

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C)74 OF 2012

1. Sri Ashok Debnath,
son of Sri Nani Gopal Debnath,
resident of village : South Indranagar,
near Kalibari, P.O. Kunjaban, P.S. East Agartala,
Sub-Division : Agartala, District : West Tripura.

.....Petitioner

- Vs -

1. The State of Tripura,
represented by the Secretary-Cum-Commissioner,
Government of Tripura,
Animal Resources Development Department,
having its office at Pandit Nehru Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division : Agartala, District : West Tripura.
2. The Secretary-cum-Commissioner,
Government of Tripura, Finance Department,
having his office at Pandit Nehru Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division : Agartala, District : West Tripura.
3. The Secretary-cum-Commissioner,
Government of Tripura,
Health & Family Welfare Department,
having his office at Pandit Nehru Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division : Agartala, District : West Tripura.
4. The Director, Animal Resources Development Department,
Government of Tripura,
having his office at Pandit Nehru Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division : Agartala, District : West Tripura.
5. The Director, Health & Family Welfare Department,
Government of Tripura,
having its office at Pandit Nehru Complex,

Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division : Agartala, District : West Tripura.

6. The Executive Engineer, Engineering Cell,
Animal Resource Development Department,
Government of Tripura,
having its office at Pandit Nehru Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division Agartala, District : West Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. Somik Deb, Advocate

For the respondents : Mr. S. Chakraborty, Add. G.A.

Date of hearing,
judgment & order : 13.08.2015

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (Oral)

Heard Mr. S. Deb, learned counsel appearing for the petitioner, as well as Mr. S. Chakraborty, learned Addl. GA appearing for the respondents.

[2] The facts are mostly undisputed. The petitioner is a Junior Engineer (Civil) working in the Engineering Cell of the

Animal Resource Department, Government of Tripura. He was suffering from acute medical problems. For the purpose of availing treatment on regular basis, the petitioner has been attending the chamber of Dr. Sajal Debbarma, Physician and Diabetologist, In-charge, Diabetes Unit, Agartala, Government Medical College & G.B.P. Hospital. The said doctor attended the petitioner and advised for intake of some medicines in strict conformity to the medical advice. The petitioner purchased the medicines and claimed medical reimbursement thereof. It is clear from the medical reimbursement bill (Annexure P/1 colly to the writ petition) that the said bill was restricted to the cost of medicines only.

[3] After due scrutiny of the bills, the competent authority made the payment of the petitioner. After a substantial time, the Executive Engineer, Engineering Cell, Animal Resource Development Department, the respondent No.6, by the communication dated 10.08.2011 (Annexure P/2 colly to the writ petition) made reference to the petitioner to communicate as under :

“With reference to the subject cited above I am to inform you that as per your submission of M.R. Bills in different occasions w.e.f.

01.02.2010 to 12.12.2010 made reimbursement amount of Rs.61,313/-.

As per their observations, the Audit team has submitted a POS and informed that you have drawn an amount of Rs. 61,313/- instead of admissible amount of Rs.19,762/- against M.R. Bills in several times of period from 01.02.2010 to 12.12.2010. On behalf of their comments/views they have submitted a Memo No. F.1(109)-MS/82/13454(V-iii) dated 22.02.1983 of Health & Family Welfare Dept., Govt. Of Tripura to follow up the Rules for Medical Reimbursement (Copy enclosed with POS No.3).

Appropos to the above, I would request you to refund the inadmissible amount of Rs.41,551/- to the Govt. account at a time within earliest that to let Audit reply and settle the issue.”

[4] With the said communication dated 10.08.2011 (Annexure P/2 colly to the writ petition), the statements as to the medical reimbursement bills of different dates have been elaborately shown from the Note No.3 of the Asstt. Audit Officer, Directorate of Audit, Government of Tripura. The petitioner, while rebutting the basis as asserted in the said communication dated 10.08.2011, by his reply dated 19.08.2011, has categorically asserted that neither the attending doctor referred to the specified institution nor had the office brought the said memorandum dated 22.02.1983 issued by the Health & Family Welfare Department, Govt. of Tripura to his knowledge and as

such he was completely unaware of such direction from a Department of the Government. Even when the bills were passed, as he indicated, the concerned department was also not aware of such direction.

[5] Having not being satisfied with such reply from the petitioner, the respondent No.6 by another letter dated 19.12.2011 asked the petitioner to refund the amount to the extent of Rs.41,551/-, for the reasons as stated.

[6] Mr. Deb, learned counsel appearing for the petitioner has submitted that even though the petitioner has not challenged the memorandum dated 19.12.2011, but the said memorandum was not within the notice of the competent authority who passed the said M.R. Bills. It is not the case of the respondents that the petitioner mis-represented any fact or anywhere tried to lay any claim which was not otherwise legal. Hence, their objection was wholly based on the compliance of the process as indicated in the memorandum dated 19.12.2011 (Annexure-P/5 to the writ petition).

[7] Mr. Deb, learned counsel while placing his alternative submission as to the recovery, has submitted that the petitioner

cannot be held in any way responsible for representing any fact wrongly for achieving reimbursement. The competent authority after due scrutiny had passed the bill and therefore, the recovery would not only be unjust, but it would push the petitioner to the serious financial difficulty as the petitioner is now critically ill and he is under treatment. To support his contention, Mr. Deb learned counsel has relied on the decision of the apex court in ***Syed Abdul Qadir and Others versus State of Bihar and Others***, reported in **(2009) 3 SCC 475**, where the apex court while examining an issue as to the payment made to a Government employee who was paid the excess payment by applying FR 22-C as it was not known to the competent authority, long after FR 22-C was repealed and in its place a new provision FR 22(I)(a)(1) and FR22(I)(a)(2) was substituted. The apex court, while dealing with the issue of recovery, observed as under :

55. That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favour of making the amended provisions of FR. 22-C applicable to the appellants- teachers after having come to know that the said rule did not exist and had been substituted, the Department of Human Resource Development, Government of Bihar, wanted to apply the unamended provision to the appellants-teachers so as to make available the benefit of additional increment provided for under FR.22-C to its teachers, unaware of the fact that even under FR.22-C they were not entitled to the additional increment as they

were not discharging duties and responsibilities of greater importance on the promoted post.

56. This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:-

"...the fixation of pay under Fundamental Rule 22-C has wrongly been made as it was not in existence. Pay fixation on the basis of a non-existent rule is a bona fide mistake."

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana: 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of

India: (1994) 2 SCC 521; Union of India vs. M. Bhaskar: (1996) 4 SCC 416; V. Ganga Ram vs. Director : (1997) 6 SCC 139; Col. B.J. Akkara (Retd.) vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar: (2006) 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr.: (2006) 8 SCC 647; and Bihar SEB & Anr. Vs. Bijay Bahadur & Anr.: (2000) 10 SCC 99.

59. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

[Emphasis supplied]

[8] For reference, it would be proper to reproduce the memorandum dated 19.12.2011 in its full :

“Subsequent to the objection raised by the Sr. Audit Officer Directorate of Audit Government of Tripura the undersigned felt it indispensable to apprise all the concerned about the observance of the customary rules pertaining to the admissibility of expenses adherence to the defrayal M.R. Bills aligned with the claimant. The essence of the communication made by

Health & Family Welfare Dept. Govt. Of Tripura under their Memo No. F.1(109)-MS/82 dt. 22Nd February, 1983 (copy enclosed herewith for ready reference) as referred by the Sr. Audit Officer, Directorate of Audit is appended below.

(i) C.S.(MA)Rules.

Under C.S.(MA) Rules medical attendant/treatment at patient's residence or doctor's chamber(which in Tripura means doctor's residence) is permissible upto 10 days. If treatment is necessary beyond 10 days , the patient should be referred to Govt./recognized Hospital either for hospitalization or treatment at OPD. In the Hospital indoor or O.P.D. there is no limit to the duration/period of treatment .Treatment can be had for any length of time considered necessary by the A.M.A. in residence/chamber treatment under C.S. (MA) Rules medicines should be prescribed in such a way that the entire quantity can be consumed by the patient within the prescribed limit of 10 days. Reimbursement is not admissible for quantity which can not be consumed within 10 days. Thus, if excess medicine is prescribed without referring the patient to hospital O.P.D. he will suffer financial loss.

Thus, all the concerned under the A.R. Dev Dept. Of Govt. of Tripura are hereby requested to ensure before submission of Medical Re-imbursement bill that the bill is admissible as per guideline contained in the aforesaid Memorandum of the Health & Family Welfare Dept. Govt. of Tripura."

There is no dispute as to the provisions of the Central Civil Services (Medical Attendance) Rules and the applicability of the said Rules for the purpose of reimbursement medical bills of the petitioner.

[9] Mr. Chakraborty, learned Addl. Govt. Advocate has raised two pertinent points, viz. (1) when the petitioner is not entitled to reimburse the medical bill under the relevant rules,

he is bound to refund that amount and (2) when the rules prescribed certain things are to be done in a certain way no other procedure can be adopted. If in a wrong procedure some amount is wrongly paid to the Government officer, the said amount always remains to be realised by the Government. Hardship cannot be an excuse. Mr. Chakraborty, learned Addl. Govt. Advocate has further submitted that when the audit team pointed out that irregularity, the respondent No.6 has taken due action. As such there is no basis for granting the relief as sought in the writ petition. Mr. Chakraborty, learned Addl. Govt. Advocate has further stated that the decision in ***Syed Abdul Qadir and Others versus State of Bihar and Others (2009)3 SCC 475*** is distinguishable and this decision cannot be applied in this case. In that decision, it was the wrong of the Government officers who were in charge of fixing the pay of the officers and the said officers had no role in such fixation. Having regard to that circumstances, the apex court has passed that direction. But in this case, the petitioner has raised medical reimbursement bills and as such it cannot be held that the officer had no role in preparation and presentation of the bill. However, Mr. Chakraborty, has fairly admitted that the Department had passed the bill on the purported scrutiny.

[10] Having regard the contrasting submissions made by the learned counsel, this court finds that the dispute falls within a very short compass, that whether the Central Service (Medical Attendance) Rules has prescribed any consequential provision in the rule itself as is expected of a comprehensive rule? CS(MA) Rules have however provided that treatment can be had for any length of time considered necessary by the medical officer in residence. If treated in the chamber, under C.S.(MA) Rules, medicine should be prescribed in such a way that the entire quantity can be consumed by the patient within the prescribed limit of 10 days. Reimbursement is not admissible for quantity which cannot be consumed within 10 days. Thus, if excess medicine is prescribed without referring the patient to the hospital O.P.D, he/ she will suffer financial loss.

[11] On plain reading of the said provision it would lead us to understand that primarily it is the duty of the doctor who attends the officer to advise him for attending the hospital within the prescribed time. In this case, the petitioner was not referred to the government hospital for prescribing the medicine within the prescribed time(ten days) as the petitioner has claimed that such prescription was not within his knowledge and even the

doctor did not advise him in that manner even though the doctor is a medical officer of the designated government hospital. Bonafide he had raised the medical reimbursement bills and after due scrutiny by the competent authority those bills were passed. As indicated earlier, the bills are confined to the actual cost of medicines. It is needless to say that the original Cash Memos were enclosed with the medical reimbursement bills. As such, it cannot be doubted that the petitioner had consumed those medicines on the medical advice.

[12] Now the question is whether the petitioner is entitled to the reimbursement or not. On the face of the rule, it cannot be denied that the petitioner is not entitled to the reimbursement beyond the medicines he consumed within 10 days on the medical advice rendered in the chamber by a competent medical practitioner. But it also at the same time cannot be denied that at no point of time the petitioner was aware that there existed such rule.

[13] It is well known in the legal parlance that ignorance can not be pleaded as the defence. Despite that, unawareness is a social reality. That cannot be ignored by the court of equity. The court must have good conscience while appreciating the

circumstance eloquent of such unawareness. Even the competent authority which was entrusted with the responsibility of scrutinizing and passing the bills in question, as it appears, did not know existence of such provisions and passed the bills.

[14] Having regard to all these aspects, attending to the controversy, this court is of the view that it is not the case where the respondents shall be permitted to recover the amount, as determined to be recovered from the petitioner.

[15] Accordingly, this writ petition stands allowed. As consequence to this observation, the impugned orders dated 10.08.2011 and 19.12.2011(Annexure P-2 colly and Annexure 4) are quashed. But, before parting with the records, it is mentioned that this order would create precedent for any future case. This order is restricted to the special circumstances related to this case.

There shall be no order as to costs.

JUDGE

Sabyasachi B