IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P. (C) No. 180 of 2014

Wahengbam Dhanachandra Singh aged about 53 years by occupation State Govt. Service, presently working and functioning as Research Assistant, State Academy of Training, Govt. of Manipur and a resident of Irembam Mayai Leikai, P.O. & P.S. Nambol in Bishnupur District, Manipur.

… Petitioner

-Versus-

1. The State of Manipur represented by the Commissioner, Administrative Reforms at Imphal.
2. The Director General, State Academy of Training, Govt. of Manipur at Takyelpat, Imphal.
3. The Director, Health Services, Manipur at Lamphelpat, Imphal.
4. The State Medical Board represented by its Member Secretary at Imphal.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioner	::	Shri N. Umakanta, Advocate
For the Respondents	::	Shri Vashum, GA
Date of Hearing	::	**19-08-2020**
Date of Judgment & Order	::	**24-08-2020**

JUDGMENT AND ORDER

[1] Heard Shri N. Umakanta, learned Advocate appearing for the petitioner and Shri Vashum, learned Government Advocate appearing for the State respondents.

[2] According to the petitioner, he is an employee of the State Government working, at the relevant time, as Research Assistant in the State Academy of Training, Government of Manipur. The instant writ petition was filed by him for reimbursement of medical expenses incurred by him towards his daughter's treatment. While the writ petition was pending, the petitioner had expired. An application being MC (WP) No.118 of 2016 for bringing his LR on record, was filed and after it being allowing by this Court on 11-05-2016, the wife of the petitioner was impleaded as the legal representative.

[3] The petitioner's daughter, Miss Sanjuka Wahengbam had been undergoing her 2nd year studies in the BDS Degree at Navodhya Dental College, Raichur which is located at the North Eastern boundary of Karnataka State bordering Andhra Pradesh. On 20/03/2013, the petitioner's daughter had an unbearable attack of lower abdominal pain making her unbearable and almost losing her consciousness. The first aid treatment was given to her at the college where it was preliminarily diagnosed by the doctor that she was suffering from uterine fibroid. As Raichur being a small town with no facility of advanced medicine, she was advised by the doctor to go to Hyderabad for treatment. On 24/03/2013, the petitioner's daughter went to Hyderabad and got herself admitted at the Vikram Hospital, Hyderabad. As her condition stood deteriorated quite acutely, the doctors at Vikram Hospital advised her to undergo emergency operation so that her condition would not deteriorate further and accordingly, an emergency operation was conducted removing her fibroid uterus. On 29/03/2013, the

petitioner's daughter was discharged from Vikram Hospital by issuing a discharge summary/certificate.

[4] The petitioner after collecting all the medical treatment papers including various bills submitted the same claiming for medical reimbursement of the expenses incurred by him towards the emergency operation and treatment of his daughter which amounted to Rs.99,826/- (Rupees ninety-nine thousand eight hundred and twenty-six) only. The claim of the petitioner was submitted on 29/05/2013 along with prescribed declaration including certificate B and appendix-xii was duly received by the respondent No. 2, the Director, State Academy of Training, Manipur.

[5] Pursuant to the petitioner's claim for medical reimbursement, the Deputy Director of the State Academy of Training requested the Chairman, State Medical Board to convey the necessary ex-post facto approval for the treatment of the petitioner's daughter vide its letter dated 16/07/2013. The Director of Health Services, Manipur informed the respondent No. 2, the Director General of State Academy of Training, Government of Manipur stating that the State Medical Board in its meeting held on 1/8/2013 had refused to grant ex-post facto approval for the treatment of the petitioner's daughter at Vikram Hospital. The reason furnished by the State Medical Board was that Vikram Hospital is a private hospital and a non-referral hospital of the State Government and consequently, the claim of the petitioner for medical reimbursement was rejected by it. The petitioner requested the concerned authorities for reconsideration of their decision and

for conveying ex-post facto approval quoting the rules whereby the reimbursement could be made in relaxation thereof in emergency cases. Pursuant to the petitioner's request for reconsideration, the Deputy Director, State Academy of Training again requested the Chairman, State Medical Board, Government of Manipur for reconsideration of their decision. However, on 03/10/2013, the Director of Health Services, Manipur informed the Deputy Director, State Academy of Training that the State Medical Board in its meeting held on 06/09/2013 had turned down the request. Being aggrieved by the decisions of the State Medical Board taken on 01/08/2013 and 06/09/2013, the instant writ petition was filed by the petitioner praying for quashing them on the inter-alia grounds that the State Government had failed to appreciate the fact that the petitioner's daughter was operated upon and treated under the emergency circumstances; that had the operation not been undertaken, the petitioner's daughter could have been in a critical and fatal state which could have put her life in danger; that it was absolutely justified for the petitioner's daughter to go the nearest hospital where such facilities for treatment were available and that the Hon'ble Supreme Court as well as numerous High Courts including this Court had held that the expenses incurred in the emergency operation even at the private and non-referral hospital were to be reimbursed, if such treatment was necessitated due to emergency and extreme condition of the patient.

[6] The instant writ petition has been contested by the State respondents by way of an affidavit filed by the Director of Health Services,

Manipur stating that the petitioner was not entitled to reimbursement of medical expenses for the reason that Vikram Hospital, Hyderabad where the petitioner's daughter was given treatment, was not empanelled by the State of Manipur. Since the State Medical Board is following the relevant Government orders, it could not go beyond the limits prescribed by the relevant rules. Any patient may go for treatment without prior approval of the State Medical Board but the hospital where the treatment is given, should be an empanelled hospital. The ex-post facto approval for reimbursement can be granted only when the hospital is one of the hospitals found in the list of the hospitals empanelled by the Government. It has further been stated that if such claim is allowed or the relief sought for by the petitioner in the present case is granted, the purpose of constituting the State Medical Board for examination of the patients' condition for granting or not granting the approval of medical reimbursement, shall certainly be frustrated and there shall be no meaning/ purpose for constitution of the Medical Board by the Government under C.S. (M.A.) Rules.

[7] The fact that the petitioner's daughter was operated upon at the Vikram Hospital, Hyderabad is not denied by the respondents and moreover, it is not the case of the State respondents that the papers submitted by the petitioner are not sufficient to grant ex-post facto approval for medical reimbursement. All that has been contended by them, is that Vikram Hospital where the petitioner's daughter was operated upon, is a private hospital and a non-referral hospital and therefore, the petitioner is not entitled to medical reimbursement. It is the further case of the State

respondents that if such claim is allowed, the purpose of constituting a State Medical Board will have no meaning at all.

[8] The subject in issue relates to the medical reimbursement of the expenses incurred by the petitioner towards the operation of his daughter and in other words, the short issue is as to whether the petitioner is entitled to it. In a case namely **WP (C) No. 1036 of 2014, Shri Soram Nabakumar Vs. State of Manipur & ors**, a similar issue arose and in fact, the facts of the present case are almost identical with that of the said case wherein the petitioner who was serving as a Section Officer Grade-I, PWD, Manipur, suffered from diarrhoea and as per the report of the C.T. Scan, his prostate gland was found enlarged and on 15-03-2014, he was advised by the gastroenterologist to go to Rajiv Gandhi Cancer Institute, Delhi for treatment. In view of the urgent treatment being required and Surgical Oncologist or Uro- Oncologist not being available in Manipur, the petitioner left for Delhi on 17-03-2014 and was admitted at Rajiv Gandhi Cancer Institute and Research Centre, Delhi. After having performed various clinical tests and operated upon, the petitioner was discharged from the Hospital on 11-04-2014. He spent a total sum of Rs.4,40,957.69/- (Rupees four lakhs forty thousand nine hundred fifty seven and sixty nine paise) only towards his aforesaid treatment. After returning from Delhi, he submitted the relevant documents to the Chairman, State Medical Board, Medical Directorate for ex-post facto sanction through the proper channel which did not grant the ex-post facto approval for the treatment at Rajiv Gandhi Cancer Institute and Research Centre, New Delhi on the ground that the

said Institute is a private and a non-recognised hospital for medical reimbursement. The stand of the State Government was that he underwent his treatment outside the State of Manipur without prior approval of the State Medical Board; that the Rajiv Gandhi Cancer Institute is not a hospital empanelled by the State Government; that the medical reimbursement for having been treated at such private hospital is not permissible under the C.C.S (M.A) Rules and other existing rules of the Government of Manipur and that if such request for reimbursement is accepted, the whole purpose of the constitution of State Medical Board, in respect of medical reimbursement, shall be frustrated. Rejecting the contentions of the State respondents, this Court allowed the said writ petition and consequently, the letter dated 20-10-2014 of the Director of Health Services, Manipur was quashed and set aside. The relevant portions of the judgment and order dated 16-06-2015 read as under:

> **[5]** *It is submitted by the learned counsel appearing for the petitioner that right to health is a fundamental right and it includes within the realm of the right to life enshrined under Article 21 of the Constitution of India and that such reimbursement for medical treatment is permissible in view of the law laid down by the Hon'ble Supreme Court in the case of* ***Surjit Singh Vs. State of Punjab & ors., reported in (1996) 2 SCC 336*** *wherein the appellant, while in London, got himself admitted and operated upon for a by-pass surgery and on returning to India, he submitted a bill for medical reimbursement, the Hon'ble Supreme Court held:*
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> > ***"12****. The appellant therefore had the right to take steps in self-preservation. He did not have to stand in queue*

before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

Relying upon the law laid down by the Hon'ble Supreme Court as aforesaid, the Hon'ble Gauhati High Court had delivered a judgment and order in the case of ***Gouri Sen Gupta Vs. State of Assam, reported in 1999 (3) GLT 601*** *wherein the petitioner consulted a Professor of Obstetrics and*

Gynaecology, Assam Medical College, Dibrugarh and after preliminary examination, it was found that she was suffering from Carcinoma for which she was advised to go for major abdominal surgery for removal of the uterus at an advanced hospital outside the State and accordingly, she went to Calcutta and got himself treated in Lans Down Nursing and Research Centre, Calcutta and the petitioner after completion of her treatment returned to Dibrugarh and submitted the relevant papers for medical reimbursement. Her writ petition was allowed and the respondents therein were directed to pay the amount of Rs. 34,774.19/- (Rupees thirty four thousand seven hundred seventy four and nineteen paise) only within a month with 18 % interest.

Similarly, the Gauhati High Court, Imphal Bench had decided a writ appeal being W.A. No. 71 of 2007, ***State of Manipur & ors. Vs. Angom Suchila Devi, reported in 2009 (3) GLT 757*** *which was directed against the judgment and order dated 05-04-2007 passed by the learned Single Judge in the W.P. (C) No. 778 of 2006 wherein the petitioner, while in Bangalore, was admitted at Kidwai Institute of Oncology, Bangalore and after examination she was advised for histological evaluation by way of lumpectomy and biopsy for which she was admitted at Mallaya Hospital, Bangalore. On her return from Bangalore, her case was referred to the State Medical Board which conveyed that medical reimbursement could not be considered as per C.C.S. (M.A) Rules, 1944 without obtaining approval of the State Medical Board for further follow-up and check-up, she left Imphal and got herself attended at Mallay Hospital, Bangalore. As the amount claimed for ex-post facto approval both for the first and second trip were not being granted, the petitioner approached the Hon'ble Gauahti High Court, Imphal Bench by way of a writ petition which was allowed*

by the learned Single Judge. The Hon'ble Gauhati High Court, Imphal relying upon the decisions rendered by the Hon'ble Supreme Court and the Gauhati High Court, held that the petitioner was entitled to relief in respect of the first trip only.

[6] *The learned Government Advocate has not cited any judgment in support of his contention. However, he has relied upon the O.M. dated 16-07-1974 issued by the Government of India and the relevant partition of which is reproduced herein below:*

> ***" (1) Circumstances to justify treatment in private medical institution:–***
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> *In emergent cases involving accidents, serious nature of disease, etc., the person/persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognized hospital is available nearer than the private hospital. The Controlling Authority/Department will decide on the merits of the case whether it was a case of real emergency necessitating admission in a private institution. If the Controlling Authorities/ Departments have any doubt, they may make a reference to the Director- General of Health Services for opinion."*

[7] *Admittedly, there is no dispute as regards the facts of the case and the only stand taken by the State Government is that medical reimbursement as claimed by the petitioner cannot be permitted in law. Rule 6 of the C.C.S. (M.A) Rules, 1944 (1)(i) provides that a Government servant shall be entitled to, free of charge, treatment in a Government hospital at or near the place where he falls ill. An exception has been curved out in sub-rule (1)(ii) which provides that a*

Government servant shall be entitled to, free of charge, treatment in a private hospital subject the condition mentioned therein. Rule 6(2) provides for reimbursement of medical expenses. It may be noted that the said rules were made keeping in mind the circumstances prevailing at that point of time and since there had been changes in the circumstances thereafter, the Government of India had to issue instructions from time to time including the one mentioned above and relied upon by the learned Government Advocate. But one thing is clear that medical reimbursement for expenses towards treatment in private hospital is permissible, subject to the conditions mentioned therein, in accordance with the policy decision of the Government concerned and it is not that it is impermissible at all.

[8] *There has been further changes recently in the circumstances with the development of science and technology in the field of Medicine, as a result, a private hospital differs from the other in respect of medical facilities to be provided therein. When one is not sure which hospital would be better for the ailment that he suffers, it must be left with the employee concerned to choose a hospital of his choice so as to avoid repentance in future. The Hon'ble Supreme Court in the case of* ***Surjit Singh case*** *(supra) has explained what is self- preservation and what can be done by the individual concerned for it. As per the observations of the Hon'ble Supreme Court, self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable and for his self-preservation, one has the right to take steps accordingly. One needn't stand in queue before the Medical Board, the manning and assembling of which makes its meetings difficult to*

happen and needn't stand in queue in Government hospital and could go elsewhere to an alternative hospital as per policy. As has been stated hereinabove, the Hon'ble Gauhati High Court had delivered a judgment in the case of ***Gouri Sen Gupta Vs. State of Assam, reported in 1999 (3) GLT 601 (supra),*** *the facts of which are very much identical to that of the present case.*

[9] *Coming to the facts of the present case, the petitioner had to take immediate steps the moment he came to know about the seriousness of his illness and to take a decision keeping in mind the circumstances namely the advice of the consulting doctor advising him to go to Rajiv Gandhi Cancer Institute, Delhi for treatment and non-availability of Surgical Oncologist or Uro-oncologist in Manipur and the urgent nature of his illness and it is no doubt true that the petitioner ought to have gone to the private hospital recognised/approved by the State Government so as to avoid such problem of reimbursement. But the fact remains that since the petitioner had the right to self- preservation as laid down by the Hon'ble Supreme Court, it is quite natural that he opted for the private hospital which his consulting doctor had suggested, with the idea that he would get better attention there with the reference of his consulting doctor. Considering the facts of the present case, this court is of the view that it is covered by the judgment of the Hon'ble Gauhati High Court rendered in the case of* ***Gouri Sen Gupta Vs. State of Assam, reported in 1999 (3) GLT 601 (supra)*** *and therefore, the present writ petition is liable to succeed. At this juncture, it is relevant to note that the learned counsel appearing for the petitioner has fairly submitted that the petitioner's medical expenses be reimbursed as per the rates approved by the State Government.*

[9] From the aforesaid judgment and order, it is clearly seen that the contentions of the State respondent, similar to the ones taken in the present case, have already been rejected by this Court. It may be noted that the said judgment and order dated 16-06-2015 was passed by this Court relying upon the decisions rendered by the Hon'ble Supreme Court in Surjit Singh case (supra) and the Hon'ble Gauhati High Court. No material has been placed on record by the counsel appearing for the respondents to show that the said judgment and order had been set aside by the appellate Court or the said decision of the Hon'ble Supreme Court had been overruled by a subsequent decision rendered by the Hon'ble Supreme Court. If that be so, there is no reason as to why this Court shall take a different view and moreover, this Court is bound by its earlier decision rendered on similar facts and circumstances. In other words, the issue involved herein is covered by the said judgment and order and therefore, this Court has no option but to allow the instant writ petition and accordingly, the respondents are directed to reimburse the medical expenses, incurred by the petitioner, to be calculated based on the rates approved by the State Government in respect of items listed therein or on the rates charged by a private hospital recognized/ approved by the State Government within a period of three months from the date of receipt of a copy of this judgment and order. There shall be no order as to costs. However, if the amount as determined by the respondents following this Court's direction mentioned above, is not paid within three months as

aforesaid, the interest @ 8% will accrue thereon from the date of expiry of three months till the date of payment of the amount.

JUDGE

FR / NFR

Victoria

WAIKHOM TONEN MEITEI

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