THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.07.2015

\+ **W.P.(C) 1538/2013 & CM 3212/2013**

DELHI VOLUNTARY HOSPITAL FORUM & ORS ..... Petitioners

versus

MINISTRY OF HEALTH AND FAMILY WELFARE & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Mamta Tiwari and Mr Petal Chandhiok.

For the Respondents : Mr Saqib and Ms Shipra Shukhla for R-1, 2 & 3.

AND

\+ **W.P.(C) 2688/2013 & CM 5073/2013**

SUNDER LAL JAIN CHARITABLE HOSPITAL ..... Petitioner

versus

MINISTRY OF HEALTH AND FAMILY WELFARE & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Mamta Tiwari.

For the Respondents : Mr Rajesh Gogna with Mr Arnab Naskar for R-1, 2 & 3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present petitions have been filed impugning the Office Memorandum dated 07.02.2013 (hereinafter 'impugned OM') whereby the

rates for treatment were reduced from ₹97,750/- to ₹50,000 in case of Coronary Angioplasty and from ₹97,750/- to ₹55,000 in case of Coronary Angioplasty with Balloon.

2. Briefly stated, the facts relevant to consider the controversy in the present petitions are as under:-

2.1 On 05.09.2009, the Government of India floated a tender for empanelment of private hospitals, eye care centres, dental clinics and imaging centres under the Central Government Health Scheme (hereafter CGHS) and issued an E-tender Document for inviting bids (hereafter the 'Tender Document'). In pursuance to the Tender Document, various hospitals including the petitioner hospitals submitted their technical and commercial bids. In September 2010, the Government of India (Directorate of Health Services) declared a treatment wise list of rates (CGHS approved rates) which were arrived at on the basis of the lowest rates submitted by various hospitals in their respective bids. The said rates list indicated ₹97,750/- as the rate for treatment of Coronary Angioplasty and Coronary Angioplasty with Balloon.

2.2 On the rates being notified by the Government, various hospitals including the petitioner hospitals accepted the notified rates and submitted their Acceptance Letters to the Government. Thereafter, in October 2010, the Government entered into Memorandum of Agreements (hereafter MoAs) with various hospitals, including the petitioner hospitals, for being empanelled with the CGHS for providing treatment facilities to the beneficiaries of the CGHS as per the declared CGHS rates.

2.3 The said MoAs were initially valid for a period of 2 years and were extendable by another year subject to mutual agreement on the same terms as provided under the Tender Document. Thus, after the expiry of the term of two years in 2012, the MoAs were extended till 31.03.2013. After a lapse of approximately 5 months of the extension period, the Government issued the impugned OM revising the CGHS rates for treatment of Coronary Angioplasty from ₹97,750/- to ₹50,000 and for treatment of Coronary Angioplasty with Balloon from ₹97,750/- to ₹55,000. It is contended by the petitioners that the representations made by various hospitals against the revision of CGHS rates elicited no response from the Government.

2.4 During the pendency of the present petitions, the term of the empanelment of various hospitals/diagnostic centres was extended from time to time and as per notification dated 24.06.2014, the term of empanelment was extended till 31.07.2014 or till finalization of next empanelment process, whichever is earlier.

Submissions

3. The learned counsel for the petitioners contended that the revision of CGHS rates was arbitrary and without any application of mind, as no study was conducted by the Government before directing for revision of the CGHS rates. It was contended that the CGHS rates for various treatments were unreasonably reduced by the Government by the impugned OM. It was contended that the Government by a notification dated 19.06.2014 again increased the rates for the treatment of Coronary Angioplasty with

Balloon to ₹92,690/- for CGHS, Delhi & NCR. It was also asserted that consequent to the said notification, 275 hospitals/Diagnostic Centres had executed agreements with the Government.

4. The learned counsel for the respondents contended that the revision of CGHS rates is a policy decision which was taken on the basis of technical recommendation from Director General of Health Services in consultation with expert Cardiologists, as the CGHS rates for angioplasty were considered to be on the higher side. The revised CGHS rates were notified only after obtaining concurrence of Integrated Finance Division of Ministry of Health & Family Welfare. It was contended that the scope of judicial review of a policy decision is very limited.

5. It was further submitted that revision of CGHS rates was a considered decision and would not amount to modification of the terms and conditions of the MoA. The learned counsel for the respondents contended that there was no requirement for seeking approval or consent of hospitals while undertaking the process of revision of applicable CGHS rates. And, in terms of Clause 24 of the Tender document, it was open for the empanelled Private Hospitals to withdraw from the scheme if the revised CGHS rates were not acceptable to the said hospitals.

6. The learned counsel for the respondents pointed out that by notification dated 15.10.2012, the validity of empanelment was extended till 31.03.2013 and it was clarified that the empanelled hospitals had the option to withdraw from the empanelment by submitting letters seeking withdrawal of empanelment on or before 31.10.2012. It was contended that,

therefore, the relevant period for consideration would be from 07.02.2013 till 31.03.2013. The counsel also referred to a notification dated 14.02.2013 which is related to the "Continuous Empanelment Scheme", which provides that the revised CGHS rates shall be applicable for any fresh empanelment.

7. It was further urged that where a contract is non-statutory and purely contractual, the rights of the parties are governed only by the terms of the contract. The grievances raised by the petitioners are contractual in nature and required interpretation of the contractual terms and, therefore, remedy under Article 226 of the Constitution of India is not sustainable. Reliance was placed on decisions in ***State of Orissa & Ors. v. Narain Prasad & Ors.***: **(1996) 5 SCC 740** and ***NHAI v. Ganga Enterprises & Anr.*****: (2003) 7 SCC 410**. The respondents also referred to Clause 25 of the Tender Document which provides for an alternative dispute resolution mechanism of arbitration and contended that the petitioners had an alternative efficacious remedy and therefore proceedings under Article 226 of the Constitution of India were not maintainable. Reliance was placed on ***M/s Bisra Stone lime Co. Ltd. v. Orissa State Electricity Board & Anr.*****: AIR 1976 SC 127** and ***Smt. Rukmanibai Gupta v. The Collector, Jabalpur*****: AIR 1981 SC 479**.

8. The aforesaid contentions were disputed by the petitioners and it was contended that the action of the Government, even in contractual matters, must satisfy the test of reasonableness being an action of the 'State'. Reliance was placed on a decision of this court in ***South Delhi Distributors v. Govt. of NCT of Delhi & Anr.*****: W.P. (C) No.11847/2009, decided on 15.12.2009**.

9. The petitioners contended that the availability of alternative remedy did not bar the invocation of Writ jurisdiction of this Court, as the impugned OM was arbitrary and illegal. Reliance was placed on decisions in ***Union of India & Ors. v. Tantia Construction Pvt. Ltd.*****: (2011) 5 SCC 697** and ***Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd. & Ors.*****: (2003) 2 SCC 107**.

Discussion and conclusion

10. In view of the aforesaid, the principal controversy to be addressed is whether the reduction in the CGHS rates for treatment of Angioplasty as specified in the impugned OM dated 07.02.2013 is arbitrary and unreasonable? It is also necessary to consider whether the reduction in the CGHS rates as notified constitutes the breach of MoAs entered into by the Government with various hospitals including the petitioner hospitals and whether the present petition is maintainable.

11. Insofar as the respondents' contention, that the present proceedings are not maintainable as the issue involved relates to contractual arrangement between the petitioner hospitals and the Government, is concerned, the same is not sustainable. It is trite law that Article 14 of the Constitution of India strikes at arbitrariness in State's action. Thus, all decisions of the State are amenable on the touchstone of Article 14 of the Constitution of India. Indisputably, in cases relating to contractual arrangement the latitude and discretion available to the State is vide and the judicial review of such discretion is extremely limited. However, in cases where it is shown that the decision of an authority or State is not informed

by reason or is based on no material at all, the same would be liable to be struck down as falling foul of Article 14 of the Constitution of India. The Supreme Court in the case of ***Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors***: **AIR 1990 SC 1031** had observed as under:-

> ".....Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable."

12. It is also relevant to refer to the decision of the Supreme Court in ***Abl International Ltd. & Anr v. Export Credit Guarantee*: (2004) 3 SCC 553.** The supreme Court summarized the position as to maintainability of a writ petition in contractual matters as under:

> "From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition :-
>
> (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
>
> (b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
>
> (c) A writ petition involving a consequential relief of

monetary claim is also maintainable."

13. The Supreme Court also referred to its earlier decision in ***Kumari ShriLekha Vidyarthi & Ors. v. State of U.P.& Ors.***: **1991 (1) SCC 212** and observed as under:

> "It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent."

14. Insofar as the claim that revision in CGHS rates constitutes breach of MoA is concerned, the same needs to be considered in context of the nature and the substratum of the MoA. It is necessary to bear in mind that the Government invited tenders and entered into MoAs with various hospitals for the purpose of accepting them as service providers to the beneficiaries of CGHS. Under the CGHS, medical care facilities are provided to Central Government employees and pensioners and certain other categories of beneficiaries as notified by the Central Government from time to time. The Government invited bids from private hospitals, eye centres, dental clinics and imaging centres in order to ensure that medical services under the CGHS are available to the beneficiaries of CGHS. The bid process was divided into two parts – "technical bid" and "commercial bid". The technical bids were examined in the first instance. Thereafter, the

commercial bids, of those bidders who were found to be eligible and fulfilling the technical criteria, were opened. The bid document provided a mechanism for approval of the maximum rates at which treatment would be offered by the respective hospitals. Essentially, the lowest rates submitted by the bidders were contemplated to be notified as approved rates/CGHS rates. All hospitals seeking empanelment were required to accept the approved rates by communicating their acceptance by a letter. The private hospitals selected for empanelment were also required to enter into a MoA. The essential object of empanelling the hospitals was to accept them as service providers. The approved rates were to serve as the maximum rate that could be charged by the hospitals for providing their services.

15. Paragraph 15 of Tender document provided that the CGHS rates would be valid for a period of two years and extendable by another year with mutual agreement. The said paragraph is relevant and is quoted below:-

> "15. **VALIDITY OF CGHS RATES**
> The rates shall be valid for two years and is extendable by another year with mutual agreement.
> The empanelled institutions shall not charge more than CGHS rates."

16. The Government on its part agreed that the bills for the treatment provided by empanelled hospitals would be paid within a period of 10 working days.

17. The MoA (format of which was enclosed with E-tender document) expressly provides for the obligations of empanelled hospitals to charge approved rates. Article 6 of the MoA is relevant and is quoted below:-

"6. **APPROVED RATES TO BE CHARGED**

The Hospital shall charge from the CGHS beneficiary as per the rates for a particular procedure / package deal as prescribed by the CGHS and attached as Annexure (rate list), which shall be an integral part of this Agreement. The rates notified by CGHS shall also be available on web site of Ministry of Health & F.W. at www.mohfw.nic.in

The package rate will be calculated as per the duration specified in the tender document under the 'treatment requirements'. No additional charge on account of extended period of stay shall be allowed if that extension is due to infection on the consequences of surgical procedure or due to any improper procedure and is not justified.

The rate being charged will not be more than what is being charged for same procedure from other (non-CGHS) patients or institutions. An authenticated list of rates being charged from other non-CGHS institutions if available will also be supplied to CGHS within 10 days of this Agreement.

The procedure and package rates for any diagnostic investigation, surgical procedure and other medical treatment for CGHS beneficiary under this Agreement shall not be increased during the validity period of this Agreement. The Hospital agrees that during the In-patient treatment of the CGHS beneficiary, the Hospital will not ask the beneficiary or his attendant to purchase separately the medicines / sundries / equipment or accessories from outside and will provide the treatment within the package deal rate, fixed by the CGHS which includes the cost of all the items. Appropriate action, including removing from CGHS empanelment and / or termination of this Agreement, may be initiated on the basis of a complaint, medical audit or inspections carried out by CGHS terms / appointed TPA."

18. The MoA also includes provisions for submission of bills, medical audit of the bills and processing of claims.

19. A plain reading of the Tender Document and the MoA clearly indicates that, in substance, private hospitals were empanelled to accept them as service providers from whom medical treatment could be availed of by the beneficiaries of CGHS at approved rates. The approved rates formed an integral part of the MoA and the empanelled hospitals were obliged to provide treatment at the approved rates. However, notifying the approved rates was only for the purposes of specifying the maximum rates that could be charged by the empanelled hospitals. It is difficult to accept that the same in any way fettered the Government from revising the approved rates from time to time. The approved rates essentially represented the payment that Government was willing to pay for the medical services rendered by a hospital. Although the empanelled hospitals were obliged not to charge above the approved rates, it was always open for the empanelled hospitals to exit the panel, if they were not willing to accept the approved rates. As indicated earlier, the substratum of arrangement between the empanelled hospitals and the government was to set up a framework within which private hospitals could provide medical services to the CGHS beneficiaries. Given the substratum of the arrangement, it is difficult to accept that the Government was obliged or committed in any manner not to revise approved rates or that the empanelled hospitals were obliged to render services at rates not acceptable to them. The empanelled hospitals are obliged to provide treatment at the rates accepted by them. However, if the rates were revised by the Government which were not

acceptable to the empanelled hospitals, they were at liberty to discontinue their services and seek dis-empanelment. This was expressly provided under paragraph 24 of the Tender Document, which reads as under:-

> "24. **EXIT FROM THE PANEL**
>
> The Rates fixed by the CGHS shall continue to hold good unless revised by CGHS. In case the notified rates are not acceptable to the empanelled Private Hospital, or for any other reason, the Private Hospital no longer wishes to continue on the list of empanelled Private Hospital, it can apply for exclusion from the panel by giving three months notice and by depositing an exit fee of Rs Ten thousand."

20. It is well settled that an agreement must be read as a whole. The plain reading of the MoA clearly indicates that even though a mechanism for fixing the rates for treatment had been specified under the Tender Document, Government would, nonetheless, have the discretion for fixing rates which it considered reasonable; it was open for the hospitals to accept those rates and provide the services or decline to do so.

21. In my view, the contention that Government was bound to accept the rates as initially fixed is not sustainable, as it would not be in conformity with the substratum of the arrangement/agreement which, as indicated above, provided for empanelment of the hospitals to render medical services; indisputably, neither party was obliged to continue rendering service or continue availing of the services at rates which were not acceptable to the them.

22. In view of the aforesaid, the contention that in terms of the agreement, Government was constrained not to revise approved rates, is not sustainable. The learned counsel for the petitioners, also did not press the contention that downward revision of the rates was in breach of the MoA but focused her submissions to urge that downward revision of rates was arbitrary and unreasonable; the principal contention urged by the petitioners was that the revised rates for the treatment of Angioplasty were arbitrary and unreasonable and without any application of mind.

23. It was contended on behalf of the respondents that the decision to revise the ceiling rates for Coronary Angioplasty were based on the technical recommendation from the Director General, Health Services in consultation with expert cardiologists. It was further contended that the same being a matter of policy did not warrant any interference by this Court under Article 226 of the Constitution of India.

24. It is well settled that Courts will not interfere in decisions taken by professionals within the scope of their authority unless it is found that the same is *ex facie*, arbitrary, unreasonable or violates any of the Constitutional guarantees. Therefore, the scope of inquiry in the present proceedings is limited to determining whether the decision is illegal, irrational or suffers from procedural impropriety. This Court is neither competent to examine the merits of the decision as regard to the rates to be charged for Angioplasty nor would it supplant its opinion over that of the experts. Having stated the same, it would be necessary to examine whether the decision of Government was based on any material at all.

25. It is relevant to note that there is no allegation that the rates submitted by the hospitals were unreasonably high on account of any cartelisation. On the contrary, the lowest rates for treatment of Angioplasty were approved by Government pursuant to the bids received in 2009 and were fixed at ₹50,000 in case of Coronary Angioplasty and ₹55,000 in case of Coronary Angioplasty with Balloon. The affidavit submitted by the Government pursuant to the order issued by this court on 31.07.2014, indicates that during the pendency of the present proceedings further bids had been called and pursuant to the bids, the Government had notified approved rates for various medical treatments. However, the Government had received representations from various hospitals with regard to various anomalies and therefore, the issue of rates had been referred to an expert committee. It is stated that the expert committee had examined the rates and made its recommendations. Insofar as Angioplasty is concerned, a rate of ₹92,000/- has been fixed. The Government also confirmed that several hospitals have accepted the declared rates and have executed their respective MoAs.

26. Given the wide difference between the rates as notified by the Government pursuant to the bids received in 2009, as well as in 2014 and in the rates as revised by the impugned OM on 07.02.2013, it is essential to examine the material which prompted the Government to issue the impugned OM. The minutes of the meeting annexed as Annexure R-3 to the counter affidavit filed on behalf of the respondents (in W.P.(C) No.1538/2013) indicates that a decision had been taken to revise the charges for direct Angioplasty to ₹50,000/- and for Angioplasty with

Balloon to ₹55,000/-. The relevant extract of the said minutes (singed on 11.12.2012) is quoted below:-

> "9. It was also decided during the discussion that CGHS has upgraded rate for procedure for direct angioplasty at present is very very high. Therefore the price for procedure for direct angioplasty should be fixed to Rs.50,000/- and price for angioplasty of balloon should be fixed upto Rs.55,000/-."

27. It is apparent from the above that the participants of the meeting which included Head of Department of Government Hospitals were of the view that the charges for Angioplasty procedure were very high. However, the minutes do not reflect any other material, which would substantiate the aforesaid view. In the circumstances, the respondents were called upon to produce the relevant file and the same was perused. The respondents were also unable to indicate any material which would substantiate the aforesaid decision. Surely, the decision to significantly revise the rates downward would require to be substantiated on the basis of some material which would indicate that the rates fixed earlier, on the basis of the lowest rates bid by the bidders, were unreasonable. However, it appears that the decision to revise the rates downward was based on unsubstantiated opinion and not on any material. It is also relevant to note that in 2014 the Government has recommended that the charges for the treatment in question be fixed at ₹92,000/-. In my view, the impugned OM would not be sustainable as it is not based on any material at all except a view expressed by certain doctors at a meeting.

28. In the aforesaid circumstances, the Government is directed to re-examine the revised CGHS rates as fixed by the impugned OM dated 07.02.2013. Experts may be called upon to substantiate their opinion with regard to the charges payable for Angioplasty and based on the said material the Government may take an informed view as to the rates to be charged for Angioplasty.

29. Having stated the above, it is necessary to clarify that the aforesaid decision would not necessarily imply that the hospitals would be entitled to raise invoices at enhanced rates, if any, in respect of treatment provided after 31.03.2013. The petitioners have pointed out that several hospitals had decided to withdraw from empanelment pursuant to the reduction in the approved charges for Angioplasty. It appears that several other hospitals accepted the revised rates and had provided the treatment at revised rates. Clearly, such hospitals would not, now, be entitled to raise revised bills or claim enhanced charges, if any. It is also relevant to note that MoAs were in force only for a period of two years. Clause 2 of MoA is relevant and is quoted below:-

> "2. **DURATION OF AGREEMENT**
>
> The Agreement shall remain in force for a period of 2 years or till it is modified or revoked, whichever is earlier. The Agreement may be extended for another year subject to fulfillment of all the terms and conditions of this Agreement and with mutual consent of both parties."

30. The term of the MOAs was extended till 31.03.2013 by the Office Memorandum dated 15.10.2012. Thus, the MoAs entered into between respondent and various hospitals had elapsed due to efflux of time. There

was no compulsion on any of the hospitals to continue to provide services after the MoAs had come to an end. However, it appears that MoAs were extended for further periods after 31.03.2013 and the same were accepted by certain hospitals. In the circumstances, it would not necessarily follow that all hospitals would be entitled to charge for the treatment of Angioplasty at enhanced rates if so approved by the respondent. Needless to mention that it would be open for the hospitals including the petitioners in W.P.(C) 1538/2013 & W.P.(C) 2688/2013 to make a claim, which would be considered by the respondent. If aggrieved, the hospitals shall also be entitled to invoke the agreed dispute resolution mechanism.

31. Accordingly, the petitions and pending applications are disposed of. No order as to costs.

VIBHU BAKHRU, J

JULY 09, 2015
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