

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1574 of 2011

IN

Civil Writ Jurisdiction Case No. 8584 of 2010

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Raj Kumar Singh, Son of Late Bullak Singh, Resident of New Co-operative Kunj Colony, Bahadurpur, P.S. Bahadurpur, District - Patna.

.... Petitioner - Appellant

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Home Department, Government of Bihar, Patna.
4. The Deputy Secretary, Home Department, Government of Bihar, Patna.
5. The Inspector General-cum-Director General of Police, Bihar, Patna.
6. The Inspector General, Crime Investigation, Government of Bihar, Patna.
7. The Secretary, Finance Department, Government of Bihar, Patna.
8. The Deputy Inspector General of Police (Establishment), Bihar, Patna.
9. The Superintendent of Police (C), Crime Investigation Department, Patna.

.... Respondents / Respondents

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Appearance:

For the Appellant/s : Mr. Pramod Kumar, Advocate.

For the Respondent/s : Mr. Sita Ram Yadav, G.P. 16.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-04-2018

Challenging the order dated 25.07.2011 passed by the learned Writ Court for CWJC No 8584 of 2010, the original writ petitioner has preferred this intra-court appeal. By the impugned order the learned Writ Court has refused to allow the relief prayed on behalf of the petitioner for reimbursement of the entire medical expenses incurred over his treatment at the Rajeshwar Nursing Home, Patna as also in the Indraprastha Apollo Hospital at Delhi.

2. The grievance of the petitioner is that the respondents



have approved only a sum of Rs. 1,41,993/- out of a claim for Rs. 10,00,991.78 at par with the C.G.H.S. Health Scheme Package Book.

3. The facts are not in dispute. The petitioner happens to be an employee of the Home Department (Police). On 04.12.2006 he met with an accident while alighting from a train and suffered head injury. Initially, he was treated at Rajeshwar Hospital in Patna from 07.12.2006 and thereafter he was shifted to Apollo Hospital, Delhi on 08.12.2006 where he remained as an indoor patient till 28.12.2006.

4. Relying upon Rule 26 of the Bihar Medical Attendance Rules (hereinafter referred to as 'the Rules') the petitioner urged before the learned Writ Court that the State Government has ample discretionary powers to reimburse the entire amount in such an emergent situation where prior permission for treatment outside was an impossibility. It was submitted that the treatment undergone and the bills raised have not been disbelieved. On 12.09.2008, a post-facto-sanction has been given for the treatment and the entire payment has been sanctioned. The recommendation was for full reimbursement but, later on, the reimbursement was limited to the extent of Rs. 1,41,993/-. The petitioner submitted that there was no justification for the respondents to limit the reimbursement in respect of the petitioner.

5. A number of decisions of this Court whereunder the Court has been pleased to direct for full reimbursement under Rule 26



of the Rules have been relied upon. The learned Writ Court has taken note of those decisions of this Court in the impugned order and we quote the same hereunder for a ready reference.

- “1. 2003 (3) PLJR 927 (Ram Sagar Ram Vs The State of Bihar)
2. 2007 (4) PLJR 281 (Dr. Dhirendra Kumar Vs. The State of Bihar)
3. 2007 (4) PLJR 286 (Pawan Kumar Mishra Vs. The State of Bihar)
4. 2008 (1) PLJR 337 (Md. Ahad Raza Vs. The State of Bihar)
5. 2008 (1) PLJR 394 (Biresch Chandra Chatterji Vs The State of Bihar)
6. 2008 (2) PLJR 182 (Lal Bahadur Gupta Vs The State of Bihar)
7. 2008 (2) PLJR 351 (Dr. Ramesh Chandra Singh Vs. The State of Bihar)
8. 2010 (1) PLJR 369 (Ran Vijay Kumar Singh Vs. The State of Bihar)
9. (2005) 13 SCC 393 (Chhotu Ram Yadav Vs. The State of Haryana)”

6. The learned Writ Court, however, took note of those judgments and distinguished the judgments on the ground that the primal factor weighing with the Court was that in emergency cases procedural requirements for approvals had necessarily to be waived. The learned Writ Court was, however, of the view that there existed no guidelines or rules with regard to the financial limit of such reimbursement. It was the case of the respondents that a Notification dated 24.03.2006 was issued in exercise of powers under Article 309 of the Constitution making suitable / appropriate amendments in Notification no. 865 LSG dated 02.10.1947 by adding Note 13 after Note 12 to Rule 1 of the Bihar Medical Attendance Rules. The learned



Writ Court referred the Rules, particularly, the list as contained in Appendix 10 which lists out the Government / Referral Hospital, Empanelled Private Hospital / Diagnostic Centers and Regional Cancer Centers in various cities. It was found that Indraprastha Hospital, where the petitioner was treated at Sl. 36, is a Private Hospital identified for permissible treatment or orthopaedic including arthroscopic surgery and joint replacement only.

7. The learned Writ Court referred the instructions which have been issued by the Government on 06.02.2007 which was, later on, modified on 09.03.2007. Clause 3 of the former notification was altered making it applicable retrospectively from 01.04.2006. The learned Writ Court also found that this notification was modified again on 07.08.2007 bearing no. 14/Misc.-31 traet8/2006 (1079) 14. Clause 2(iii) of the Notification dated 06.02.2007 which provides for reimbursement of expenses for medical treatment obtained at Private Hospitals (Unrecognized) shall be at C.G.H.S. rates. By Notification dated 09.03.2007 this has been made applicable retrospectively from 01.04.2006 and since the petitioner met with an accident on 04.12.2006 when the Apollo Hospital was not identified as permissible for the nature of the present treatment and the Notification dated 07.08.2007 provides that expenses for expensive medical treatment, such as, Kidney Transplant, Heart Surgery, Cancer and



Spinal Surgery obtained at Private Hospitals (Unrecognized) shall be reimbursed at C.G.H.S. rates only from 01.04.2006, the learned Writ court distinguished the decision of this Court rendered prior to the said Notification dated 07.08.2007.

8. The learned Writ Court refused to grant the reliefs for full medical reimbursement as claimed by the petitioner for the reason that the notification which was given effect from 01.04.2006 provided only for reimbursement of the expenses at C.G.H.S. rates.

9. Learned Senior Counsel representing the appellant submits that the only issue for consideration in the present case is as to whether the existing position as on 04.12.2006 when the petitioner met with the accident may be allowed to be altered by issuing a notification with retrospective effect. It is further submitted that Rule 26 of the Rules cannot be deemed to have been altered by a Notification dated 09.03.2007 with retrospective effect. This aspect of the matter, according to the learned Senior Counsel, has not been considered by the learned Writ Court.

10. On the other hand, learned counsel for the State submits that there is no infirmity in the order passed by the learned Writ Court and once the Writ Court found that by the Notification dated 09.03.2007 there had been an amendment to the admissibility of the reimbursement of expenses with retrospective effect, it has rightly



been decided that the petitioner shall not be entitled for the same.

11. Having heard learned for the petitioner (appellant herein) and learned counsel representing the State, we are of the considered opinion that the petitioner met with the accident on 04.12.2006 when Rule 26 of the Rules and the Notifications issued by the relevant time did permit reimbursement of full medical expenses. It was in the discretion of the State respondents to consider the request for reimbursement of medical expenses in the given facts and circumstances and to take a decision accordingly. The learned Writ Court has gone into various aspects of the matter even on the payability of all the expenses on other grounds which were not required to be gone into.

12. We find that by the Notification dated 09.03.2007, which has been made applicable retrospectively from 01.04.2006, a right to be considered for reimbursement of expenses which had already accrued to the petitioner cannot be taken away and the petitioner could not have been deprived of the benefits of application of Rule 26 in similar terms as have been provided to other similarly situated persons. We are, however, of the view that it is for the competent authority to consider such reimbursements and we need not go into the merit of payability of the bills.

13. In result, we set aside the impugned order of the



learned Writ Court and hold that the claim of the petitioner for reimbursement of medical expenses shall be considered by the competent authority / authorities within two months from the date of receipt / production of a copy of this order.

14. The appeal stands allowed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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