

GAHC010176932015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3673/2015

SMTI. JYOTIKA BHAGAWATI
D/O SRI REBATI BHAGAWATI, R/O KURUBAHI, P.O. JAMUGURI, P.S. JAJORI,
DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECY., GOVT. OF ASSAM, ASSAM SACHIVALAYA,
DISPUR, GHY-6

2:THE SECRETARY
DISTRICT LEGAL SERVICE AUTHORITY
NAGAON
ASSAM

3:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI
ASSAM
PIN-781006.

4:THE DIRECTOR OF HEALTH SERVICES
HEALTH COMPLEX
HENGRABARI
GUWAHATI-781036

Advocate for the Petitioner : MR.S SAIKIA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 22-07-2024

1. Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Mr. K Gogoi, learned counsel for the respondent Nos.1 & 2 and Mrs. D Borah, learned counsel for the respondent Nos.3 & 4.

2. It is the case of the petitioner that on 05.11.2012 at about 6.30 PM, some unidentified persons attacked the petitioner by throwing concentrated acid into her face while she was at her parent's house in village Kurubari, P.O Jamuguri, P.S Jajori, Nagaon, Assam. Immediately after attack, her parents and villagers took her to Nagaon Civil Hospital.

3. Considering the seriousness of the injuries, the Hospital authorities at Nagaon referred the petitioner to the Gauhati Medical College & Hospital for further and better treatment. However, according to the learned counsel for the petitioner, considering that she might get better treatment in a Private Hospital, she was admitted at Dispur Polyclinic, a Private Hospital at Guwahati for better treatment. Thereafter, she was under treatment for three months in that hospital. Certain surgeries for correction of tissues in her neck and face were also done at the hospital. According to the learned counsel for the petitioner, the petitioner still requires some corrective surgeries and treatment.

4. In the aforesaid backdrop, the petitioner had approached this court seeking compensation in terms of the determinations made by the Hon'ble Apex Court in ***Laxmi Vs. Union of India*** reported in **2014 4 SCC 427**, as well as under the Assam Victim Compensation Scheme, 2012

enacted by the State of Assam in exercise of powers under section 357-A of the Cr.P.C, 1973.

5. During the pendency of this petition, the petitioner was paid an amount of Rs.3 lakhs as victim compensation under the provision of Assam Victim Compensation Scheme, 2012.

6. The learned counsel for the petitioner submits that though compensation has been paid, however, the petitioner still requires to undergo certain corrective surgeries as recommended /advised by the Medical Board, constituted under the scheme and under order of this court. Accordingly, the petitioner is ready for further and better treatment outside the state of Assam as recommended/advised by the Medical Board and therefore, at this stage she prays that a direction may be issued to the State Respondents to issue necessary orders and make payment for such further treatment.

7. There is no dispute as regards the incident and the injury out of the incident. The Health Department has filed an affidavit, through the Director of Health Services, Assam. The said affidavit filed by the Director of Health Services, Assam goes to show that in terms of this court's order dated 28.11.2018 passed in this case, the Director requested the Principal cum Chief Superintendent, GMCH to constitute a Medical Board to assess the nature of surgical treatment that may require so far the same relates to the petitioner. Accordingly, a Medical Board was constituted comprising of three Professors of GMCH, i.e., Professor and HOD of Surgery, Professor and HOD of Psychiatric and Professor and HOD of Plastic Surgery Departments. The petitioner was examined by the Board and after her examination, the Board suggested the following treatments and communicated the same to the Vice Principal of GMCH, Guwahati. The operative portion of the said communication is quoted herein below:

“We have the honour to submit the report of the 'Medical Board' comprising Prof (Dr) P.P. Das (Prof. & HOD Surgery) Chairman, Prof. (Dr) Seema Rekha Devi, (Prof & HOD Plastic Surgery) as member Secretary and Prof (Dr) Suresh Chakravarty, (Prof & HOD Psychiatry) Gauhati Medical College & Hospital as member in a meeting held on 29/12/2018 at 12 pm in the office of the Department of Plastic Surgery GMCH as follows.

Name of the patient : Smt. Jyotika Bhagwati.

Disease – Acid Burn.

She was examined by all three consultants. She is stable with sound mental health conditions. She may require following surgical treatment.

- 1. Surgical treatment 2/3 for minor corrector of scar and alopecia patches in her forehead.*
- 2. She may require laser treatment for her face for cosmetic purposes.”*

8. The affidavit also reflects that thereafter the Medical Board by its communication dated 17.07.2019 suggested three names of higher centers where the treatment recommended by the Board are available. The name of the centre's are recorded herein below:

- a. Indraprastha Apollo Hospital, Delhi,*
- b. Apollo Hospital, Chennai,*
- c. Dr. Umesh Shah, Senior Plastic & Cosmetic Surgeon, Amigh Hospital, Ahmedabad.*

9. However, such treatment has not been completed till date as the petitioner could not attend such hospital outside the State of Assam for her financial incapacity and personal difficulties.

10. Ms. D Ghosh learned counsel for the petitioner on a pointed query

submits that the petitioner is ready and willing to go for such a treatment at Indraprastha Apollo Hospital, New Delhi.

11. In the meantime, the Director by its communication dated 05.08.2019 addressed to the Joint Director of Health Services, Nagaon requested to obtain an estimated cost for the treatment from any of the higher centers as mentioned in the Medical Board's recommendation and to submit the same to the Director for onward submission to the government for approval, however, affidavit is silent whether the Joint Director of Health Services, Nagaon has submitted such report.

12. The Division Bench in WP(C) No.749/2014 dealing with the rights of victim of acid attack victim as well as the responsibility of the State, in its order dated 24.06.2016, after elaborately dealing with the settled propositions of law as rendered by the Hon'ble Apex Court, held that the responsibility for such treatment of victim of such an acid attack lies upon the state. Accordingly, a direction was issued to the Government to ensure immediate specialized medical treatment to the victims of acid attack in hospitals outside the state of Assam, which were recommended by the Board in those cases.

13. It was further provided that the State Government instead of giving money to the victim, may pay the expenses of the treatment directly to the concerned hospital. It was also provided in the order that the State Government shall also provide travelling and lodging expenses to the victim and of one attendant.

14. The issues and cases dealt with by the Division Bench in its order dated 24.06.2016 are similar to the facts of the present case, inasmuch as in those cases also advance treatment were recommended by the Medical Board outside the State of Assam.

15. In view of the aforesaid, the present writ petition stands allowed in

terms of the determination made by the Division Bench in its order dated 24.06.2016 passed in WP(C) 749/2014:

I. The Joint Director of Health Services, Nagaon shall obtain an estimated cost for the treatment from any of the higher centers as mentioned in the Medical Board's recommendation and to submit the same to the Director for onward submission to the government for approval. Such exercise be completed within a period of 4 weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner.

II. Thereafter the Director shall forward the same to the competent authority in the state for approval of the same within a period of two weeks from the date of receipt of such proposal from the Joint Director of health services, Nagaon.

III. On receipt of such communication from the Director, the competent authority in the State of Assam, within a period of four weeks thereafter is to do the needful for its approval. It is provided that the State Government instead of giving money to the victim may pay the expenses of treatment directly to the concerned approved hospital.

IV. It is needless to say that the State Government shall also provide travelling and lodging expenses to the victim which is available to a Grade-III employee under the state.

16. With the above direction, the writ petition stands disposed of.

JUDGE