

Item No.1

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.594 of 2023

Shri Nepram Sonykumar, aged about 40 years, S/o Nepram Saratchandra Singh, a resident of Sagolband Nepra Menjor Leikai PO & PS Lamphel, Manipur-795001.

...Petitioner

- Versus-

1. The State of Manipur represented by the Principal Secretary, Health and Family Welfare, Government of Manipur, Manipur Secretariat, Old Block, Babupara, Imphal-795001.
2. The Director of Health and Family Welfare Services, Government of Manipur, Medical Directorate, Lamphelpat, Imphal, Manipur-795001.
3. The Chairman, State Medical Board, Government of Manipur, Near RIMS, Lamphelpat, Imphal, Manipur-795001.

...Respondents

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA
ORDER
(Oral)

16.08.2024.

[1] Heard Mr. I. Denning, learned counsel for the petitioner and Mr. Th. Sukumar, learned GA for the State respondents.

[2] The petitioner has approached this Court for directing the respondents to grant ex-post facto approval of the State Medical Board for medical reimbursement with respect to the treatment of his infant baby in the Mother's Care Children Hospital and Research Centre, Imphal.

[3] The petitioner who is a judicial officer, has twin baby boys at the Maipakpi Maternity and Child Hospital, Imphal on 29.12.2019 and one of the twin has developed breathing problems and the doctors referred the child to the Hospital where ventilator support in the Neonatal Intensive Care Unit is available.

[4] Vide impugned order dated 05.07.2022, Director of Health Services, Manipur informed the District & Sessions Judge, Imphal East that the approval of the ex-post facto sanction for treatment of the petitioner's sons at Mother's Care Children Hospital & Research Centre cannot acceded as the Hospital is not in the list of empaneled hospitals under the Government of Manipur.

[5] Mr. I. Denning, learned counsel for the petitioner draws the attention of this Court to the Memorandum dated 06.07.2018 issued by the Director of Health Services, Manipur where ex-post facto approval for treatment of Government employee who was working in the office of the Superintendent of Police, Senapati District, Manipur for treatment in the same Mother's Care Children Hospital and Research Centre, Sagolband, Imphal was released.

[6] Mr. Th. Sukumar, learned GA referring to para Nos. 4 , 6 & 9 of the counter affidavit submitted that since the Mother's Care Children Hospital and Research Centre, Imphal is not in the approved list of Government Hospitals published by the State Government, the Director

of Health Services, Manipur has rejected the claim for ex-post facto approval with respect to the petitioner's sons and the order is in terms of the policy of the State Government.

[7] Mr. I. Denning, learned counsel for the petitioner referred to the judgment of the Hon'ble Supreme Court in the case of *Shiva Kant Jha Vs. Union of India reported in (2018)16 Supreme Court Cases 187* wherein it was held that the medical benefits for the Government employees cannot be denied on the sole ground that the Hospital is not approved by the State Authority and the relevant para is reproduced herein below:

“17.It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had

actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.”

[8] The learned counsel for the petitioner draws the attention of this Court to the order dated 25.04.2016 passed by Hon’ble Division Bench of this Court in WP(C)No.1016 of 2015 where treatment taken up in Shija Hospitals & Research Institute in the non-recognized category was allowed on the ground that self preservation of one’s life is the necessary concomitant of the right of life enshrined in Article 21 of the Constitution of India and relevant para is reproduced herein below:

“8. Thus, it appears in no uncertain term it has been spelt out 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 and for his self preservation one has right to take steps accordingly. On need not to stand in queue before the Medical Board, the manning and assembling of which makes its meeting difficult to happen and need not stand in queue in Government hospital and could go elsewhere to an alternative hospital. The principle laid down by the Hon’ble Supreme Court has been followed by this Court also in the case referred to hereinabove:

[8] In another order dated 24.08.2020 passed by Learned Single Judge in WP(C)No.180 of 2014 where treatment taken up in non-recognized

hospital is also permitted by this Court on the ground that similar orders have been passed by this Court and there is no reason to differ.

[9] This Court has considered the materials available on record and the decisions relied by the parties.

[10] On perusal of annexure A/7 i.e. O.M. dated 06.07.2018 issued by the Director of Health Services, Manipur, it seen that medical reimbursement for the employee of the office of Superintendent of Police Senapati for treatment taken up in Mother's Care Children Hospital and Research Centre, Sagolband Moirang Leirak, Imphal was allowed. However, in the present case, the treatment taken up in the same hospital is rejected on the ground that the concerned hospital is not in the empaneled list of the State Government.

[11] This Court is of the view that for the same hospital, the State Government cannot have different stands to its employees and the stand of the State Government cannot be sustained in terms of the decisions of the Hon'ble Supreme Court in the case of *Shiva Kant Jha Vs. Union of India supra*. In view of the settled position of law, this Court sets aside the impugned letter dated 05.07.2022 issued by the Director of Health Services, Manipur to the District & Sessions Judge, Imphal East intimating about the rejection of the claim of sanction of the expenses for medical treatment of the child of the petitioner at Mother's Care Children Hospital & Research Centre Imphal. Accordingly, the respondents are directed to release the admissible expenses as per law within a period of

3(three) months from the date of receipt of a copy of this order failing which, an interest rate of 9% per annum shall be payable.

[12] Furnish a copy of this order to the learned counsel appearing for the parties.

[13] Registry is directed to send a copy of this order to the Director of Health Services Manipur for information and necessary compliance.

JUDGE

John Kom