

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: March 05, 2013*

+ Arb.P.No.187/2012

THE NATIONAL TRUST, MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT Petitioner

Through Mr.Gautam Awasthi, Adv.

versus

ALEGION INSURANCE BROKING LIMITED Respondent

Through Mr.S.Ramamani, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The abovementioned petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of the Arbitrator to adjudicate the dispute between the parties in terms of the Memorandum of Agreement dated 7th March, 2008. The facts are given in para 1 to 5 of the petition. The same are reproduced here as under:-

“1. That the respondent had signed a Memorandum of Agreement (MoA) on 7th March, 2008 with the petitioner whereunder it agreed to undertake the services of a nodal agency to implement “Nirmaya Health Insurance Scheme” for specific persons with disabilities across the country. The said Memorandum of Agreement was signed pursuant to a proposal submitted by the respondent to the petitioner offering the said services in response to an advertisement issued in the “Hindustan Times” newspaper dated 01.01.2008.

2. That as per the terms of Clause 5 read with Clause 6 at page 3 of the MoA read the respondent were required

to enroll One Lac beneficiaries for which they were to be paid a sum equivalent to 10% of the premium to be paid to the insurer (ICICI Lombard). It was also stipulated that in case of enrollment of beneficiaries less than the stipulated numbers, the excess amount paid to the respondent shall be refunded to the petitioner at the closure of the agreement period.

3. That at the closure of February, 2009, the petitioner found that instead on One Lac beneficiaries, the respondent had enrolled only 36,153 beneficiaries. As per the MoA the petitioner had paid an advance of ₹10,00,000/- plus taxes.

4. That the petitioner vide its notice dated 28.01.2010 demanded a payment of ₹7,15,447/- (Rupees Seven Lacs Fifteen Thousands Four Hundred Forty-Seven Only) with interest thereon @ 15% per annum calculating from 08.03.2009 till realization of the said amount but despite service of notice the respondent failed to clear the full outstanding amount.

5. That the petitioner vide its letter dated 15th March, 2011 again demanded from the respondent an outstanding of ₹9,49,290/- (Rupees Nine Lacs Forty-Nine Thousands Two Hundred Ninety Only) as on 15.03.2011. However, the respondent paid a sum of ₹4,40,000/- by issuing five cheques for ₹88,000/- each in favour of the petitioner. After adjustment of the abovementioned amount there is a outstanding of ₹5,39,685/- as on 20.08.2011.”

2. Notice to the respondent was issued who has filed the reply. The case set up by the respondent is mentioned in paras 2 & 3 of the preliminary objections of the reply which read as under:-

“2. The respondent was engaged as a nodal agency by the petitioner to process the enrolment forms to be sent to the insurance company for availing benefit of the Niramaya scheme launched by the petitioner. As a pilot project, for the first 6 months, this scheme was launched only in 10 districts in the whole of India. The contract

was valid for 2 years and the respondent agreed to enroll 1 lakh beneficiaries subject to the availability of eligible persons and accordingly received Rs.10,00,000/- as per the MOU signed by the parties. The enrolment of beneficiaries was subject to availability of the eligible persons. The respondent set up offices in all the 10 districts and employed 10 personnel with a salary component of Rs.7500 per month per location to facilitate this project apart from other infrastructure investments investing a substantial amount. However, after 6 months as the eligible persons turned out to be substantially less, the scheme was made open to all over India and all the state level government agencies of the petitioner also sent the enrolment forms for Niramaya scheme to the respondent and the respondent was processing the forms, checking out the details, scanning the forms in paper and converted them into electronic data and sent them electronically to the insurance company. The insurance company sent the ID card and policy no. directly to the beneficiaries. Since the contract price was fixed based on the 10 districts the respondent appealed to the petitioner that the servicing cost has to be revised accordingly and also stated to the petitioner that a substantial investment/expenditure has been made. At the time of termination of contract by the petitioner, apart from the 36,153 applications for which policy numbers were given by the ICICI Lombard, the insurer of the scheme, the respondent had about 20,000 physical forms under process that were converted into electronic form and were to be sent to the insurance company. On termination of the contract, on oral instruction of Mr. Mohanty, the then Deputy Director – Program, of the petitioner, in good faith, the respondent handed over the 20,000 processed forms to the Spastic Society of Tamil Nadu at Chennai, a State Nodal Agency of the petitioner. This fact has been intimated to the petitioner vide letter of the respondent dated 26th February, 2010. The petitioner has conveniently is not referring to this fact and has alleged that there is a dispute and Rs.7,15,447/- is payable to the petitioner without ascertaining from its

own state level nodal agency. If this fact is ascertained from the Spastic Society of Tamil Nadu by the petitioner, there is no amount due and payable by the respondent to the petitioner and hence there is no dispute between the parties.

3. It is most respectfully submitted that this Court may appoint an arbitrator only if there is a real arbitrable dispute between the parties. By reading the reply dated 26th February, 2010 alongwith the legal notice of the petitioner dated 28th January, 2010, it is clear that the petitioner has encashed the cheques sent by the petitioner as final and full settlement implying accord and satisfaction. After encashing the cheques, after informing that they would confirm the number of forms handed over to the Spastic Society of Tamil Nadu, the petitioner has again reopened the dispute and as such no amount is payable to the petitioner by the respondent. The petitioner has not come to the courts with clean hands as the petitioner has suppressed the letter of the respondent in reply to the notice issued by the petitioner and on this ground alone, the petition is liable to be dismissed.”

3. I have heard the learned counsels for the parties. In reply to the notice dated 26th February, 2010, the respondent has given the commutation for the refundable amount. The details of the same are mentioned as under:-

“Amount received in advance	₹10,00,000
Add S.T. @ 12.36%	₹1,23,600
Total amount received	₹11,23,600
Less S.T. paid	₹1,23,600
Amount available	₹10,00,000
Serviced applications 56,000	₹5,60,000
Balance amount to be refunded	₹4,40,000”

4. The petitioner has not disputed having received the balance amount refundable by the respondent, though the petitioner had claimed the sum of

₹7,15,447/- which includes the service tax, interest and other damages and cost.

5. After having gone through the reply as well as commutation of the refundable amount, I am of the considered view that there is no dispute between the parties. Thus, the reliefs sought by the petitioner cannot be granted. The petition is accordingly dismissed. No costs.

(MANMOHAN SINGH)
JUDGE

MARCH 05, 2013/ka