

GAHC010202532015



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

Case No. : WP(C)/3596/2015

SMTI SANGITA DAS
W/O SRI MONOJ KR. DAS, S.S.ROAD, ABHAYAPURI TOWN, W/NO.3, P.O.
ABHAYAPURI, DIST- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HEALTH and F.W. DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENDERABARI
GHY-36

3:THE CHIEF ENGINEER
PWD NH WORKS
ASSAM
CHANDMARI
GHY-3

4:THE EXECUTIVE ENGINEER
PWDNH
ABHAYAPURI CONST. DIVISION
ABHAYAPUR

Advocate for the Petitioner : Mr. S. Hoque, Advocate.

Advocate for the Respondents : Mr. B. Goswami, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 01.04.2022

Date of Judgment : 01.04.2022

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Hoque, learned counsel for the petitioner and Mr. B. Goswami, learned counsel appearing on behalf of all the respondents.

2. The instant writ petition has been filed seeking a writ of mandamus directing the respondent authorities to grant Ex-Post-Facto approval of the treatment of the petitioner's husband and to make immediate payment of the medical reimbursement bills in respect of the petitioner's husband.

3. It is the case of the petitioner that her husband was appointed as a Roller Handyman in the establishment of Executive Engineer, PWD (NH) Construction Division, Abhayapuri. While in service, the husband of the petitioner had faced a severe brain stroke on 05.01.2012 during the course of his employment and he was immediately admitted at the Abhayapuri CHC (FRU) on 05.01.2012 wherein he was provided preliminary treatment. But as the health condition of the petitioner's husband deteriorated, he was immediately rushed to Guwahati wherein he was admitted in the ICU of Rahman Hospitals Pvt. Ltd., Sixmile, Guwahati on 06.01.2012 for emergency treatment where he had undergone treatment till 20.01.2012.

4. It is the further case of the petitioner that after undergoing treatment with effect from 06.01.2012 to 20.01.2012 at the said Rahman

Hospitals Pvt. Ltd., the life of her husband was saved and it was due to the lack of money, the husband of the petitioner was released from the said Rahman Hospitals Pvt. Ltd. on 20.01.2012. In that connection, the petitioner had incurred an expenditure of Rs.1,82,322/- towards medical expenses for the treatment of her husband at Rahman Hospitals Pvt. Ltd. It is further stated that after the petitioner's husband was released from Rahman Hospitals Pvt. Ltd., he had to continue treatment as one side paralysis had taken place to him. The petitioner, thereafter, on behalf of the husband, submitted the medical bills and documents in original before the Executive Engineer, PWD (NH) Construction Division, Abhayapuri for grant of Ex-Post-Facto approval as well as reimbursement of the medical bills.

5. The Executive Engineer, PWD (NH) Construction Division, Abhayapuri, respondent No. 4 by the letter No. 1123 dated 25.03.2013 forwarded the same to the Chief Engineer, PWD (NH), Assam for making payment of the medical bills in respect of the petitioner's husband. Thereafter, the Chief Engineer, PWD (NH), Assam vide his letter dated 26.07.2013 requested the Executive Engineer, PWD (NH) Construction Division, Abhayapuri, respondent No. 4 for furnishing (i) Referred Medical Certificate, (ii) Ex-Post-Facto approval from the Director of Health Services and (iii) Essential Certificates.

6. When the said aspect of the matter was brought to the notice of the petitioner, she approached the respondent No. 2, the Director of Health Services, Assam for sanctioning Ex-Post-Facto approval for treatment of the petitioner's husband. She was intimated by the said authority that the Ex-Post-Facto approval of her husband will be placed before the Referral Medical Board, GMCH for the needful in that regard.

7. The Office of the Superintendent, Guwahati Medical College Hospital vide its letter dated 29.08.2013 had intimated the petitioner that the Referral Medical Board, GMCH had refused the Ex-Post-Facto approval of treatment of the petitioner's husband since the Rahman Hospitals Pvt. Ltd., Guwahati is not a referral hospital of the Government of Assam.

8. It is under such circumstances that the petitioner has approached this Court under Article 226 of the Constitution of India.

9. I have heard the learned counsel for the parties. It appears that the matter is no longer *res integra* in inasmuch as this Court in various judgments including the judgment in the case of *Uttam Das Vs. State of Assam and Others*, reported in *2015 (2) GLT 197* held that in case of acute emergency, necessitating immediate hospitalization and treatment of the patient, the Medical Referral Board may not have occasion to examine the claim of the patient for referral to a private/Government hospital. To deal with such a situation involving extreme emergency, Rule 6 (c) of the Assam Medical Attendance Rules, 2008 visualises consideration of the claim made by a patient for medical reimbursement after he obtains treatment without referral. It has also been observed that the Rules are silent as regards a case when because of acute emergency, a Government servant or a pensioner needs to be treated in a hospital, which is the nearest hospital available but which is not a referral hospital. It has further been observed that the Government has the power to grant medical reimbursement even in cases where hospitalization and treatment were done in the hospitals which are not a referral hospital. Paragraph Nos. 23 and 25 of the said judgment i.e., *Uttam Das (supra)* are the relevant and quoted herein below:

“23. *But what happens in a case when because of acute emergency, a*

Government servant or a pensioner, needs to be treated in a hospital, which is the nearest hospital available but which is not a referral hospital, is not specifically provided for in the Rules. However, Rule 19(ii) provides that nothing in the Rules shall be deemed to prevent the Government from granting to a Government servant including All India Service Officers any relief relating to treatment, attendance and journey for the purpose of treatment which is not specifically authorised under the Rules. Thus, the Government has the power to grant medical reimbursement even in a case where hospitalization and treatment was done in a hospital which is not a referral hospital.

24. Power has to be exercised in a fair and reasonable manner consistent with the mandate of Article 14 of the Constitution of India and not in a manner which results in discrimination. In the instant case, the Government failed to exercise power in a fair and reasonable manner resulting in gross discrimination to the petitioner.

25. This Court in Runu Rajkumari (Supra), on the facts of the case, had also taken a view that denial of reimbursement on the grounds that no prior approval was taken from the authorities before hospitalization and that the hospitals where treatment was taken were not recognised, is violative of Article 14 of the Constitution of India."

10. Taking into consideration the judgment of a Co-ordinate Bench of this Court, the respondents are now directed to verify the claim of the petitioner, i.e., the medical bills amounting to Rs,1,82,322/- at the earliest, and thereafter, if the petitioner is entitled to the said amount, to pay the said amount of Rs.1,82,322/- to the petitioner.

11. The entire exercise should be completed within a period of 45 (forty five) days from the date a certified copy of this order is served upon the respondent No. 2, i.e., the Director of Health Services, Assam, Hengerabari.

12. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant