

GAHC020005702019



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

Case No. : PIL/7/2019

NEITEO KOZA
R/O OLD MINISTERS HILL, KOHIMA, N/L

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND,
NAGALAND CIVIL SECRETARIAT, KOHIMA, N/L

2:THE PRINCIPAL AND SECRETARY

GOVT. OF NAGALAND
DEPT. OF HEALTH AND FAMILY WELFARE
NEW SECRETARIAT
KOHIMA
N/L

3:THE PRINCIPAL DIRECTOR

DIRECTORATE OF HEALTH AND FAMILY WELFARE
KOHIMA
N/L

4:THE MISSION DIRECTOR

NATIONAL HEALTH MISSION(NHM)
DIRECTORATE OF HEALTH AND FAMILY WELFARE
KOHIMA
N/L

5:THE UNION OF INDIA

REPRESENTED BY THE SECRETARY
GOVT. OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
348 'A' WING NIRMAN BHAWAN
NEW DELH

For the Petitioner(s) : Ms. Neiteo Koza, Petitioner
For the Respondent(s) : Mr. Yanger Wati, CGC
: Mr. N. Mozhui, Standing Counsel

Date of Hearing : **05.06.2024**
Date of Judgment : **05.06.2024**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT AND ORDER (ORAL)

The instant Public Interest Litigation has been filed by the Petitioner seeking directions for removing the ceiling of benefits capped under the Janani Shishu Suraksha Karyakram (for short "JSSK Scheme") in the State of Nagaland and to ensure that the pregnant women and sick newborn are given various benefits in terms with JSSK Scheme as well as other consequential directions.

2. It is seen from the records that in respect to the said JSSK Scheme, earlier another Public Interest Litigation was filed which was registered and numbered as PIL No.19/2017. This Court after taking into account the JSSK Scheme and hearing the parties disposed of the same with the directions which have been mentioned in paragraph

Nos. 11 and 12 vide the judgment and order dated 27.05.2019. Paragraph Nos. 11 and 12 of the said judgment and order being relevant are reproduced herein under:

“11. The above serial Nos. 3 & 4 shows that, in the event the pregnant women and the sick new born baby are not provided their entitlements under the JSSK Scheme, the affected person can approach the Deputy Chief Medical Officer of the concerned District with their grievance. The Deputy Chief Medical Officer shall then take action on the grievance within 2 (two) days from receipt of the same. In line with the above, the claim of the affected person will be examined by the Deputy Chief Medical Officer within 2 (two) days and if the Deputy Chief Medical Officer finds that the affected person is entitled to the benefits of the JSSK Scheme, the same should be given to the affected person within a week, after taking a decision on the grievance of the affected person. If the affected person is aggrieved by the decision of the Deputy Chief Medical Officer of the concerned district, the affected person can subsequently approach the Joint Director (RCH-MH), who is the State Nodal Officer. The respondent No. 6 should also ensure that the approved annual budget for the JSSK Scheme should be released to the State Government in time.

12. The State respondents are also directed to give wide spread publicity to the JSSK Scheme in length and breadth of the State and to implement the same in all letter and in spirit.”

3. Pursuant to the said judgment and order dated 27.05.2019, a notification was issued on 24.06.2019 by the State Health Society, National Health Mission, Government of Nagaland whereby entitlements provided in the Scheme were quantified in money against each of the benefits which were provided by the JSSK Scheme. The

Petitioner thereupon had approached this Court stating that this capping of the benefits by quantifying it with money is not only meager to the actual expenses which a pregnant women or a new born child would have to spent and as such, the benefits of the JSSK Scheme have been taken away by the said notification dated 24.06.2019. It is under such circumstances, the instant Public Interest Litigation has been filed.

4. Before further proceeding, we find it very pertinent to take note of what are the actual benefits which the JSSK Scheme provides as the same would have relevance in deciding the instant Public Interest Litigation. The entitlements as per the JSSK Scheme are two fold. Firstly, the entitlements for pregnant women and secondly, the JSSK Scheme provides entitlements to sick newborn till 30 days after birth and the details of which are stated herein under.

“Entitlements for Pregnant Women:

- *Free and zero expense Delivery and Caesarean Section*
- *Free Drugs and Consumables*
- *Free Essential Diagnostics (Blood, Urine tests and Ultra-sonography etc.)*
- *Free diet during stay in the health institutions (up to 3 days for normal delivery & 7 days for caesarean section)*
- *Free Provision of Blood*
- *Free Transport from Home to Health Institutions*

- *Free Transport between facilities in case of referral*
- *Drop Back from Institutions to home after 48 hrs stay*
- *Exemption from all kinds of User Charges*

Entitlements for Sick Newborn till 30 days after birth:

- *Free and zero expense treatment*
- *Free Drugs and Consumables*
- *Free Diagnostics*
- *Free Provision of Blood*
- *Free Transport from Home to Health Institutions*
- *Free Transport between facilities in case of referral*
- *Drop Back from Institutions to home*
- *Exemption from all kinds of User Charges”*

5. Pursuant to the filing of the instant Public Interest Litigation, it is seen that various pleadings have been exchanged. It is very pertinent to take note of that an order passed by this Court on 06.12.2023 whereby this Court had directed the Union of India to file an affidavit showing the unit cost per beneficiary which have been approved by the Central Government for the JSSK Scheme and the basis/manner in which the same are calculated. In addition to that, this Court had also directed the Respondent Nos. 1 to 4 to file an affidavit giving details of the expenditures incurred in giving the entitlements to pregnant women and children under the JSSK Scheme for the month of October

and November, 2023 in respect to the District Hospital, Mon. The said affidavit which was to be filed by the Respondent Nos. 1 to 4 was also to contain the expenditure incurred in relation to the entitlements given by way of cash and by way of kind separately.

6. In pursuance to the said order, the Union of India filed an affidavit on 19.02.2024. Paragraph Nos. 4 and 5 of the said affidavit being relevant are reproduced herein under:

“4. It is respectfully submitted that under National Health Mission (NHM), financial support is provided to all States/UTs for implementation of various programs including JSSK in public health institutions. The funds are being approved under JSSK program is based on a unit cost per beneficiary which is proposed in the proposals submitted by the States/UTs. For e.g. in Nagaland state, following unit cost per beneficiary was approved in ROP 2022-24 based on their proposals as submitted through PIPs-

- ***Drugs & Consumables*** – Rs.500/- per beneficiary for normal delivery cases and Rs.1800/- per beneficiary for C-section delivery cases;
- ***Diet*** – Rs.150/- per beneficiary for 3 days in normal delivery cases and for 7 days in C-section delivery cases;
- ***Diagnostics*** – Rs.200/- per beneficiary for tests and Diagnostics;
- ***Transportation*** – Rs.1400/- (To & fro) per beneficiary for transportation to health facility and back home.

5. It is further respectfully submitted that the above-mentioned budget is flexi fund. This is only for indicative purposes and not a norm. Requirement of funds may vary on the basis of severity/complications of the case. The objective is to utilize the allocation fund in such a way that no

out of pocket expenditure is incurred by pregnant women at public healthcare institutions."

7. A perusal of the above quoted paragraphs of the affidavit filed by the Union of India shows that the National Health Mission provides financial support to all States/Union Territories for implementation of various programs including JSSK in public health institutions. It also transpires that the Central Government provides the funds based on unit cost per beneficiary which is proposed in the proposals submitted by the States/Union Territories. The State of Nagaland had provided the unit cost per beneficiary in the ROP 2022-24 and basing on their proposal, the unit cost per beneficiary have been approved. It is very apposite to take note of that the Union of India duly states in their affidavit that the budget which is being provided in respect to the JSSK Scheme is like a flexi fund which is only for indicative purpose and not a norm. It was categorically admitted that the requirement of funds may vary on the basis of severity/complications of the case. As per the Union of India, the objective of the Scheme is to utilize the allocation of funds in such a way that no out of pocket expenditure is incurred by pregnant women at public healthcare institutions. This aspect of the matter is very relevant inasmuch as it shows that the quantification of the benefits in Rupees is only an internal arrangement between the Government of India and the respective States and has nothing to do with the entitlement to be received by the beneficiaries in terms with the JSSK Scheme. The said affidavit also shows that the State of Nagaland had submitted the unit cost which is based upon the assessment made by the State of Nagaland as to how much they are

required to be recompensed against the services so provided in terms with the JSSK Scheme to the beneficiary.

8. This Court further finds it relevant to take note of the additional affidavit so filed by the Respondent Nos. 1, 2, 3 and 4 pursuant to the directions so passed by this Court on 06.12.2023. From the said affidavit more particularly the sub-paragraph to paragraph No.3 would show that the State Health Mission in pursuance to the JSSK Scheme categorically provides all other benefits as per the entitlement mentioned in the Scheme free of costs save and except benefits pertaining to diet services as well as ambulance services which are given direct benefit transfer. This has been done by the State Health Mission on the ground that the patients are reluctant to avail food from the hospital and the ambulance services cannot be adequately provided in all exigencies for which the direct benefit transfer is given to the patients so that they can come on their own.

9. We have duly heard the Petitioner-in-person and Mr. N. Mozhui, the learned Standing counsel appearing on behalf of the Respondent Nos. 1 to 4 as well as Mr. Yanger Wati, the learned CGC and had duly taken note of their respective submissions.

10. A conjoint reading of the JSSK Scheme along with the affidavit filed by the Union of India on 19.02.2024 (the relevant portion of which have already been quoted) as well as the additional affidavit filed by the Respondent Nos. 1 to 4 shows that the National Health Mission provides the funds against unit cost per beneficiary. The unit cost per beneficiary is proposed by the States/Union Territories and on

the basis of the individual assessments, the Government of India approves the same. The State of Nagaland had provided the unit cost in the year 2019 and subsequently, again had submitted for ROP 2022-24 which have been approved by the Government of India. In our opinion, the submission of the unit cost by the State of Nagaland to the National Health Mission has no connection to the benefits which the beneficiaries would be entitled to in terms with the JSSK Scheme. The unit cost so submitted are based on the assessments made by the State of Nagaland to seek reimbursement of the expenses against each beneficiary by the State of Nagaland from the National Health Mission. This aspect of the matter is further clear from the paragraph No.5 of the affidavit filed by the Union of India which categorically states that in view of the JSSK Scheme, no out of pocket expenditure is to be incurred by the pregnant women in public health institutions. The State by filing the additional affidavit also categorically mentions that all the benefits under the Scheme is provided free of cost in the public healthcare institutions save and except food as well as ambulance services for which direct benefit transfer have been provided. The said stand of the State of Nagaland to provide direct benefit transfer to the beneficiaries in respect to food and ambulance service do not seem to be unreasonable or contrary to the JSSK Scheme inasmuch as it would benefit the beneficiaries. Be that as it may, we observe that if the beneficiaries opt for food and ambulance service, the State of Nagaland have to provide the same in lieu of the direct benefit transfer.

11. In the backdrop of the above, we observe the following:

(A) The beneficiaries of the JSSK Scheme shall be entitled to the benefits/entitlements provided in the JSSK Scheme which had been stated in the Paragraph No.4 hereinabove.

(B) The quantification of the benefits in terms with money are proposed by the States/Union Territories to the National Health Mission on the basis of their individual assessments made by the States/Union Territories. The National Health Mission accepts such assessment and approves the same. This quantification in terms with money against each benefit/entitlement is the basis on which the States/Union Territories seeks reimbursement for implementation of the JSSK Scheme.

(C) The quantification in terms with money against the benefits/entitlements on the basis of the approval given by National Health Mission is an internal arrangement between the National Health Mission and the States/Union Territories which have no relevance to the entitlement to which the beneficiaries are entitled to as per the JSSK Scheme.

(D) The beneficiaries would continue to be entitled to the benefits of the JSSK Scheme as per the stipulations contained in the JSSK Scheme. The State of Nagaland as well as the Union of India would continue to provide the benefits/entitlement as per the JSSK Scheme till the said Scheme continue to remain in operation.

(E) The State of Nagaland/State Health Mission categorically states that they provide all the entitlements as per the JSSK Scheme to the

beneficiaries in kind save and except the food value and ambulance costs which are paid to the beneficiaries by direct transfer benefit. It had also been stated that the beneficiaries normally do not like to take the food provided in the hospital and as such the direct transfer benefit is provided. It is also mentioned that it is more helpful for the beneficiaries for availing the direct transfer benefit in lieu of the ambulance service and as such direct transfer benefit is provided. We feel pertinent to observe that the said direct transfer benefit provided in lieu of providing food and ambulance service cannot be said to be unreasonable or in conflict with the JSSK Scheme. We at the same breadth, also find it relevant to observe that if the beneficiaries want to avail the food provided in the hospital or the ambulance services, they also should be given the option to opt.

12. Under such circumstances, this Court therefore disposes of the instant Public Interest Litigation in terms with what had been observed hereinabove and if he/she or they are aggrieved, recourse to the remedies available to them can be availed as have been already held by the Co-ordinate Bench of this Court in its judgment and order dated 27.05.2019 in PIL No.19/2017 at paragraph Nos. 11 and 12 which have already been quoted hereinabove.

13. With above, the instant Public Interest Litigation stands closed.

14. We express our gratitude to Ms. Neiteo Koza, the petitioner-in-person for bringing to the attention of this Court the instant matter. We also commend our appreciation to the assistance provided by Mr. N. Mozhui, the learned Standing counsel and Mr. Yanger Wati, the learned

CGC in the instant Public Interest Litigation.

J U D G E

J U D G E

Comparing Assistant