

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) No.346 of 2024

Smt. Minati Das, aged about 55 years, wife of Bimal Chandra Das, residents of Bolananda Palli, near Kali Bari, Barjala, Agartala, P.O- Kunjaban Kathal Bagan, P.S- NCC Police Station, District- West Tripura, Pin-799006.

..... *Petitioner(s)*

V E R S U S

(i) The State of Tripura, to be represented by Secretary Department of Home, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, Pin-799010.

(ii) The Secretary, Finance Department, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, Pin-799010.

(iii) The Secretary, Health & Family Welfare Department, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, Pin-799010.

(iv) The Director General of Police, Tripura Police Head Quarter, Akhaura Road, Joynagar, Agartala, West Tripura, Pin-799010.

(v) The Assistant Inspector General of Police, Tripura Police Head Quarter, Akhaura Road, Joynagar, Agartala, West Tripura, Pin-799010.

(vi) Principal/Chairman, Tripura Standing Medical Board, AGMC & GBP Hospital, Agartala, West Tripura, Pin-799006.

..... *Respondent(s)*

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Mr. Dipjoyti Paul, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of Judgment & Order : 11th July, 2024.

Whether Fit for Reporting : YES.

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel and Mr. Dipjoyti Paul, learned counsel appearing for the petitioner. Also heard Mr. Mangal Debbarma, learned Additional Government Advocate appearing for the State-respondents.

[2] The order dated 17.05.2024 in essence encapsulates the case of the petitioner and is therefore reproduced hereunder :

“Petitioner was initially referred to the ILS Hospitals, Agartala on 08.09.2021 by the State Referral Board, AGMC & GBP Hospital, Agartala for further investigation and treatment vide Annexure-2. However, ILS Hospitals, Agartala referred her to Higher Centre vide Annexure-3 dated 18.09.2021 making the following observations:

“Course of Treatment in Hospital : 49 years old female was initially having sudden onset of reduce responsiveness followed by vomiting headache & double vision. She was initially treated in GBP hospital and diagnosed as a case of subarachnoid hemorrhage. Thereafter she was referred to ILS hospital for further management. Upon receiving in SICU her GCS was found to be E4V5M6 and conservative treatment was started. She was diagnosed as Angio negative SAH Fisher grade 4. She was kept in SICU under observation and physiotherapy was started. She was started on “HHH” regimen and oral NIMODIPINE. Serial NCCT Brain were done and it showed resolving SAH & No hydrocephalus. She was discharged on 15/09/2021. But in the hospital, on the day of discharge she developed acute onset right side hemiplegia and aphasia. MRI Brain (Plain) showed ischaemia involving caudate nucleus, multiple small regions in frontal lobe s/o vasospastic event. Presently she is able to verbalise, right UL power 3/5, right LL power 1/5. Since no endovascular facility is available here, referring to higher centre for further management.”

Petitioner was airlifted for treatment to the Institute of Neurosciences, Kolkata. She was discharged after treatment on 05.10.2021 by the Institute of Neurosciences, Kolkata. Her claim for medical reimbursement for treatment at ILS Hospitals, Agartala for an amount of Rs.96,293/- has been allowed by the department, but the remaining bills for treatment at Institute of Neurosciences, Kolkata has been regretted as there was no referral to a Higher Centre outside the State by the State Referral Board. Therefore, petitioner has approached this Court.

Mr. M. Debbarma, learned Additional Government Advocate for the respondents-State, submits that apparently the claim has been regretted as there was no referral for treatment outside the State by the State Referral Board as per the scheme for medical reimbursement under the State Government.

Learned senior counsel for the petitioner submits that since ILS Hospitals, Agartala did not have the facility to treat her condition and precious time would have been lost in seeking referral from the State Referral Board, petitioner was airlifted to the Institute of Neurosciences, Kolkata for proper treatment. Fortunately, she survived the ordeal and was discharged. In cases of such emergency, requirement of a prior referral from the State Referral Board may sometimes prove to be counterproductive and fatal, as it is ultimately the human life which has to be saved. Emergency treatment such as this warrants no delay. Learned senior counsel for the petitioner has placed reliance upon a decision dated 04.05.2018 in the case of *Sri Uttam Pal v. The State of Tripura & others* passed in ***WP(C) No.1479 of 2017*** [Annexure-8] wherein this Court has held that the requirement of referral by the State Medical Board is directory in nature. As such, respondents ought to have examined the case of the petitioner in that light and allow the claim.

Mr. M. Debbarma, learned Additional Government Advocate for the respondents-State, is therefore allowed to seek instructions whether it is possible for the department to place the case of the petitioner before the State Referral Board for post-facto approval of her treatment outside the State in the facts and circumstances narrated above. Accordingly, matter be listed on 21.06.2024.”

[3] Counter-affidavit has been filed by the respondents wherein the following stand has been taken :

“4. That, in reply to para 1 and 1.2 of the writ petition, I say that it is admitted fact that the petitioner has been paid vide Bill No.706/MR/NGOS/PHQ/2022 dated 05.03.2022 for an amount of Rs.96,293/- as M.R bill claim in connection with her treatment at GBP Hospital and ILS Hospital Agartala from 06.09.2021 to 18.09.2021. Copy of vide Bill No. 706/MR/NGOS/PHQ/2022 dated 05.03.2022 is annexed herewith and marked as Annexure-R/1.

5. That, in reply to para 4 of the writ petition, I say that as per record, the petitioner was admitted in ILS Hospital on 06.09.2021 and discharged on 15.09.2021 from ILS Hospital, Agartala as referred by the Standing Medical Board of AGMC & GBP Hospital.

It also appears from the Annexure No.3 to the writ petition, that the petitioner was admitted again in ILS Hospital Agartala on 15.09.2021 afternoon without referred by the Standing Medical Board and discharged on 18.09.2021 from which she has been referred to higher centre for further management/treatment by the ILS Hospital. However, her treatment expenditure incurred by the petitioner at GBP Hospital and ILS Hospital Agartala from 06.09.2021 to 18.09.2021 has been paid on 05.03.2022 and thereby the MR bill as referred by the Standing Medical Board was completed. Copy of the discharged certificate dated 15.09.2021 is annexed herewith and marked as Annexure-R/2.

6. That, in reply to para 6 & 7 of the writ petition, I say that the petitioner after discharged from ILS Hospital on 18.09.2021 she never intimated the authority for her further treatment outside the State and referred by the ILS Hospital, Agartala. Thereafter, the petitioner submitted a fresh MR Bill for Rs.11,71,180/- in connection with her treatment at the institute of Neurosciences Kolkata with effect from 18.09.2021 to 05.10.2021. The same was forwarded to Home Department vide PHQ letter dated 06.04.2022 (Annexure-5 to the writ petition) for Administrative approval and sanction which was regretted by Government of Tripura (Home/Finance) vide their letter dated 13.05.2022 on the ground that the treatment of the petitioner was done outside the State without referral from the State Medical Board (Annexure-6 to the writ petition).

It is pertinent to mention here that as per latest medical reimbursement policy of the State Government vide memo dated 22.12.2022 (Annexure-4 to the writ petition) the ex-post facto approval may be allowed for medical reimbursement to Group-A & B of the State Government employee without referral from the State Medical Board subject to condition that in case of emergency or acute illness arising while the Government servant is staying outside the State with station leave permission. In the instant case, there is no scope to consider under ex-post facto approval of the Government.

7. That, in reply to para 8 to 10 of the writ petition, I say that there is no indication in the relevant record/papers of the instant M.R bill that the treatment of the petitioner was undertaken at Institute of Neurosciences Kolkata as the case of emergency/acute illness.”

[4] The fact relating to the treatment of the petitioner, a Group-B employee, posted as Office Superintendent in the Police Headquarters at Agartala, West Tripura and her referral to the ILS Hospital, Agartala on 08.09.2021 by the State Referral Board, AGMC & GBP Hospital,

Agartala for treatment vide Annexure-2 is not in dispute. The fact that she was treated there and discharged on 15.09.2021 and again admitted on 15.09.2021 for serious complications is also not in dispute. The fact that on 18.09.2021 she was discharged by the ILS Hospital, Agartala and referred to higher centre for further management/treatment by the ILS Hospital and that she was airlifted to the Institute of Neurosciences, Kolkata and admitted there on 18.09.2021 is also not in dispute. The fact that she survived after her treatment at Institute of Neurosciences, Kolkata and was discharged on 05.10.2021 from the said Institute is also not in dispute. The fact that the medical bills of Rs.96,293/- in connection with her treatment at GBP Hospital and ILS Hospital, Agartala from 06.09.2021 to 18.09.2021 have been reimbursed by the department is also not in dispute. What is disputed is reimbursement of medical bills of the petitioner for her treatment at Institute of Neurosciences, Kolkata between 18.09.2021 to 05.10.2021.

[5] The reasons for regretting her claims are said to be based upon medical reimbursement policy of the State Government contained in memorandum dated 22.12.2022. According to the respondents, ex-post facto approval may be allowed for medical reimbursement to Group-A & B employee of the State Government without referral from the State Medical Board subject to the condition that in case of emergency or acute illness arising while the government servant is staying outside the State with Station leave permission. According to the respondents, in the present case, there is no indication from the relevant records of the medical reimbursement bills that the treatment of the petitioner was

undertaken at Institute of Neurosciences, Kolkata as the case was of emergency/acute illness. This stand is categorically reflected at paragraph 7 of their counter-affidavit in reply to paragraph 8 to 10 of the writ petition as has been extracted hereinabove.

[6] The policy for medical reimbursement vide memorandum dated 22.12.2022 (Annexure-4) deals with such a contingency is usefully extracted hereunder :

“Government of Tripura
Health & Family Welfare Department

No. F.2(10-43A)-DHS/ESTT/MR/2022

Dated 22.12.2022

MEMORANDUM

Subject :- Re-imbursement facility to the State Government employees of medical expenditure incurred by the employees for treatment inside/outside the State.

With a view to simplify and streamline the operational guidelines of medical reimbursement facility for the eligible State Government employees, the Council of Minister's has examined the existing provision and in supersession/partial modification of all existing guidelines as follows :

The Governor, Tripura is pleased to lay down following guidelines with regards to admissibility of medical expenses to State Government Officials inside/outside the State.

(a) Group-A and Group-B officials of the State Government employees and their dependent family members when referred by the Standing Medical Board to a particular listed referral institution/hospital as Annexed (A) for medical treatment but undertakes the treatment at some other Institution/Hospital of his/her own choice/volition, he/she shall be entitled to get reimbursement for treatment/investigations(s) undertaken at the rates of their referred institution including journey expenses for the purpose as existing T.A. Rules.

(b) Medical reimbursement expenses to Group-A and Group-B of the State Government employees and their dependent family members may avail treatment in any enlisted referral hospital inside/outside the State approved by the State Government without referral of the Standing Medical Board subject to condition that ex-post facto approval shall be given only in case of emergency or acute illness arising while govt. servant is staying outside the State with station leave permission. In such case a certificate stating the emergency status and ICD diagnosis has to be obtained from the treating hospital. If treatment is undertaken in any such hospital reimbursement would be at CGHS rate.

(c) The dependent family members of State Government Group-A & B employees who are not residing with the concerned government employees due to staying outside the State and require medical treatment in any health institution, will be eligible to get reimbursement of treatment expenses at latest CGHS rates.

(d) Group-C & D officials of the State Government employees when referred by the Standing Medical Board to a particular listed referral institution/hospital for medical treatment but undertakes the treatment at some other Institution/Hospital of his/her

own choice/volition, he/she shall be entitled to get reimbursement for treatment/investigation(s) undertaken at the rates of their referred institution including journey expenses for the purpose of existing T.A. Rules.

(e) Medical reimbursement expenses to Group-C & D of the State Government employees himself/herself or any member of his/her family suffers from cancer and is referred to a particular medical institution/hospital outside the State on being referred by the State Standing Medical Board, Government of Tripura but undertakes the treatment at some other Institution/Hospital of his/her own choice/volition, he/she shall be entitled to get reimbursement for treatment/investigation(s) undertaken at the rates of their referred institution including journey expenses for the purpose as existing T.A. Rules.

(f) In case of all categories of the State Government employee (Group-A, B, C and D), while being outside the State in connection with official works/for his own duty, with station leave permission where he/she fell ill and requires medical treatment in any health institutions, will be eligible to get reimbursement of treatment expenses at latest CGHS rates subject to condition that it is applicable in acute emergency cases like chest pain, cardiac failure, brain stroke, trauma and head injury and 1st time cancer etc.

(g) The reimbursement facility to all categories of the State government employees (Group-A, B, C and D) for implanting of Pacemaker shall continue to be admissible, subject to limit therein vide Finance Department Memo No.F.30(1)-FIN(G)/2009, dated 12.05.2009 and in continuation of this Deptt. Memo No.F.5(2)-FIN(G)/93, dated 24th May, 1997.

(h) The State Government employees who are posted in Tripura Bhavan at Guwahati, Kolkata and New Delhi and require medical treatment for his/her own in any health institution, will be eligible to get reimbursement of treatment expenses at latest CGHS rates and dependent family members of Group-A & B employees, require medical treatment in any health institution, will be eligible to get reimbursement of treatment expenses at latest CGHS rates or any hospital of choice whichever less.

(i) Reimbursement of cost of medical expenses of pensioners and spouse referred by the Standing Medical Board, Government of Tripura for treatment outside the State once in 5(five) years subject to ceiling of Rs.50,000/- Rupees Fifty Thousand). The other terms & conditions of the original OM No. F.8(3)-FIN(G)/88, dated 25th June, 1991 shall remain unchanged.

(j) The empanelment of referral hospitals outside the State from time to time approved by the Government is Annexed (A).

(k) Finance Department, Government of Tripura has concurred the proposal of the Department vide U.O. No.170-FIN (EXPDT-II)/2022 dated 21.11.2022. The Council of Ministers approved the proposal of the department, dated 03.12.2022. This order shall take with immediate effect.

By order of the Governor
SD/-
(D. Basu)
Secretary to the Government of Tripura”

[7] The State Government has framed the policy for medical reimbursement to its employees for different classes which is in the nature of a social security measure to the employee and/or his dependents in case of medical treatment in lieu of the services rendered by the employee to the State. Paragraph-b of the scheme extracted above contemplates ex-

post facto approval in case of emergency or acute illness arising while the government servant is staying outside the State with station leave permission. In such a case a certificate stating the emergency status and ICD diagnosis has to be obtained from the treating hospital. If treatment is undertaken in any such hospital reimbursement would be at CGHS rate.

[8] The facts of the instant case are stark and cannot be overlooked. Petitioner, a Group-B employee, was treated at ILS Hospital, Agartala between 08.09.2021 to 18.09.2021 on the reference made by the State Referral Board, AGMC & GBP Hospital, Agartala. The observations of the ILS Hospital, Agartala at the time of her discharge on 18.09.2021 (Annexure-3) which has been quoted in the foregoing part of this order depict the acute state of emergency in which she was referred for treatment at a higher centre as ILS Hospital, Agartala did not have the facility. The observations of the medical team of ILS Hospital, Agartala for her reference to higher centre even from a layman's point of view indicates that because of her acute conditions she was somehow kept stable but no endovascular facility was available there for further treatment and management. Such was the exigency that she had to be airlifted to Institute of Neurosciences, Kolkata on the same day where she was admitted. She fortunately survived the ordeal and has come back alive to serve the department. She is only 49 years of age and has more than 10 years to serve the State Government. One can only imagine if she was not airlifted for treatment to the Institute of Neurosciences, Kolkata on the advice of the medical experts at ILS Hospital, Agartala where she

was being treated on reference by the State Referral Board, whether she could have survived. A precious life may have been lost in the process and the State would have also lost the services of a competent employee for more than 10 years. Such was her state that her airlifting for treatment at a higher centre in Kolkata brooked no delay seeking further approval from the State Referral Board for treatment outside the State. If this could not be an emergency what else could be.

[9] The policy of medical reimbursement framed by the State Government is a social welfare measure in the nature of a beneficial subordinate legislation. If the very purpose of the scheme is defeated by such mechanical and myopic approach of the authorities of the concerned department, the whole purpose of such a beneficial scheme would be defeated. The respondents seem to have adopted a very mechanical and insensitive approach in rejecting the claim of medical reimbursement of the petitioner for treatment undertaken at Institute of Neurosciences Kolkata by stating that there is no indication in the relevant records/papers that it was a case of emergency or acute illness. The decision can therefore be said to be irrational in the light of the Wednesbury principles of reasonableness.

[10] The judgment in case of *Tata Cellular versus Union of India*, reported in (1994) 6 SCC 651, the Apex Court has expatiated on the meaning of the expression irrationality. Irrationality which could be referred to as “Wednesbury unreasonableness” applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards

that no sensible person who had applied his mind to the question to be decided could have arrived at. The relevant part of paragraph 79 of the judgment is extracted hereunder :

“79.

This summary by Lord Greene has been applied in countless subsequent cases.

"The modern statement of the principle is found in a passage in the speech of Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service*¹⁹:

'By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness". (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.³¹) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.' "

[11] Mr. P. Roy Barman, learned senior counsel for the petitioner has rightly placed reliance upon paragraph 13 of the judgment rendered by the Apex Court in case of *Shiva Kant Jha versus Union of India* in *WP(C) No.694 of 2015* dated 13.04.2018. Paragraph 13 of the judgment is quoted hereunder :

13) 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.

[12] Therefore, judging both from point of view of the beneficial nature of policy of the medical reimbursement of the State Government dated 22.12.2022 which is a social welfare legislation and also on the test of “Wednesbury reasonableness” the impugned decision dated 13.05.2022 contained in Annexure-6 regretting the claim for medical reimbursement bills of the petitioner for her treatment at Institute of Neurosciences, Kolkata for an amount of Rs.11,71,180/- as not admissible being undertaken without reference by the State Standing Medical Board is unsustainable in law and on facts and fit to be set aside. It is accordingly set aside. In view of the discussion made and the reasons recorded hereinabove, the respondent-department is directed to reimburse the admissible bills of the petitioner for treatment at the Institute of Neurosciences, Kolkata, after granting post-facto approval, in accordance with law, within a period of 6(six) weeks from the date of receipt of copy of this judgment.

[13] The writ petition is allowed and disposed of with the aforesaid observations and direction.

Pending application(s), if any, also disposed of.

(APARESH KUMAR SINGH) CJ