

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **FAO(OS) No.50/2008**

% Date of Decision: 29th January, 2008

AIDS HEALTHCARE FOUNDATION-INDIA CARES
Appellant

! Through: Mr. Avijit Bhattacharjee, Advocate
along with Mr. Saumya Kundu,
Advocate
versus

\$ SECRETARY, DEPARTMENT OF LEGAL AFFAIRS & OTHERS
..... Respondent

^ Through: Mr. P.P. Malhotra, ASG, along with
Mr. Suresh Kait, Mr. Chetan Chawla
and Mr.Gaurav Sharma, Advocates

CORAM:

* **HON'BLE MR.JUSTICE MANMOHAN SARIN**

* **HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? yes

Manmohan Sarin, J. (ORAL)

1. Aggrieved by the order dated 14.1.2008 passed in I.A. No.477/2008 appellant has filed the present appeal under Section 9 of the Arbitration and Conciliation Act, 1996. Learned Single Judge by the impugned order held that it was not a fit case to grant interim injunction without giving an opportunity to the respondents to file their reply. Learned Single Judge granted four weeks' time to respondent to file reply and has kept the application for hearing

along with the main arbitration petition on 7th March, 2008.

2. Learned counsel for the appellant M/s AIDS Healthcare Foundation India Cares has submitted that the appellant is an NGO which has done commendable work for the health, care, prevention and treatment of AIDS. The focus of the appellant's activities had been in the North-East. The appellant had entered into an agreement on 4.12.2006 with National AIDS Control Organisation, Department of Health, Ministry of Health and Family Welfare (for brevity referred to as NACO) through the President of India. The agreement cites various activities and obligations of either party. It also contains an arbitration clause. The bone of contention between the parties is the Clause VI relating to the termination of agreement. The said Clause is reproduced below for the facility of reference:

“VI- Termination of Agreement

1) Any party may terminate this Agreement after giving three months notice to the other party at the address provided in this Agreement for correspondence or the address last communicated for the purpose and acknowledged in writing by the other party.

2) On such notice of termination being received by any party, AIDS Healthcare Foundation-India Cares shall intimate NACO about its ability to continue to provide treatment free of charge to the patients enrolled. If AIDS Healthcare Foundation – India Cares cannot continue to provide treatment free of charge, they shall give notice to the patients and NACO about this and refer the

patients to the nearest government hospital providing treatment for opportunistic infections and ART as directed by NACO. Further, upon such referral, AIDS Healthcare Foundation -India Cares shall forthwith forward a copy of all medical records of the patients to such hospital and to NACO or a person designated by NACO to receive such medical records. Thereupon, NACO will be responsible for ensuring that the patients continue to receive the drugs."

3. The appellant also relies on Clause IV of the agreement under the heading "Commencement" which is as under:

"Commencement

1) This Agreement shall become effective upon signature by both the Parties and certification of the site of the collaborative ART project as "designated ART Centre" by NACO as per clause 5 of part II of this Agreement. It shall remain in full force and effect for a period of three years thereafter."

4. It is common ground between the parties that the respondents vide a communication dated 26.10.2007 invoked clause VI (1) of the agreement and served three months' notice to the appellant for termination of the agreement referred to as the Memorandum of Understanding. The appellant received the notice on 1.11.2007 and the said factum is not denied. The three months' notice period is expiring on 1.2.2008. Learned counsel for the appellant submits that the action of the respondents is wholly arbitrary especially in view of the commendable services claimed to have been rendered

by the appellant. The appellant claims that there has not been any shortcomings or failures on its part and the termination in such circumstances is a mala fide exercise of power which cannot be done by the State. Learned counsel further submits that the Clause VI under the heading "Termination of agreement" has to be read with other Clause i.e. Clause IV relating to "commencement" which provides that the agreement shall remain in force for a period of three years. He submits that the termination which is without any cause and have extraneous and mala fide reasons cannot subjugate the provision with regard to enforcement or continuance of the agreement term of three years as the termination is without cause.

5. We have heard learned ASG in opposition who submits that the respondents have their own concerns about the non-performance by the appellant and the same would be stated in the reply to be filed before the learned Single Judge. We may mention that whether the appellant has committed any breach or not is a subject matter of merit of this case which is pending consideration before the learned Single Judge and cannot be seen at this stage. On perusal of the agreement dated 4.12.2006, we find that Clause VI of the same gives an unfettered and unequivocal right to either party to terminate the agreement by serving a three months' notice. This stipulation does not even provide that the termination is

restricted to an event of breach or of some contingency. It is an unfettered right available not only to the State but to the appellant also. The agreement also provides that during the period of notice the appellant shall continue to provide the services free of charge to the patients enrolled and if it is unable to do so, it would notify to the respondent who would make alternative arrangements. In these circumstances, we are of the view that at this stage without going into the merits or justification of the termination of the agreement, the respondents have exercised their right of termination of the agreement which has been conferred upon it under the said agreement. The remedy of the appellant, if any, may lie for breach of the agreement if it is so established by it. We do not find that the learned Single Judge has failed to exercise its discretion in holding that a case for grant of interim injunction was not made out in these circumstances. The prayer for interim relief has undoubtedly been denied subject to the consideration of the matter on merits after receiving the reply of the respondent. We, accordingly, do not find any merit in the appeal. Dismissed.

Manmohan Sarin, J.

Veena Birbal, J.

January 29, 2008
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