

Om Babu Vyas Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Jun-04-2015

Appellant : Om Babu Vyas

Respondent : State and Ors

Judgement :

1 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CIVIL WRIT PETITION NO.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.Date of order : 4.6.2015 HON'BLE Mr.JUSTICE SANDEEP MEHTA Mr.Vinay Jain, for the petitioner.

Mr.BL Bhati, AGC, for the respondents.

<><><> 1.

By way of the instant writ petition, the petitioner seeks a direction to be issued to the respondents to reimburse the medical expenses borne by him for the treatment, which he had to undergo in an emergent condition at the Krishna Heart and Super Speciality Hospital, Ahmedabad in April 2008.

2.The petitioner is working on the post of Dy.Director at Rajasthan Education Research and Training Institute, Udaipur.

It is averred in the writ petition that the petitioner suffered cardiac discomfort on which his attendants took him to Krishna Heart and Super Speciality Hospital, Ahmedabad for check up.

He was admitted in an emergent condition at the Krishna Heart and Super Speciality Hospital, Ahmedabad where his angiography was done and two stents were inserted in the coronary arteries.

In this procedure, a total sum of Rs.1,85,120/- was spent.

The petitioner submitted the bills of 2 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.his medical expenses for reimbursement to the authorities.

Initially, the Accounts Officer of the respondent department, issued a letter dated 5.12.2009 intimating the District Education Officer under which the petitioner was posted to obtain an affidavit from the petitioner to the effect that he was ready to accept the payment to the tune of the expenses incurred for a similar treatment at the SMS Hospital.

The petitioner submitted an affidavit (Annex.9) dated 10.6.2010 in compliance of the aforesaid notice and agreed to accept the payment of Rs.1,10,000/-, which would have been incurred if the petitioner had been provided a treatment similar to the one undertaken by the petitioner at the SMS Hospital.

The file kept on being shunted like a shuttle cock between various officials and the reimbursement of the petitioners medical bills was continuously delayed.

The Dy.Secretary, Education Department of the State Government wrote a letter (Annex.14) dated 8.4.2013, wherein it was mentioned that as the treatment undertaken by the petitioner was of a period prior to the coming into force of the Rajasthan Civil Services (Medical Attendance) Rules, 2008, thus the reimbursement thereof could only be made under the Rajasthan Civil Services (Medical Attendance) Rules, 1970.

It was also mentioned that the case had been sent to the department after a delay of 4 years whereas the reimbursement under the Rules of 1970 3 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.could only be made within a period of two years from the date of treatment.

Repeated communications were continuously exchanged even thereafter between the petitioner, the petitioners department and the pension department.

In the meantime, the petitioner had a reoccurrence of cardiac problem and was again subjected to another cardiac treatment procedure at the Sal Hospital, Ahmedabad on 17.5.2012.

He claimed reimbursement of the second treatment as well but no response was given by the authorities to his claim.

The petitioner served a notice for demand of justice to the authorities, whereupon a letter (Annex.21) was issued to him intimating that the reimbursement of treatments taken prior to 16.9.2008 from a private or a charitable hospital in the State was only permissible if the treatment was undertaken in an emergent situation.

Accordingly, the prayer for reimbursement was turned down by the aforesaid letter (Annex.21) dated 22.1.2014 challenging which, the petitioner has approached this Court by way of the instant writ petition.

A copy of the circulars (Annex.22 and

23) dated 6.2.2009 and 27.11.2009 have been annexed with the writ petition as per which the State Government has approved the reimbursement of cost of implants, medical attendance and treatment in private hospitals at specified rates.

As per the circular dated 27.11.2009, the reimbursement of the medical treatments 4 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.even prior to coming into force of the said rules, taken by a government servant, has been approved in terms of the Rajasthan Civil Services (Medical Attendance) Rules, 2008, subject to the condition that the treatment was taken in

an emergent condition.

The fact that the petitioner was subjected to treatment at the Krishna Heart and Super Speciality Hospital, Ahmedabad on 23.4.2008 in an emergent condition is undisputed in view of the interdepartmental communications made by the departmental officials which are available on record of the writ petition.

3.Learned counsel for the petitioner submits that looking to the petitioners precarious condition, his wards had taken him to the Krishna Heart and Super Speciality Hospital, Ahmedabad, where he was treated for his heart ailment.

He relies upon the decision of this Court in the case of Anil Kumar Surolia versus State of Rajasthan reported in 2005(3) WLC (Raj.)-396 and prays that the writ petition deserves to be accepted and the respondents be directed to reimburse the medical expenses incurred in the treatment of the petitioner in accordance with Rajasthan Civil Services (Medical Attendance) Rules, 2008 and in light of the letters (Annex.7 &

8) as per which the department itself assessed the reimbursable amount in favour of the petitioner at Rs.1,10,000/-, which figure was arrived at after consultation with the authorities of the SMS Hospital.

5 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.4.Learned counsel for the respondents has vehemently opposed the submissions advanced by the learned counsel for the petitioner.

However, he candidly conceded that in similar matters this Court has directed reimbursement of the medical expenses borne by the government employees at the rate which is applicable for similar treatment in Recognised/Government hospitals.

So far as the petitioners claim for reimbursement of medical expenses borne by him for his treatment in the year 2012 is concerned, learned counsel submits that the same has already been disbursed to the petitioner by depositing the same in the petitioners bank account on 2.9.2014 and the petitioner was also informed about the same by way of letter dated 13.8.2014.

This fact has also been incorporated in para No.3 of the reply to the writ petition filed by the respondents, which is reproduced hereinbelow for the sake of ready reference: 3.

That it is further submitted that when the petitioner has taken treatment in the month of May, 2012 and claimed Rs.1,42,733/-, the replying respondent has passed the claim of medical reimbursement of Rs1,40,133/- and same was deposited in the bank account of petitioner vide bill no.41 dated 02.02.2014.

The copy of letter dated 13.08.2014 along with ECS Slip received from the Pay Manager of State Employees are submitted herewith and marked as Annexure R/1 & R/2 respectively.

The fact of this reimbursement is not disputed by the 6 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.petitioner.

5.This Court considered the issue of emergent situation in the case of Gyanendra Kumar Pareek versus State of Rajasthan & ORS.reported in 2009(4) WLC(Raj.)-95 and held that when a family member suffers from sudden ailment, the prime objective of the other family member would be to save his/her life.

At that time, services of whichever hospital is suited could be utilized because emergency knows no law and no procedure and when human life is at stake, in such situation, ultimate responsibility of the State cannot be washed off.

This Court relied upon the decision of the Division Bench of this Court in Anil Kumar Surolia versus State of Rajasthan (supra) wherein the Division Bench observed as under:- Government cannot insist upon an employee to get himself treated at recognized government institution.

All that the Government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognized government institution.

Reference in this connection may be made to the judgment of the Honble Supreme Court in Surjit Singh versus State of Punjab reported in AIR 1996 SC-

1388 and State of Punjab & ORS.versus Mohan Lal Jindal reported in (2001) 9 SCC-217.

Consequently, the reimbursement of the medical expenses borne by the State Government employees and pensioners has to be done even if the treatment is undertaken at unrecognized hospital outside the State even though reference may not have been taken prior to treatment.

6.Thus, as per Rajasthan Civil Services (Medical Attendance) Rules, 2008, the only hurdle against the petitioner for being granted reimbursement of the medical bills is that he was 7 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.subjected to treatment at an unrecognised hospital outside the State and that too without a reference being made.

However, as has been noted above, the Division Bench of this Court has already laid the issue to rest by observing that even if the treatment is taken at an unrecognized hospital and without any reference, the reimbursement thereof has to be done at the rates prescribed in the Rules.

7.The petitioner was admitted at the Krishna Hospital, Ahmedabad in an emergent condition so that he could be provided the best possible medical aid as a life saving measure.

Definitely and without any doubt, it was on account of an emergent condition that the petitioner had to be subjected to treatment at an unrecognised hospital outside the State of Rajasthan.

In such situation, the petitioner is entitled to be reimbursed with medical expenses borne by him in the treatment at the Krishna Heart and Super Speciality Hospital, Ahmedabad in accordance with the Rajasthan Civil Services (Medical Attendance) Rules, 2008.

8.As a consequence, the action of the respondents in failing to reimburse the medical bills of the petitioner was grossly unjust and arbitrary.

9. Consequently, the petitioner is entitled to be reimbursed with medical expenses borne by him for his treatment at the Krishna Heart and Super Speciality Hospital, Ahmedabad in accordance with the Rajasthan Civil Services (Medical 8 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS.Attendance) Rules, 2008 and in light of the letters (Annex.7 &

8) as per which the department itself assessed the reimbursable amount in favour of the petitioner at Rs.1,10,000/-, which was arrived at after inquiry from the SMS Hospital.

10. Furthermore for the period during which the reimbursement was unjustly denied to the petitioner, he is entitled to receive interest as well.

11. Accordingly, the writ petition is allowed and it is hereby directed that the respondents shall reimburse the amount of medical expenses borne by the petitioner for his treatment at the Krishna Heart and Super Speciality Hospital, Ahmedabad in accordance with the Rajasthan Civil Services (Medical Attendance) Rules, 2008.

The reimbursement shall be made within a period of four weeks from the date of receipt of copy of this order.

The amount shall also carry interest @ 9% per annum w.e.f. the date on which the bill was presented to the date of the actual payment.

If the payment is delayed beyond the period of four weeks, interest shall stand enhanced to 12% per annum.

12. The Pension Department shall also undertake an exercise for identifying the official/officials responsible for the delay in reimbursement of the petitioners medical claim and thereafter, the interest amount which the department has been burdened with on account of the unjustified delay in reimbursement of the petitioners medical claim shall be 9 S.B.Civil Writ Petition No.1914/2014 Om Babu Vyas versus State of Rajasthan & ORS. recovered from such official/officials.

13. No order as to cost.

(SANDEEP MEHTA).J.

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