

Tripura High Court

Sri Kali Sankar Baidya vs The State Of Tripura on 30 October, 2020

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HIGH COURT OF TRIPURA

AGARTALA

W.P(C) No. 289/2020

Sri Kali Sankar Baidya, S/o. Late Birendra Baidya, R/o Vill-Sishu Uddyan
Para, P.O & P.S:- Belonia, District-South Tripura.

..... Petitioner(s).

Vs.

1. The State of Tripura, represented by its Principal Secretary, Department of Finance, Government of Tripura, P.O- Kunjaban, P.S-New Capital Complex, District-West Tripura.
2. The Legal Remembrancer & Secretary, Department of Law and Parliamentary Affairs, Government of Tripura, P.O- Kunjaban, P.S-New Capital Complex, District-West Tripura.
3. The District and Sessions Judge, South Tripura District, P.O & P.S: Belonia, District: South Tripura.
4. The Principal Secretary, Health and Family Welfare Department, Govt. of Tripura, P.O- Kunjaban, P.S-New Capital Complex, District-West Tripura.
5. The Standing Medical Board, AGMC & GBP Hospital, Represented by it's Chairman, Agartala, P.O- Kunjaban, P.S-New Capital Complex, District-West Tripura.

..... Respondent(s).

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.

For Respondent(s) : Mr. D. Sharma, Addl. Govt. Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

ORDER

30/09/2020 Petitioner has prayed for medical reimbursement of a sum of Rs.3,73,031/- spent by him on his own treatment which the Government has refused to grant on the ground that the petitioner did not obtain prior referral order from the Medical Board before taking treatment from outside the State.

[2] The petitioner is a Head Clerk engaged in a district judiciary.

In the year 2019 the petitioner started noticing lesions over the left side of the nose which became progressively aggressive. The petitioner consulted the local ENT specialist and skin specialist. However his condition deteriorated despite treatment. He wished to consult the doctor at a hospital at Vellore for which he also applied to the authority on 30th November, 2019 seeking a referral order for taking treatment outside the State. Looking to the fast developments the petitioner had already in the meantime booked his passage for travel to a far distance. Unfortunately, till his date of departure on 5th December, 2019 there was no response from the respondents to his request for

reference under letter dated 30th November, 2019. It was only on 06.12.2019, the Medical Board conveyed to the petitioner that as per the prevailing norms there is no provision for referring the patients outside the State without appearing before the Medical Officer. Since in the meantime time the petitioner had already started his journey on 5th December, 2019, the petitioner could not present himself for a referral order.

[3] It was at Vellore that the doctors detected that the petitioner was suffering from nasal passage cancer. This news must have come as a rude shock to the petitioner and his family members. The petitioner therefore stayed back at Vellor, extended his leave and under took the full treatment for his nasal cancer, total expenditure of which came to Rs.3,72,031/-. He claims that as per the Government rules the same is to be reimbursed. Since the Government refused to do so he filed this petition.

[4] The reply of the Government is short and opposes the prayer of the petitioner on two grounds. Firstly that there was no referral order allowing the petitioner to take the treatment from outside the State and secondly, there were no extra ordinary urgent grounds for the petitioner to have travelled outside the State for his treatment without presenting himself before the Medical Board.

[5] Both the objections of the Government need to be overruled.

Firstly, as noted the petitioner was struggling with aggressive infection on his nose which did not get cured despite his treatment at the hands of ENT specialist and skin specialist. The petitioner therefore desired to have further investigations and opinion from the experts. He, therefore, approached the authorities for permission to travel outside State. His request dated 29th November, 2019 met with no immediate response. He could not wait any longer. He started his travel on 5th December, 2019. It was only thereafter that the Medical Board conveyed to him that unless and until he is present a referral order cannot be issued in his favour. On 7th December, 2019 the hospital at Vellore detected that the petitioner was suffering from cancer. Under such circumstances it was not expected for the petitioner to have waited for the Medical Board to call him for personal appearance for grant of referral order which would delay his treatment. As things turned out, having gone to Vellore for investigations, the petitioner ended up the undergoing entire treatment even without returning home for which purpose his leave was sanctioned by the employer.

[6] Under such circumstances to expect the petitioner to wait for the referral order is unreasonable. It is not even the case of the respondents that the specialized treatment needed for such cancer is readily available within the State. In other words going by the stand of the respondents if the petitioner had presented himself before the Medical Board and waited for long enough for the Medical Board to respond to his request for grant of referral order, the same would have been granted.

Only on that ground to deny the benefit of reimbursement of medical expenditure would be interpreting the policy of the Government too rigidly. Further, the ground that there was no urgency in the petitioner departing for treatment, also must be rejected. After having waited for long enough for the treatment prescribed by the local doctors to have effect and the treatment having failed to

have desired effect, the petitioner had to have a proper diagnosis and line of treatment. It is not as if the petitioner departed immediately without informing the employer or even the Medical Board. The petitioner did approach the Medical Board but could not give too long a time for Medical Board to respond. The petitioner had to take a calculated risk of departing without prior referral order.

[7] In a judgment dated 05.12.2019 in W.P(c) No.830/2019 in case of Sri Samar Bhusan Chakraborty Vrs. The State of Tripura & others, this Court in similar circumstances had made following observations:

"It can thus be seen that initial symptoms of the disease were that the petitioner suffered rapid weight loss coupled with drastic depletion of level of Hemoglobin in his blood. The petitioner lost close to 20 kgs of weight in a short span. With these complaints when the petitioner approached the GBP Hospital, the medical opinion was that the petitioner was suffering from iron deficiency anemia. The petitioner thereafter noticed that he was passing blood in the stool upon which he once again approached the GBP Hospital on 11.11.2014 when he was advised colonoscopy which was performed on 19.11.2014. The colonoscopy revealed that the petitioner had possible colon cancer. Under the advice of friends and well-wishers, therefore, he immediately rushed to the TATA Memorial Hospital at Mumbai for availing best treatment of cancer. He was operated on 09.12.2014 and 12 cycles of chemotherapy were administered between 28.01.2015 to 21.07.2015.

The respondents do not dispute the medical expenditure. They only argue that

because prior referral order from the Medical Board was not obtained, such bills cannot be passed. In my opinion, in facts of the present case, such objection is totally invalid. As noted, initially the petitioner suffered from weight loss and low hemoglobin in his blood. The fact that he was suffering from cancer was not detected at that stage. When he went back to the doctors with a complaint of passing blood in his stool, colonoscopy was advised which when performed revealed that he was suffering from colon cancer.

Considerable time thus was already lost between the petitioner reporting early symptoms of a possible serious ailment and actual detection of the fact that he was suffering from cancer. He, therefore, had every reason to rush for best medical advice and treatment for such life threatening and dreaded disease. At such stage to expect him to apply, await and appear before the Medical Board and obtain a referral order before proceeding for the treatment is an unreasonable expectation. The respondents do not even dispute that had he appeared before the Medical Board, such reference would have been made. They only argue that the petitioner did not obtain a prior order of reference. The fact that on each subsequent occasion when the petitioner had the opportunity he applied to the Medical Board and referral orders were duly passed itself is an evidence of the justification of the petitioner obtaining medical treatment from outside State hospital.

The Supreme Court in case of Surjit Singh vs. State of Punjab and others reported in (1996) 2 SCC 336 had in somewhat similar circumstances made following observations:

"11. It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to verses 17 18, 20, and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17 Vinaa dehena kasyaapi
canpurushartho na vidyate Tasmaaddeham

dhanam rakshetpunyakar maani saadhayet Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanamaatmaa
sarvasya bhaajanam Rakshane

yatnamaatishthejje vanbhaadraani pashyati One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20 Sharirarakshanopaayaah Kriyante
sarvadaa budhaih Necchanti cha
punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22 Aatmaiva yadi naatmaanama hitebhyo nivaarayet Konsyo hitakarastasmaa-

daatmaanam taarayishyati If one does not prevent what is unpleasent to himself, who else will do it? Therefore one should do what is good to himself.

12. The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done

so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

Similar view is expressed by this Court on number of occasions granting relief to the Government servants. Reference in this respect can be made to the following decisions:

Judgment dated 18.08.2016 in case of Sri Kallol Roy vrs. The State of Tripura & others in WP(C) No.277 of 2016, judgment dated 04.05.2018 in case of Sri Uttam Pal vrs. The State of Tripura & others in WP(C) No.1479 of 2017 and judgment dated 27.03.2019 in case of Sri Subal Das vrs. The State of Tripura & others in WP(C) No.895 of 2018.

In the result, the impugned order dated 07.12.2018 is set aside. The respondents are directed to pay the petitioner's medical bills in question as permissible. Such payment shall carry simple interest @ 7.5% from the date of completion of 3(three) months of presentation of bills till actual payment. Entire payment be made within a period of 2(two) months from today.

Petition is disposed of accordingly."

[8] Under the circumstances, the respondents are directed to process the medical reimbursement bills of the petitioner and release the same to the extent as per the Government policy the same are payable.

The entire exercise shall be completed within a period of eight weeks from today.

[9] Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI),CJ.

Dipankar