HIGH COURT OF TRIPURA
AGARTALA

W.P(c) No. 1411/2019

Sri Sibabrata Sarkar.

----Petitioner(s)

Versus

Tripura Tribal Areas Autonomous District Council(TTAADC) and Others.

----Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Advocate. Mr. Samarjit Bhattacharjee, Advocate. Mr. Kawsik Nath, Advocate.
For Respondent(s)	:	Mr. Koomar Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

O R D E R

13/03/2020.

Heard learned counsel for the parties for final disposal of the petition.

2. Petitioner is aggrieved by non clearance of some of his medical reimbursement bills. He has, therefore, prayed for a direction to the respondents to release a sum of Rs. 2,58,791/- (rupees two lakhs fifty eight thousands seven ninety one).

3. Brief facts are as under:

Petitioner is a Government servant employed as an Assistant Engineer. On 29.11.2016 he developed chest pain for which he was admitted in ILS Hospital, Agartala where on 01.12.2016 angiography was performed. On 26.12.2016 again the petitioner developed chest condition. He was admitted on the same day and released two days later. According to petitioner, he thereafter had gone to Kolkata on leave in the month of January 2017. While on leave on 18.01.2017 the petitioner developed heart complaint all over again for which he was admitted in Medica

Superspecialty Hospital and operated for by-pass surgery on 25.01.2017. Even while he was under treatment his wife had communicated this development to the department. The cost for medical treatment which he had incurred at hospital at Agartala has been reimbursed. However, the cost for the treatment at Kolkata is not reimbursed on the ground that the petitioner did not obtain prior referral order from the medical board.

4. The petitioner's health condition and the treatment that he had to undergo for such purpose is not in dispute. Perhaps it is also not in dispute that facilities for by-pass surgery are not available in the State. In other words, had the petitioner approached the Medical Board for a referral order, in all likelihood the same would have been granted. Merely because the petitioner could not or did not obtain such referral order, should his medical reimbursement be refused? Answer to this question in the present case obviously is in the negative. Going by the petitioner's statement his heart surgery at Kolkata was not planned. It is not as if the hospital at Agartala had opined that the petitioner would have to undergo such surgery and for which purpose the petitioner planned this visit to Kolkata. If in emergency, a Government servant needs to undergo life saving surgery or any other treatment at a place outside the State, surely, he cannot be expected to first return to the State, present himself before the Medical Board and obtain the referral order before he can take steps to save his life.

5. In somewhat similar circumstances in a recent judgment dated 05.12.2019 in case of ***Sri Samar Bhusan Chakraborty Vrs.***

The State of Tripura & others [W.P(c) No.830/2019] this Court had made following observations:

> ***"It can thus be seen that initial symptoms of the disease were that the petitioner suffered rapid weight loss coupled with drastic depletion of level of Hemoglobin in his blood. The petitioner lost close to 20 kgs of weight in a short span. With these complaints when the petitioner approached the GBP Hospital, the medical opinion was that the petitioner was suffering from iron deficiency anemia. The petitioner thereafter noticed that he was passing blood in the stool upon which he once again approached the GBP Hospital on 11.11.2014 when he was advised colonoscopy which was performed on 19.11.2014. The colonoscopy revealed that the petitioner had possible colon cancer. Under the advice of friends and well-wishers, therefore, he immediately rushed to the TATA Memorial Hospital at Mumbai for availing best treatment of cancer.*** *He was operated on 09.12.2014 and 12 cycles of chemotherapy were administered between 28.01.2015 to 21.07.2015.*
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> ***The respondents do not dispute the medical expenditure. They only argue that because prior referral order from the Medical Board was not obtained, such bills cannot be passed. In my opinion, in facts of the present case, such objection is totally invalid. As noted, initially the petitioner suffered from weight loss and low hemoglobin in his blood. The fact that he was suffering from cancer was not detected at that stage. When he went back to the doctors with a complaint of passing blood in his stool, colonoscopy was advised which when performed revealed that he was suffering from colon cancer. Considerable time thus was already lost between the petitioner reporting early symptoms of a possible serious ailment and actual detection of the fact that he was suffering from cancer. He, therefore, had every reason to rush for best medical advice and treatment for such life threatening and dreaded disease. At such stage to expect him to apply, await and appear before the Medical Board and obtain a referral order before proceeding for the treatment is an unreasonable expectation. The respondents do not even dispute***

that had he appeared before the Medical Board, such reference would have been made. They only argue that the petitioner did not obtain a prior order of reference. The fact that on each subsequent occasion when the petitioner had the opportunity he applied to the Medical Board and referral orders were duly passed itself is an evidence of the justification of the petitioner obtaining medical treatment from outside State hospital.

The Supreme Court in case of Surjit Singh vs. State of Punjab and others reported in (1996) 2 SCC 336 had in somewhat similar circumstances made following observations:

"11. It is otherwise important to bear in mind that 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. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to verses 17 18, 20, and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17 Vinaa dehena kasyaapi canpurushaartho na vidyate Tasmaaddeham dhanam rakshetpunyakar maani saadhayet

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejje vanbhaadraani pashyati

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20 Shariirarakshanopaayaah Kriyante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22 Aatmaiva yadi naatmaanama hitebhyo nivaarayet Konsyo hitakarastasmaa- daatmaanam taarayishyati

If one does not prevent what is unpleasent to himself, who else will do it? Therefore one should do what is good to himself.

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 him 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."

Similar view is expressed by this Court on number of occasions granting relief to the

Government servants. Reference in this respect can be made to the following decisions:

Judgment dated 18.08.2016 in case of Sri Kallol Roy vrs. The State of Tripura & others in WP(C) No.277 of 2016, judgment dated 04.05.2018 in case of Sri Uttam Pal vrs. The State of Tripura & others in WP(C) No.1479 of 2017 and judgment dated 27.03.2019 in case of Sri Subal Das vrs. The State of Tripura & others in WP(C) No.895 of 2018.

In the result, the impugned order dated 07.12.2018 is set aside. The respondents are directed to pay the petitioner's medical bills in question as permissible. Such payment shall carry simple interest @ 7.5% from the date of completion of 3(three) months of presentation of bills till actual payment. Entire payment be made within a period of 2(two) months from today.

Petition is disposed of accordingly."

6. Under the circumstances, this petition is disposed of with the directions to the respondents to release the petitioner's medical reimbursement bills to the extent allowable under the rules. Such amount shall carry simple interest @ 7.5% per annum from the date of completion of three months from presentation of bills till actual payment. Entire exercise shall be completed within a period of two months from today.

7. Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI),CJ.

Dipankar