

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+ Writ Petition No.25612 of 2017

% 03-10-2017

Smt. Satram Gireesha, W/o.P.Raja Sekhar,
Aged 39 years, Occ: Stenographer Grade-II,
Senior Civil Judge's Court, Gudur,
R/o. D.No.2/36-1, N.R. Pet, Gudur, Nellore Dist.
... Petitioner

Vs.

- \$ 1. The Govt. of AP, Home (Courts.B) Dept.,
Rep. by its Secretary to Govt., A.P. Secretariat,
Velagapudi, Amaravathi, Guntur Dist.
2. The Secretary, Finance (EBS.V) Dept.,
Secretariat, Velagapudi, Amaravathi, Guntur Dist.
3. The Registrar (Admn.), High Court of Judicature
at Hyderabad for the States of Telangana & AP
4. The State of AP, Rep. by its Prl. Secretary,
Medical & Health Dept., Velagapudi,
Amaravathi, Guntur Dist.
... Respondents

! Counsel for the Petitioner: Mr. Chetluru Sreenivas

Counsel for Respondent No.1: GP for Home (AP)
Counsel for Respondent No.2: GP for Fin. & Plg. (AP)
Counsel for Respondent No.3: GP for Medical H & FW (AP)
Counsel for Respondent No.4: Smt. V.Uma Devi, SC for HC

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> Head Note:

? Cases referred:
1. (2008) 5 SCC 328

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Order: (per V.Ramasubramanian, J.)

Aggrieved by the rejection of her claim for medical reimbursement, a person working as a Stenographer (Grade-II) in the Senior Civil Judge's Court, Gudur, Nellore District, has come up with the above writ petition.

2. Heard Mr. Chetluru Sreenivas, learned counsel for the petitioner and the learned Government Pleader for Finance and Planning Department (Andhra Pradesh).

3. Fortunately, the respondents have not disputed the fact that the petitioner had her 8-year old daughter treated for what is known as Macroductyly, over the right little finger of her daughter, at the Apollo First Med Hospitals, Chennai, incurring a total expenditure of Rs.58,428=68 ps. But the claim for reimbursement made by the petitioner was rejected on the ground that the treatment was undertaken in a private hospital outside the State of Andhra Pradesh. Therefore, the petitioner is before this Court.

4. In the counter affidavit filed by the respondents, the respondents have stated that the claim for reimbursement of medical expenditure incurred by a Government servant, has to be processed in accordance with a set of rules known as The Andhra Pradesh Integrated Medical Attendant Rules, 1972 and that the Rules provide for reimbursement only in

cases where the treatment is undertaken in a recognised hospital within the State of Andhra Pradesh. More particularly, the respondents rely upon a provision incorporated in the Rules, under G.O.Ms.No.105, HM & FW (K1) Department, dated 15-3-2005. It reads as follows:

“In respect of treatment obtained in unrecognised private hospitals for treatment/surgeries under emergency conditions, stipulated in G.O.Ms.No.175, HM & FW (K1) Dept., dated 29-5-1997, the concerned Administrative Department in Secretariat shall examine the proposal in consultation with Finance Department for relaxation of rules and take a decision for sanction of medical reimbursement based on scrutiny report as per the business rules. In such cases, the Administrative Department concerned shall not refer files to Health Medical & Family Welfare Department for remarks/opinion.”

5. According to the respondents, the case of the petitioner was examined as per the Rules and the aforesaid Government Order and that there was no occasion for the respondents to relax the Rules and grant reimbursement.

6. The learned Government Pleader relies upon a judgment of the Supreme Court in **State of Karnataka v. R.Vivekananda Swamy**¹, to drive home the point that a claim for medical reimbursement, can be processed only in terms of the Rules and no claim can be entertained dehors the Rules.

7. We have carefully considered the rival contentions.

¹ (2008) 5 SCC 328

8. There is no dispute about the fact that the petitioner incurred the expenditure stated by her, for the treatment of her minor daughter at the hospital in question. There is also no dispute about the fact that the said hospital is located outside the State of Andhra Pradesh. Therefore, the case of the petitioner can be considered only in relaxation of the Rules, if the Rules provide for such a relaxation.

9. Even the respondents do not dispute the fact that there is a power of relaxation. The question is as to the manner in which the power of relaxation has been exercised in this case.

10. A careful look at the order of rejection would show that the respondents refused to exercise the power of relaxation, without stating any reason whatsoever. In the decision relied upon by the learned Government Pleader, the Supreme Court made it clear that any power of relaxation has to be exercised in a judicious manner. Paragraph-25 of the judgment of the Supreme Court may be usefully extracted as follows:

“25. In the Karnataka case, however, it is necessary to take into consideration the provisions of Rule 31 of the 1963 Rules which confers an unequivocal power of relaxation on the authorised authorities specified therein. A public authority may exercise its power of relaxation only where there exists a provision therefore. [See *Kendriya Vidyalyaya Sangathan v. Sajal Kumar Roy* (2006) 8 SCC 671 and *Pitta Naveen Kumar v. Raja Narasaiah Zangiti* (2006) 10 SCC 261]. It, however, goes without saying that while exercising such a power, the authority must act judiciously keeping in mind the purport and object thereof. Considerations

therefor, although may not partake a mathematical exactable but should always be fair and reasonable. Although it may not be possible for an employee to enforce a purported right on the premise that another person had obtained reimbursement for a similar kind of treatment, ordinarily fair procedure envisages a broad similarity. If any person has been shown any undue favour, we may add, this by itself may not be a ground to favour another but when such a contention is raised, the State should be able to demonstrate a fair treatment. It is possible to draw a distinction on the basis of several factors, emergent situation being one of them. So viewed, we do not find that the State of Karnataka had acted arbitrarily.”

11. But we find from the impugned order that the respondents have not stated a single reason as to why they would not exercise the power of relaxation. Therefore, the order impugned in the writ petition, suffers from non-application of mind and also suffers from being not in accordance with the Rules.

12. It must be borne in mind, in cases of this nature that today corporate hospitals have spread their tentacles, crossing all regional borders. Therefore, if one of the hospitals belonging to the same group, located within the State, is treated as a recognised hospital for the purpose of reimbursement of medical expenses, we do not know as to why and how, another hospital belonging to the same group, but located outside the State should be treated differently. Corporatisation and globalisation, have completely changed the scenario from the rule position as they stood in the year 1972.

13. Therefore, the writ petition is allowed, the impugned order is set aside and the matter remanded back to the 2nd respondent for a fresh consideration, in the light of the observations made above. The 2nd respondent may reconsider the decision and pass orders within a period of 8 (eight) weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ABHINAND KUMAR SHAVILI, J.

03rd October, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.25612 of 2017
(per VRS, J.)



03rd October, 2017.
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