

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1755 of 2014

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Harish Chandra Pun Son of Late Ram Bahadur Pun Resident of Dehradun House
No. 76, Ward No. 3, P.S. + Mohalla - Missarwala, Doiwala, P.S. - Uttrakhand, at
Present Posted At Bmp - 1, Veterinary Cattle Campus, Patna - 14

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Finance Department, Government of Bihar, Patna
3. The D.G.P., Bihar, Patna
4. The Additional D.G.P., Military Police, Bihar, Patna
5. The Commandant, Bmp - 1, Patna - 14
6. The Under Secretary, Home (Police) Department, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAMAKANT SHARMA
Mr. RAJESH KUMAR
Mr. RAKESH KUMAR SHARMA
For the Respondent/s : Mr. ARUN KUMAR SINHA A.C. to G.P. 24

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 09-08-2016

Heard both sides.

2. Under the Bihar Medical Attendance Rules (for short “The Rules”) an employee of the State Government and his dependants are entitled to reimbursement of the Medical Bills. In the case at hand, the wife of Hawaldar of BMP was rushed to the Medanta, the Medicity Hospital, Gurgaon for treatment of her cardiac ailment which required emergent treatment. Before rushing to the hospital, the petitioner requested the Commandant, BMP for grant of the permission which was allowed on 02.02.2013. The cardiac surgery



on the wife of the petitioner was carried out in 2013 in which the petitioner incurred costs. As the costs incurred in the surgery or treatment of his wife has not been reimbursed by the respondents-State, the present writ petition has been filed seeking a direction upon the respondents-State to reimburse the medical expenses which the petitioner incurred in the treatment of heart ailment of his wife at the government approved super specialty hospital i.e. Medanta, the medicity Hosptial, Gurgaon. The total cost incurred by the petitioner in the surgery is Rs. 2,41,192.05/- .

3. In the counter affidavit two preliminary objections have been raised. It is stated that before going to the hospital prior permission of the Civil Surgeon or the Competent Authority was not obtained. It is, further, stated that Medanta hospital where the wife of the petitioner was treated for her heart ailment is not in the approved list of the Government prepared under the Rules. On the basis of these statements, the prayer made in the writ petition has been resisted by the respondents-State.

4. Mr. Sharma has relied on Rule 26 of the Rules as amended from time to time in order to submit that discretion in the matter where emergency treatment is required is conferred on the Authority. The requirement of prior permission of the Civil Surgeon or any other Authority can be dispensed with. A case where

emergency situation is required it is not expect of an employee to first rush to the civil surgeon or the competent authority of the State Government and seek a recommendation or approval. In order to highlight the said contention, he has relied on **2008 (1) PLJR 337 (Md.Ahad Raza Vs. State of Bihar and Ors.)** as well as **2008 (1) PLJR 394. (Biresch Chandra Chatterjee Vs. State of Bihar & Ors.)**

5. In Biresch Chandra Chatarjee (Supra), this Court taking clue from the observations made by the Apex Court in the case of **Hriday Narayan Vs. Income Tax Officer, Barielly AIR (1971)SC 33** held that in a case where an employee or the dependants of the employee has undergone emergent treatment outside State on recommendation of the doctors, the cost incurred as per the charges/fees approved under the Central Government Health Scheme (for short “CGHS”) can be reimbursed invoking the discretion conferred on the authority under Rule 26 of the Rules. The respondents-State had rejected the claim of the petitioner for reimbursement of the medical bills. This Court in paragraph 4 of the judgment set aside the order contained in memo no. 3961 dated 5.09.2013 and directed the respondents to make payment of the medical bills of the petitioner in so far as they related to the treatment in question. Another clarification made by the State Government in the Rules have been brought to the notice of the Court by the counsel for the petitioner. Vide notification dated



24th March, 2006, the State Government permitted the employees of the State Government to get treatment in all hospitals approved by CGHS. Similar view has been taken by this Court in *Md. Ahad Raza (Supra)* when interpreting Rule 26 of the Rules, it has been held that requirement of seeking prior permission which is not possible in emergent situation ought to be relaxed by invoking Rule 26.

6. In the case at hand, the petitioner had sought permission from the Commandant of the BMP under whom he was posted. The ailment was serious and he was required to rush to the hospital immediately where the surgery of the wife of the petitioner was performed. It is not the case of the respondents-State that surgery was not at all performed or that it was not a case where emergency treatment was not required. The petitioner has shown to the Court that the hospital in question is in the approved list of CGHS.

7. Having heard the parties and on perusal of the materials on record as also considering the orders passed by this Court, I find merit in this application.

8. The writ application is allowed.

9. The respondent(s) are directed to reimburse the medical bills of the wife of the petitioner, if not already done so far as quickly as possible preferably within six weeks from the date of filing an

application along with a copy of the order. Considering the delay in payment of the dues, in my view, the petitioner is also entitled to a payment of interest @ 6% from the date the claim was made until payment thereof.

(Kishore Kumar Mandal, J)

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