



Askan Das Batra v. Attorney General

(1993-1994) Z.R. 41 (S.C.)

Country: Zambia

Region: Africa

Year: 1993

Court: Supreme Court

Health Topics: Aging, Chronic and noncommunicable diseases, Health care and health services, Health systems and financing

Human Rights: Right to health, Right to social security

Facts

The Appellant was employed by the Zambian Government as an accountant with the Ministry of Legal Affairs. Upon recommendation for further evaluation of his medical condition he travelled to the United Kingdom where he underwent elective heart surgery. He then claimed reimbursement of his medical expenses from his employer under the Conditions of Service for Zambian Civil Servants (the Conditions).

The Appellant was diagnosed with ischemic heart disease and advised to seek further medical evaluation in the United Kingdom (where he had previously been treated), as the relevant facilities were not available in Zambia. In the United Kingdom, the appellant was diagnosed with complex lesion in the right coronary artery. His doctor in the United Kingdom indicated that he might suffer an adverse effect in the foreseeable future and suggested cardiac surgery on an elective basis. The Appellant elected to have the cardiac surgery in the United Kingdom and proceeded to claim the reimbursement of his medical costs from the Ministry of Health.

The Appellant relied on General Order 179 of the Conditions which provided that the Government would cover medical expenses for specialist medical treatment outside Zambia if the patient could not be treated in the country. Authorization had to be sought from the Ministry of Health in this regard.

Decision and Reasoning

The Supreme Court held that the State did not have an obligation to provide free medical services outside Zambia under General Order 179. It considered that the text of the Order was intended to confer a discretion on the Government to fund overseas treatment, and contrasted its language with that of General Orders 173 and 174, which stated that civil servants were "entitled" to free medical treatment at public medical facilities.

Further, the Court considered that the Appellant had failed to establish that he had any legal entitlement to free medical services in the United Kingdom as he had not sought the necessary authorization before undertaking treatment, and the Appellant had received advice that as he was 67, the Government would not fund his treatment (although this evidence was disputed).

The appeal was dismissed.

Decision Excerpts

"The result of this construction is that we find that it was not the intention of the parties to find the Government to authorise and pay for overseas medical treatment. The wording of the order makes it quite clear that the intention was to provide *ex gratia* facilities in some cases at the discretion of the Government through the Permanent Secretary. The existence of an Ad Hoc committee, which could make recommendations, was an internal arrangement in order to enable the Permanent Secretary to make the difficult decisions as to which parties should benefit. It was quite clear from the evidence of Dr Chirwa that not all deserving cases could be catered for under the *ex gratia* scheme and for this reason there was no intention to make it a contractual liability for the Government to provide funds for overseas treatment." (1993) ZR, Page 45-46.

"As we see it, the appellant seems to have misunderstood the situation as being that, although he would in the ordinary way be entitled to Government funds for overseas treatment, he lost that entitlement by having failed to go through the correct channels of applying to the ad hoc committee before he left the country. If this had

been the case it would have been completely wrong to deprive the appellant of a right to which he was entitled for a pettifogging bureaucratic reason. However, that was not the case. There never was an entitlement in the first place and the evidence of Dr Mwansa indicated that because of his age the appellant could not in any event have been considered for an "ex gratia" grant. Whether this provision was unfair or not does not concern us. We are only concerned with the consideration of whether or not there was entitlement. (1993) ZR, Page 46.

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