

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 763 of 2021

Pradip Karjee
Vs.
The Secretary Ministry of Home Affairs and Ors.

Ms. Suman Sehanabis (Mandal)
..for the petitioner

Mr. Ajoy Kumar Singhania
...for the Union of India

Item No.37

Judgment on: 31.01.2023

BIBEK CHAUDHURI, J. : –

Rules are handmade of justice. Substantial justice cannot be denied on literal interpretation of rules.

Let me now come to the fact of the case in brief. The petitioner is a constable of Sashastra Seema Bal(SSB). The petitioner has a minor son who was suffering from bilateral congenital profound hearing loss and non-syndrome tongue tie. Sometimes on 28th March, 2015, the petitioner submitted a letter to the commandant 34th Battalion, Alipurduar informing him, inter alia, that his son required Cochlear Implantation treatment at any higher medical centre in West Bengal

/India in reputed hospital like CMC Vellore. Therefore, he prayed for permission to treat his son in some higher medical centre. He subsequently, contacted Christian Medical College (CMC), Vellore on 30th April, 2015. He was informed by the head of the department of ENT that unilateral Cochlear implantation costs would be rupees six lakhs to rupees twelve lakhs fifty thousand depending upon the low and high hand implantation. The petitioner treated his son subsequently at North Bengal Medical College and Hospital. The said hospital also opined that the son of the petitioner required Cochlear implantation surgery at any higher centre in West Bengal /India. Then the said child was treated by the Commandant Medical of SSB at Falakata. The child was also referred to higher centre for valuable opinion and treatment. On 27th June, 2015 the petitioner again wrote a letter on 2nd July, 2015 that Cochlear implantation treatment at higher centre in West Bengal /India is required immediately for his son who was aged about two years at the relevant point of time and, therefore, he sought for permission in order to carry out medical treatment of his son. Subsequently, Cochlear implantation treatment was done in Christian Medical College at Vellore spending a sum of Rs.9,55,662.75/- of such treatment. Thereafter, the petitioner prayed for ex-post facto sanction of medical expenditure for the treatment of his son. The Commandant 34th Battalion SSB Alipurduar recommended the prayer for reimbursement to the Deputy Inspector General, SHQ, SSB, Jalpaiguri

vide letter dated 22nd June, 2016. The said application was, however, rejected on the ground that approval was not taken prior to the medical treatment. Subsequently the proposal was returned on the ground that medical bill was not signed and verified by the Medical Officer. At last, the Accounts Officer, SSB informed the petitioner that his prayer for ex-post-facto sanction of medical reimbursement could not be allowed on the ground that he did not take prior permission of competent authority for treatment at CMC, Vellore. It is also stated that cochlear implantation is not an emergent treatment. Denial of payment of medical reimbursement forced the petitioner to file the instant writ petition.

The respondents have filed affidavit-in-opposition against the instant writ petition. It is alleged by the respondents that the son of the petitioner was medically examined at the Unit Hospital, 17th Battalion, SSB at Falakata on 27th June, 2015. For Bilateral Congenital Profound Hearing Loss and Non-syndrome Tongue tie the Medical Officer of the Unit Hospital did not issue any permission letter for getting treatment at CMC, Vellore to the petitioner. Further Medical Officer of the Unit Hospital only suggested for consultation at CMC, Vellore immediately and referred to the higher centre on 27th June, 2015. The petitioner got the permission of his son, without prior permission of the concerned authority and, therefore, he is not entitled to get any medical reimbursement. In support of his contention, the

respondents have annexed an office Memorandum dated 12th June, 2009 on "reimbursement of cost of cochlear implantation to beneficiaries under CGHS/Central Services (Medical Attendance) Rules, 1944"

The learned Advocate for the respondents draws my attention to Rule 3 of the said Memorandum which says that the reimbursement for cochlear implant surgery will be permitted only after the request has been approved and recommended by a standing committee comprising of Additional Director General, CGHS/DDG(M)/HoD, ENT, Dr. R.M.L. Hospital/HoD, ENT, Safdarjung Hospital/HoD, ENT LHMC & Smt. S. K. Hospital. Rule 7 also states that Cochlear implant surgery is a planned surgery and, therefore, prior permission has to be obtained before surgery is undertaken. Since the petitioner did not take any prior permission from the standing committee he is not entitled to get medical reimbursement for the treatment of his son. The petitioner, in turn, has used an affidavit-in-reply stating inter alia that cochlear implantation requires a follow up procedure including speech therapy etc. and due to paucity of fund the petitioner is not able to carry out the follow up treatment of his son.

I have heard the learned Advocates for the parties. I have also perused the documents and the relevant rules filed by the parties. It appears from annexure – P/2 that the petitioner who is a constable of SSB prayed for permission of the Commandant of his battalion for

medical treatment of his son. The Commandant did not refer to the said letter to the standing committee. Subsequently also he was instructed by the Commandant (Medical) of the Unit Hospital at Falakata to get his son medically treated in any higher centre of West Bengal/India having necessary infrastructure for cochlear implantation. At this stage, it is pointed out by the learned Advocate for the respondents that the reference letter of the Commandant of 34th Battalion was replied on 27th April, 2015 by the adjutant of the same Battalion with the observation that the Director or equivalent post, Department of Health Directorate of the concerned State can be referred a patient for better treatment outside the State but in this instant case only a Medical Officer of Rural Hospital, Falakata who is not competent to refer a patient recommended his medical treatment outside the State. There is nothing on record that the said Memorandum dated 27th April, 2015 was forwarded to the petitioner. There is also no correspondence that after getting the letter dated 27th April, 2015, the Commandant referred the letter of the petitioner to the concerned authority who is empowered to give permission for medical treatment of a child.

It is needless to say that the petitioner is an employee under the control of Ministry of Home Affairs. In order to provide medical treatment the Central Government has initiated a scheme under the name and style of "Ayushman Bharat". In the instant case, the prayer

of the petitioner was rejected only because he failed to obtain prior permission of the standing committee. There is no record that the Commandant, 34th Battalion, Alipurduar sent the letter of the petitioner to the standing committee for recommendation. In the office Memorandum dated 12th June, 2009 it is stated that cochlear implant surgery is a planned surgery but in case of an infant who could not speak even after attaining the age of two years due to his loss of hearing cochlear implantation is emergent because of the fact that without such treatment and implantation it would not be possible for the son of the petitioner even to learn how to speak.

Considering such aspect of the matter, the respondent nos. 3,4,5 and 6 are directed to consider the case of the petitioner sympathetically and dispose the amount of Rs.6,41,111/- in favour of the petitioner towards the cost of medical reimbursement of his son within four weeks from the date of this order.

This order, however, will not be treated as a precedent in similar other cases and this order is passed only on sympathetic approach with a view to give a proper life to an infant who will be with advancement of age a responsible citizen of the country.

(Bibek Chaudhuri, J.)

Suman/Srimanta

