

**HIGH COURT OF TRIPURA
AGARTALA**

W.P. (C) No.717/2019

Sri Pradyut Choudhuri

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

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

For Respondent(s) : Mr. D. Sharma, Addl. GA.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

20/12/2019.

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

Petitioner is aggrieved by the respondents not clearing his medical bills only on the ground that before taking treatment outside State, he had not obtained referral order from the standing Medical Board.

Learned counsel for the petitioner would point out that in the month of December, 2017, the petitioner experienced difficulty in swallowing food. He, therefore, took advice from a private doctor and consulted ENT on 27.12.2017. The doctor after carrying out tests detected abnormal growth in Oesophagus and advised the petitioner to obtain further specialized guidance. The doctor suspected possible cancer. Under such mental pressure, the petitioner decided to obtain best medical opinion for which he rushed to TATA Memorial hospital, Mumbai. He was registered as

an outdoor patient on 09.01.2018 and after full investigations on 11.01.2018, he was diagnosed with Carcinoma of Esophagus, subject to confirmation. Final confirmation of this disease came on 19.01.2018 when the laboratory reports established Malignancy. In simple terms the petitioner's worst fears came true and he was diagnosed with throat cancer.

The petitioner undertook treatment for such disease at TATA Memorial hospital between 09.01.2018 to 10.04.2018 and submitted bills for reimbursement. For a total sum of Rs.2,60,739/- and a further bill of Rs.35,280/- for transportation and thereafter a further sum of Rs.8,227/-. Subsequently, also the petitioner had to visit Mumbai and take follow up treatment total break up of petitioner's visits with matching bills is as under:-

No of Bills	Period of treatment	Amount of MR Bill	Amount of TA Bill	Remarks
1 st Spell	09.01.2018 to 10.04.2018	Rs.2,60,739/- Returned by letter, dated, 08.05.2019	Rs.35,280/- Returned by letter, dated, 28.03.2019	Returned
2 nd Spell With valid referral certificate	11.06.2018 to 28.06.2018	Rs.36,128/- Lying before Department	Rs.8217/- Returned by letter, Dated, 28.03.2019	Pending for sanction
3 rd Spell With valid referral certificate	17.09.2018 to 21.09.2018	Rs.15,402/- Lying before Department	Rs.13,121/- Returned by letter, Dated, 28.03.2019	Pending for sanction
4 th Spell With valid referral certificate	26.12.2018 to 01.01.2019	Rs.19,892/- Lying before Department	Rs.9736/- Returned by letter, Dated, 28.03.2019	Pending for sanction
	09.01.2018 to 01.01.2019	MR Bill comes to Rs.3,32,161/-	TA Bill comes to Rs.66,354/-	Total Bill (MR+TA)= (3,32,161 + 66,354_ Rs.3,98,515/-

The respondents have cleared only a small portion of the said bills not accepting the rest on the ground that the petitioner did not obtain prior referral certificate.

Requirement of prior referral by the Medical Board, before treatment can be taken outside the State may undoubtedly be a sound policy. The same, however, cannot be applied with rigidity in all cases. There may be cases where due to variety of reasons, it may be simply impossible or impracticable for the Government servant or his family member to obtain prior referral. The present case is a peculiar one. The petitioner approached his ENT surgeon with complaint of difficulty in swallowing food. The doctor's preliminary investigation suggested possibility of malignancy. He was advised further examinations and specialized guidance. It was under such circumstances that the petitioner was rushed to TATA Memorial hospital, Mumbai where after brief investigations, it was confirmed that he was suffering from malignancy.

Under such circumstances, to expect the petitioner to approach the Standing Medical Board and obtain referral order would be wholly improper. The petitioner will be far more concerned about his life than securing reimbursement of the cost of treatment which he may be required to undertake. The respondents do not dispute that the treatment as the petitioner received outside the State, was available within the State. In other words, if the petitioner had presented himself to the Medical Board, referral order would in ordinary course been granted. Even subsequent treatment was authorized by the Medical Board outside State.

In a recent order dated 05.12.2019, in case of ***Sri Samar Bhusan Chakraborty vs. The State of Tripura and others, W.P. (C) No.830 of 2019*** following observations were made:-

"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.

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 canpurushartho 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 Sharirarakshanopaayaah 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 unpleasant 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 vs. The State of Tripura & others** in **WP(C) No.277 of 2016**, judgment dated 04.05.2018 in case of **Sri Uttam Pal vs. The State of Tripura & others** in **WP(C) No.1479 of 2017** and judgment dated 27.03.2019 in case of **Sri Subal Das vs. 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."

In the result, the respondents shall process the medical and TA bills of the petitioner without insisting on prior referral order and pay the same to the extent permissible under the Rules.

Entire exercise shall be completed within a period of 3 (three) months from today.

Petition disposed of accordingly.

(AKIL KURESHI), CJ



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