

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.6240 of 2021

Khuku Biswas, W/o Late A.K. Biswas, aged 63 years, Retired Staff Nurse, Dr. Bim-Rao Ambedkar Memorial Hospital, Raipur (C.G.), R/o Gandhi Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Health and Family Welfare, Mahanadi Bhavan, Mantralaya, Atal Nagar, Nava Raipur (C.G.)
2. Joint Director, Medical Education, Old Nurses Hostel, D.K.S. Bhawan, Raipur (C.G.)
3. Joint Director & Superintendent, Dr. Bim Rao Ambedkar Memorial Hospital, Raipur (C.G.)
4. Civil Surgeon Cum Chief Hospital Superintendent, District Raipur (C.G.)
5. Medical Officer, Dr. Bim-Rao Ambedkar Memorial Hospital, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Akash Kumar Kundu, Advocate.
For Respondents/State: Mr. Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board
(Through Video Conferencing)

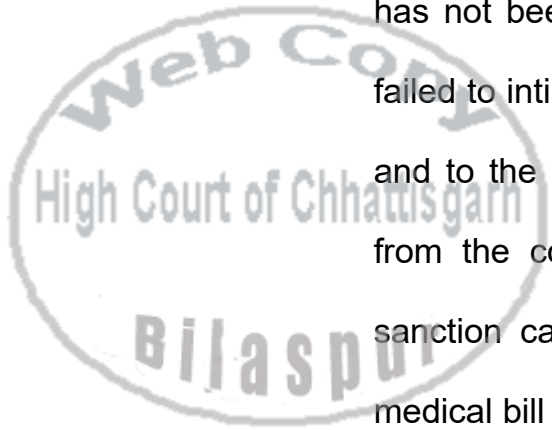
13/01/2022

1. The petitioner herein takes exception to the order dated 16-6-2021 by which respondent No.3 has returned her medical bill on the ground that post-facto sanction has not been accorded by the competent authority.
2. The petitioner while in service as Staff Nurse suffered surgery of her spinal cord i.e. Canal Stenosis on 29-6-2019 in V.Y. Hospital, Raipur and she was discharged on 6-7-2019. Thereafter, she claimed



reimbursement of the medical bill amounting to ₹ 99,743/- which was considered by the impugned orders Annexures P-1 & P-2 and the said medical bill has been returned on the ground that she has not intimated the fact of surgery in accordance with sub-rule (5) of Rule 10 of the Chhattisgarh Civil Services (Medical Attendance) Rules, 2013 (for short, 'the Rules of 2013') and consequently, she is not entitled for medical reimbursement of the aforesaid amount which has been called in question in the instant writ petition as arbitrary and unsustainable in law.

3. Return has been filed justifying the refusal to reimburse the medical bill stating inter alia that sub-rule (7) of Rule 10 of the Rules of 2013 has not been complied with and the petitioner / her family members failed to intimate to the Director, Medical Education / Director, AYUSH and to the Head of the Department within the time limit of 48 hours from the commencement of treatment and therefore no post-facto sanction can be granted under Rule 11 of the Rules of 2013 and medical bill has rightly not been reimbursed to the petitioner.
4. No rejoinder has been filed in opposition of the return filed by the State / respondents.
5. Mr. Akash Kumar Kundu, learned counsel appearing for the petitioner, would submit that since the surgery was emergent surgery and the petitioner underwent the surgery in the hospital and remained in hospital for seven days and admittedly, she was discharged from the hospital on 5-7-2019 and thereafter, she submitted the bill which has been returned by respondent No.3 on the ground that sub-rule (7) of Rule 10 of the Rules of 2013 has not been followed and the competent authority has not been informed within the time limit of 48 hours from the commencement of treatment. He would further submit



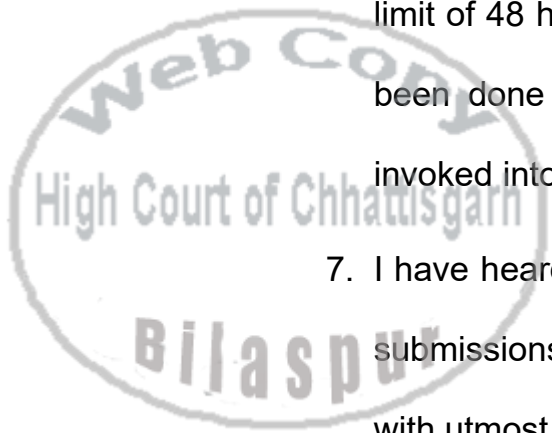


that return of medical bill is totally arbitrary as the provision under sub-rule (7) of Rule 10 of the Rules of 2013 is not mandatory and even otherwise, self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India and therefore the impugned orders deserve to be set aside and the respondents be directed to reimburse the aforesaid amount of medical expenses in favour of the petitioner within a specified time.

6. Mr. Jitendra Pali, learned Deputy Advocate General appearing for the State / respondents, would submit that the petitioner or her family members must have informed the Director, Medical Education / Director, AYUSH and to the Head of the Department within the time limit of 48 hours from the commencement of treatment, which has not been done and therefore Rule 11 of the Rules of 2013 cannot be invoked into.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. Admittedly, the petitioner was a Government servant and retired on 31-3-2020, but at the time of her treatment, she was admittedly, a Government servant and she was entitled for medical reimbursement of medical expenses incurred in her treatment in accordance with the provisions contained in the Rules of 2013. Rule 6 of the Rules of 2013 provides for treatment and reimbursement. Rule 7 provides for limitations to reimbursement and if the amount of reimbursement is more than ₹ 25,000/-, the Director, Health Services; the Director, AYUSH; and the Director, Medical Education after the recommendation of a committee of three specialists constituted in the Directorate of concerned system, are the competent authorities. Rule





10 provides for referral for investigation / treatment. In the present case, Rule 10(7) of the Rules of 2013 is relevant which states as under: -

“10. Referral for investigation/treatment. -

(7) In case of emergency cases, the applicant/family member must intimate to Director Medical Education/ Director AYUSH, as the case may be, and to Head of Department of concerned department within the time-limit of 48 hours from the commencement of treatment.”

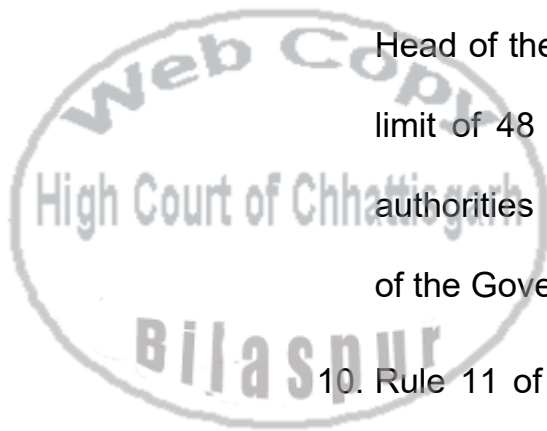
9. A careful perusal of sub-rule (7) of Rule 10 of the Rules of 2013 would show that in case of emergency cases, the concerned Government servant or his family member is required to intimate to the Director Medical Education/ Director AYUSH, as the case may be, and to the Head of the Department of the concerned department within the time-limit of 48 hours from the commencement of treatment, so that the authorities concerned may be well aware of the undergoing treatment of the Government servant.

10. Rule 11 of the Rules of 2013 provides for post-facto sanction which states as under: -

“11. Post-facto sanction. - (1) In emergency circumstances, in cases of treatment obtained in recognized private hospitals located within the State or outside the State, a post-facto sanction has to be obtained. In absence of post-facto sanction, no reimbursement of the expenses incurred for treatment in such cases may be made.

(2) The case regarding post-fact sanction shall be sent to Director Medical Education/Director AYUSH, as the case may be, after duly investigated by Controlling Officer of employee, having made its abrogation on the basis of merits/demerits, post-facto sanction shall be issued by the Director Medical Education/Director AYUSH.

(3) The cases of post-facto sanction of the treatment obtained from non-recognised private institutions within the State/outside the State shall be sent to the State Government, Health and Family Welfare Department with





the recommendation of Director Medical Education/Director AYUSH, as the case may be, for abrogation.

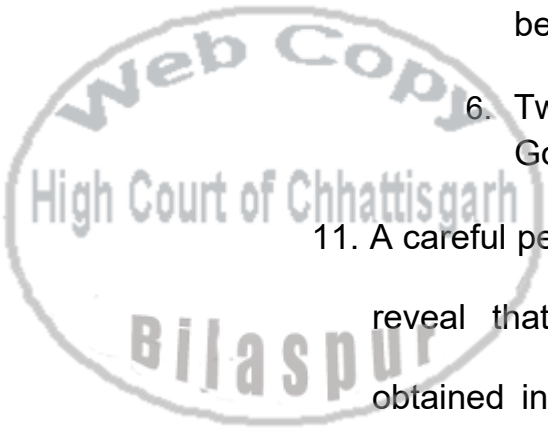
(4) Director Medical Education/Director AYUSH can constitute a Specialist Committee for the investigation of the cases of post-facto sanction.

(5) The following committee shall be constituted as under for the abrogation of cases of post-facto sanctions at State Government level;-

1. Principal Secretary/Secretary, Health and Family Welfare Department. - Chairman
2. Director, Medical Education - Member
3. Director, AYUSH - Member
4. Director, Health Services - Member
5. Representative of Finance Department (Officer not below the rank of Deputy Secretary) - Member
6. Two Subject Specialists (Nominated by the State Government) - Member"

11. A careful perusal of sub-rule (1) of Rule 11 of the Rules of 2013 would reveal that in emergency circumstances, in cases of treatment obtained in recognized private hospitals located within the State or outside the State, a post-facto sanction has to be obtained for granting medical reimbursement and in absence of post-facto sanction, no reimbursement of the expenses incurred for treatment in such cases can be made.

12. In the instant case, admittedly, neither the petitioner nor her family member has intimated the fact of surgery of spinal cord i.e. Canal Stenosis underwent by the petitioner, to the Director Medical Education / Director AYUSH or to the Head of the Department of the department concerned within 48 hours from the commencement of treatment and on that count, Rule 11 of the Rules of 2013 has not been invoked by the respondents and her application for medical





reimbursement has been returned. True it is that the petitioner or her family member was obliged to intimate the fact of commencement of treatment within a period of 48 hours, but that has not been done so.

13. The question is, whether in view of non-compliance of sub-rule (7) of Rule 10 of the Rules of 2013, the post-facto sanction under Rule 11(1) of the said Rules can be considered or not?
14. The pertinent decisions of the Supreme Court in this regard may be noticed herein, profitably.
15. The Supreme Court in the matter of Consumer Education & Research Centre and others v. Union of India and others¹ has held that right to health and medical care to protect his health and vigour while in service or post-retirement is a fundamental right of a worker under Article 21 of the Constitution of India, and observed as under: -

“22. The expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in the workplace and leisure. In *Olga Tellis v. Bombay Municipal Corpn.*² this Court held that no person can live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content of meaningfulness but it would make life impossible to live, leave aside what makes life liveable. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilisation which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In *State of H.P. v. Umed Ram Sharma*³ this Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the Constitution. Access to road was held to

1 (1995) 3 SCC 42

2 (1985) 3 SCC 545

3 (1986) 2 SCC 68





be an access to life itself in that State.

25. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.”

16. Likewise, in the matter of Surjit Singh v. State of Punjab and others⁴, the Supreme Court has held 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, and observed as under: -

“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 rakshetpunyakarmaani saadhayet*

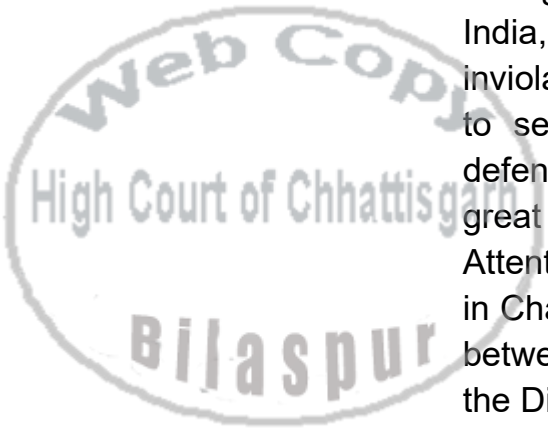
Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

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 budhah
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.





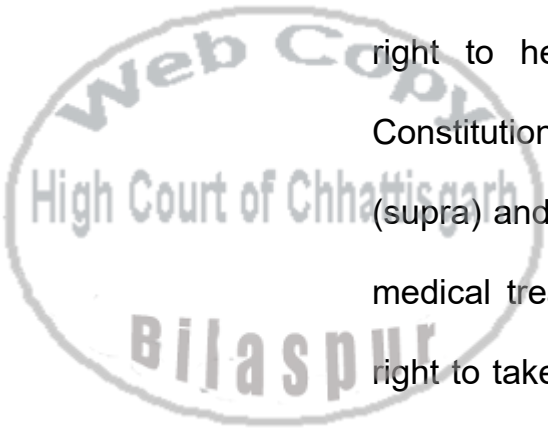
* * *

22 *Aatmaiva yadi naatmaanamahitebhyo nivaarayet
Konsyo hitakarastasmaadaatmaanam 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.”

17. Recently, the Supreme Court in the matter of **In Re : The Proper Treatment of Covid 19 Patients and Dignified Handling of Dead Bodies in the Hospitals etc.**⁵ has held that right to health is a fundamental right guaranteed under Article 21 of the Constitution of India. Right to health includes affordable treatment.
18. Following the principles of law laid down by their Lordships of the Supreme Court in the aforesaid cases (supra), it is quite vivid that right to health is a fundamental right under Article 21 of the Constitution of India as held by the Supreme Court in **Surjit Singh** (supra) and consequently, the provisions relating to reimbursement of medical treatment has to be construed liberally. The petitioner had right to take steps in self-preservation of her own life which is a facet to right to health and thus, she immediately got herself admitted in the hospital for medical treatment (Canal Stenosis), but on account of urgent medical need she or her family members could not intimate the fact of such emergency situation as envisaged under sub-rule (7) of Rule 10 of the Rules of 2013 and therefore her case could have been considered for grant of post-facto permission / sanction by the competent authority as envisaged under sub-rule (1) of Rule 11 of the said Rules; non-intimation of commencement of treatment within 48 hours would not preclude her to recover the amount of medical reimbursement from the respondents, as Rule 11 of the Rules of 2013 takes care of that situation and under Rule 11(1), post-facto sanction

5 Suo Motu Writ Petition (Civil) No.7/2020, decided on 19-6-2020





can be granted by the competent authority. Since the surgery which the petitioner had undergone was admittedly, a surgery related to spinal cord i.e. canal stenosis and that surgery can be said to be an emergent surgery in emergency situation, therefore, Rule 11(1) of the Rules of 2013 can certainly be invoked into by the competent authority and failure of the petitioner or her family member in intimating the authorities within the time limit of 48 hours from the commencement of treatment would not debar the competent authority to consider the case of the petitioner under Rule 11(1) treating the surgery i.e. canal stenosis which is a surgery to spinal cord as an urgent circumstance / situation. Accordingly, the competent authority is directed to consider the case of the petitioner for grant of post-facto sanction under Rule 11 of the Rules of 2013 and it has to be considered by the competent authority as per the provisions contained in sub-rules (2) to (5) of Rule 11 of the Rules of 2013. Such consideration will be made within 45 days from the date of receipt of a copy of this order on its own merit in accordance with law, expeditiously.

19. The writ petition is allowed to the extent indicated herein-above.
Parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6240 of 2021

Khuku Biswas

Versus

State of Chhattisgarh and others

Head Note

Right to health is fundamental right under Article 21 of the Constitution of India and self-preservation of life is included in right to life. The provisions relating to reimbursement of medical treatment has to be construed liberally.

भारत के संविधान के अनुच्छेद 21 के तहत स्वास्थ्य का अधिकार मौलिक अधिकार है और जीवन के अधिकार में जीवन की आत्म-संरक्षा शामिल है। चिकित्सा उपचार की प्रतिपूर्ति से संबंधित प्रावधानों का निर्वचन उदारतापूर्वक करना चाहिए।

