh v. State of Bihar, 2002 (4) PLJR 447. The relevant part of the order reads as under-

'The Commissioner-cum-Secretary, Health Department, Government of Bihar, who is present in Court in another case, was asked about the claim of the petitioner and his attention was specifically drawn towards Rule 26 which subscribes relaxation of rules for such cases as to when the petitioner was suffering from Cancer he had his kidney removed within seven days from his being found suffering from the said disease was there any time for him to apply earlier and face a medical board. He immediately opined that he would be looking into the matter

and all the reimbursable charges as per the rule to which he is entitled on being treated in a Government hospital, shall be re-imbursed.'

7. In CWJC No. 3019/2003 Counsel for the petitioner stated that the petitioner will be satisfied if a direction is issued for reimbursement of the pending bills at the rates applicable to the AIIMS, In CWJC No.2060/2003 which had been heard earlier, no such stand was taken therein. However, I am of the view that ends of justice would be served by directing the respondents to reimburse the claim of the petitioners in both the cases at the rates applicable in case of medical treatment and attendance at the AIIMS without insisting on prior approval of the Medical Board. For the balance amount the petitioners may make representation which should be sympathetically considered. The amount found due to the petitioners should be paid within six weeks of receipt of a copy of this order.

8. Before I part with this case I may observe that the Bihar Medical Attendance Rules framed in 1947 i.e. more that 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 State 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 lessor 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 be consistent with not only Articles 21 and 47 but also Article 14 of the constitution.

9. In the result, the writ petitions are allowed with the observations and directions made above.