

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7937 of 2014

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Siyaram Pandey, Son of Rajkishore Pandey, Resident of Village + P.O.-
Bherokhara, P.S.- Tajpur, District- Samastipur, Presently sitting and Practicing as a
lawyer in Patna High Court at Chamber No. 94, Bihar State Bar Council Bhawan,
Patna High Court, Patna.

.... Petitioner/s

Versus

1. The Bihar State Advocates Welfare Trustee Committee through its Chairman,
Office at Bihar State Bar Council Bhawan, Patna.
2. The Chairman, Bihar State Advocates Welfare Trustee Committee, Office at
Bihar State Bar Council Bhawan, Patna.
3. The Secretary-cum-Treasurer, Bihar State Advocates Welfare Trustee
Committee, Office at Bihar State Bar Council Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shailendra Kumar & Mr. Ram Ganesh, Advocates
For the Committee	:	Mr. Prem Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-12-2016

Heard learned counsel for the parties.

The petitioner has moved the Court for quashing of
the decision taken by the respondent no. 1, as communicated to him
under Reference No. 1374/2012 dated 01.06.2012, by which the
application for medical aid to him has not been considered.

The petitioner, being a practicing advocate was
suffering from spinal cord tumor in the year 2011 and initially due to
lack of diagnosis, he kept moving from one place to another,
including Kolkata. Finally, the tumor was detected, but the risk of
the operation was also high. However, the petitioner decided to



undergo the surgery which was performed on 22.08.2011. The petitioner having faced acute financial crunch, both as he could not practice during the said period and also because he do not have much in assets, applied for aid from the respondent no. 1, for aid from the Bihar Advocates Welfare Fund. The same having been refused to be considered by the respondent no. 1, has led to filing of the present writ application.

Learned counsel for the petitioner submitted that the tumor being in the spinal cord, had seriously affected the activities of the petitioner and even when the said was detected, the opinion of the doctor was that it carried great risk and could lead to paralysis waist downward. Learned counsel submitted that the tumor was also damaging his neuro and nephro system and if left unattended, would have led to him being paralyzed waist downward and also his vital organs being damaged. For such contention, learned counsel has referred to and relied upon the prescriptions of the specialists/consultants in which the advice was for early surgery. In another report, the doctor has opined that though early surgical intervention was required, but the risk of surgery needed to be explained to the patient i.e., the petitioner. The report further discloses that the tumor led to pain in both lower limbs and also sphincteric problems of small voids and lack of control. Learned counsel has also referred to the



patient follow up report in which it is written that the surgery of such tumor is as risky as brain tumor surgery. Learned counsel, thus, submitted that the non consideration of his case needed to be reviewed by the respondent no. 1.

Learned counsel appearing for the respondents submitted that strictly speaking, in terms of the Bihar Advocates Welfare Fund Act, 1983 (hereinafter referred to as the 'Act') and the Bihar Advocates Welfare Fund Rules, 1984 (hereinafter referred to as the 'Rules') there is provision of reimbursement of a maximum of Rs. 1,00,000/- once in the life time of the member, but only for critical illnesses relating to :

- “ I. Cancer Including Surgery*
- II. Invalidating Paralysis/stroke leading to permanent disability.*
- III. Brain Haemorrhage leading to serious damaged*
- IV. Brain Surgery for cancerous tumor/removal of blood clot for recovery from coma*
- V. Coronary by-pass surgery including angioplasty /valve change*
- VI. Kidney transplant/kidney failure/dialysis*
- VII. Liver transplant/Cirrhosis of liver*
- VIII. Serious accident cases which may lead to death or permanent disability of major limb causing impairment either of movement, loss or vision or loss of writing skill, loss of speech etc. affecting efficient discharge of professional duty. ”*

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the considered opinion of the Court, the illness of the petitioner i.e., of



there being a tumor in his spinal cord is obviously a critical illness and can very well come under Clause-II which relates to invalidating paralysis/stroke leading to permanent disability. In the present case admittedly, the tumor was leading to lack of control in the lower limbs which ultimately would have lead to paralysis and, further, in the opinion of the specialist, the surgery was as risky as the brain surgery. Thus, the critical illness read in such terms can also include the illness suffered by the petitioner, for which he had undergone surgery. The Court would also like to indicate that the basic aim, object and spirit of the Bihar Advocate Welfare Fund is to support and give financial aid to an advocate who otherwise does not have any source or capital to fall back upon. In the present case, there is no doubt that the ailment was serious and there is also no doubt that treatment for the same would have cost the petitioner much more than Rs. 1,00,000/-, which has been asked for. However, in such matter, the Court cannot straightway issue mandamus and the Advocate Welfare Trustee Committee has to be sensitive to the issue.

At this stage, learned counsel appearing for the respondents submitted that as per the amendment brought about by the Bihar Advocate Welfare Fund (Amendment) Act, 2015, a new Section 17A has been added to the Act which gives the power of review to the Trustee Committee. However, there is a period of 30



days for preferring a review application, which has already elapsed.

Considering the aforesaid position, in the interest of justice, the writ petition stands disposed off with liberty to the petitioner to file an application under Section 17A of the Act and Rules for review of the decision intimated to him dated 01.06.2012, within two weeks from today, along with a copy of this order. If the same is filed, the Trustee Committee shall look into the matter with an open mind and also give due regard to the object and spirit of the Welfare Fund and also the observations made by the Court in this order. The Court would request the Trustee Committee to take an early decision so that if any amount is to be paid to the petitioner, the same is paid at a early date, saving him from further financial crunch.

(Ahsanuddin Amanullah, J.)

P. Kumar

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