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

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Judgment delivered on: 13.05.2016

+ **W.P.(C) 3150/2016**

ROMESH KUMAR WADHWA, PROPRIETOR

.... Petitioner

versus

**THE MINISTRY OF HEALTH &
FAMILY WELFARE & ORS**

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Garg and Mr Sanjay Gupta
For the Respondents : Mr Peeyoosh Kalra, Additional Standing Counsel with
Mr Shiva Sharma, Advocates for GNCTD.
Mr Jasmeet Singh for R -4/Union of India.
Mr Sangram S.Saran

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

W.P.(C) 3150/2016 & CM Nos.13487/2016(stay), 15651/2016(stay)

1. This writ petition is concerned with the e-tender bearing No.16_2008 dated 04.03.2016 for the supply of drugs and medicines to Department of Health and Family Welfare, Government of NCT of Delhi for the year 2016-2017.
2. The grievance of the petitioner is that in Annexure XV, there is a list of items with specifications, for which bids have been invited.

3. Before the tabular listing of the item, there are certain notes (a) to (l). The petitioner has a grievance with notes (b), (c) and (g). The said notes read as under:-

“b. Sitagliptin 100mg/Vildagliptin 100mg/Saxagliptin 5mg shall be considered equivalent for L-1 calculation; the demand of Gliptin shall be shifted to the item declared L-1 as per this equivalence.

c. Inj Insulin Aspart, Inj Insulin Glulisine and Inj Insulin Lispro shall be considered equivalent for L1 calculation; the demand of L1 shall be increased by adding the demands of the remaining two Insulin Injections.

g. For Surfactant Solution for intratracheal instillation, the L1 shall be derived on the basis of lowest price quoted per mg of phospholipids.”

4. To be clear, the petitioner's grievance is that in note (b), three drugs have been mentioned, namely, Sitagliptin, Vildagliptin and Saxagliptin and that as per the note, these three drugs are to be considered equivalent for the L-1 calculation. According to him, this cannot be done because the three drugs are entirely different. The counter-affidavit filed on behalf of respondent Nos.2 & 3 specifically deals with this issue. Paragraph 6 reads as under:-

“6. It is further submitted that in the year 2013, the EML Committee recommended the procurement of any one out of the three Gliptins namely, Sitagliptin, Vildagliptin and Saxagliptin, whichever was found to be most cost effective as Gliptins are costly in nature. The Committee further suggested equivalence for comparison based on daily dosing pattern. The Government of NCT of Delhi has thus been procuring Gliptin on such same principle and administering

the same to the patients in the hospitals under its authority and supervision.”

5. From the above extract, it is evident that the EML Committee had recommended the procurement of any one, out of the three Gliptins, whichever was found to be most cost effective, as Gliptins are costly in nature. The Committee had suggested equivalence for comparison based on the daily dosing pattern. We may point out that the constitution of the Committee for selection of essential medicines for Hospitals under the Government of NCT of Delhi comprises of 24 doctors. The constitution of the said Committee is as under:-

“Committee for Selection of Essential Medicines for Hospitals
under Government of NCT, Delhi

- | | | |
|----|---|----------|
| 1. | Professor Ranjit Roy Chaudhury
Advisor to Minister, Health & Family Welfare
Govt. of NCT of Delhi | Chairman |
| 2. | Dr. N.V. Kamat
Director Health Services
Government of NCT of Delhi | Member |
| 3. | Sh. S.B. Shashank
Drug Controller, Government of NCT of Delhi
or his nominee | Member |
| 4. | Dr. S.K. Bhattacharya
Professor & Head, Department of
Pharmacology,
University College of Medical Sciences,
Government of NCT of Delhi. | Member |

5. Dr. A.P. Dubey Member
Director Professor & Head,
Department of Paediatrics, Maulana Azad
Medical College & Associated Hospitals, New
Delhi-2.
6. Dr. B. Ghosh Member
Director, Guru Nanak Eye Center New Delhi-2,
Government of NCT of Delhi.
7. Dr. Vijay Kumar Garg Member
Director Professor & Head, Department of
Dermatology,
Maulana Azad Medical College &
Associated Hospitals, New Delhi-2.
8. Dr. Anju Garg Member
Director Professor, Department of
Radiodiagnosis, Maulana Azad Medical
College & Associated Hospitals, New Delhi-2.
9. Dr. Promila Gupta Member
Consultant Ophthalmology & Medical
Superintendent, Deen Dayal Upadhyay
Hospital, Government of NCT, Delhi.
10. Sh. P.K. Jaggi Member
Asst. Drugs Controller
Government of NCT, Delhi.
11. Dr. B.K. Jain Member
Director Professor & Head,
Department of Surgery, University College of
Medical Sciences & Guru Teg Bahadur
Hospital, GNCT, Delhi.
12. Dr P. Kar Member
Director Professor, Department of Medicine,
Maulana Azad Medical College & Associated
Hospitals, New Delhi-2.

13. Dr. Ashok Khurana
Medical Superintendent,
GB Pant Hospital, New Delhi-2. Member
14. Dr. Puneeta Mahajan
Consultant, Obstetrics & Gynaecology
& Medical Superintendent,
Sanjay Gandhi Memorial Hospital, GNCT,
Delhi. Member
15. Dr S.V. Madhu
Professor & Head, Department of Medicine,
University College of Medical Sciences &
Guru Teg Bahadur Hospital, GNCT, Delhi. Member
16. Dr. Lalit Maini
Professor, Department of Orthopaedics,
Maulana Azad Medical College
And Associated Hospitals, New Delhi-2. Member
17. Dr. J.C. Passey
Director Professor, Department of ENT,
Maulana Azad Medical College
And Associated Hospitals, New Delhi-2. Member
18. Dr. Sudha Prasad
Director Professor, Department of Obstetrics &
Gynaecology, Associated Hospitals, New
Delhi-2. Member
19. Dr. Rajpal
Medical Superintendent, Guru Teg Bahadur
Hospital, Government of NCT of Delhi. Member
20. Dr. Kishore Singh
Director Professor & Head, Department of
Radiotherapy, Maulana Azad Medical College
& Associated Hospitals, New Delhi -2. Member

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| 21. | Dr U.C. Verma
Director Professor & Head, Department of
Anaesthesia,
Maulana Azad Medical College &
Associated Hospitals, New Delhi-2. | Member |
| 22. | Dr. Mahesh Verma
Director, Maulana Azad Institute of Dental
Sciences,
New Delhi -2 | Member |
| 23. | Dr. Vijoy Kumar
Additional Director
Central Procurement Agency,
Directorate of Health Services, GNCT of Delhi. | Member |
| 24. | Dr. Vandana Roy
Professor, Department of Pharmacology,
Maulana Azad Medical College & Associated
Hospitals, New Delhi-2.” | Member
Secretary |

6. From the constitution of the said Committee, it is evident that it comprises of Doctors from different specialities of medicine and also includes, as noted above, the Controller and the Assistant Drug Controller. When an expert body comprising of specialists in the field of medicine have suggested that the three Gliptins can be treated as equivalent on the basis of their daily dosing pattern, this Court would not interfere with such a judgment.

7. Insofar as note (c) is concerned, the same argument has been raised by the learned counsel for the petitioner that the three kinds of insulin injections cannot be considered equivalent for L-1 calculation. We note that the response of the respondent Nos.2 & 3 is given at paragraph 5.14 of the said counter-

affidavit and it reads as under:-

“5.14 In response to the contents of paragraph 5.14, it is submitted that it has been decided after due deliberation by the EML Committee that any one out of the three newer Insulin Aspart, Insulin Glusin and Insulin Lispro) shall be used in the healthcare facilities under the supervision of the Government of NCT of Delhi, the thousands available in the marketplace be procured for use in the health facilities under the Department of Health and Family Welfare. This committee is known as the EML Committee and the list of medicinal drugs thus selected by it is known as the EML i.e. Essential Medicine List.”

8. The same Committee has opined that any of the three newer insulins, namely, Insulin Aspart, Insulin Glusin and Insulin Lispro can be used in the health-care facilities under the supervision of the Government of NCT of Delhi and whichever is the most cost effective ought to be considered. Once again, this is a decision of an Expert Committee and this Court does not sit in judgment over such a decision.

9. With regard to note (g) also, it is the Expert Committee's recommendation, which has been put in note (g) that for Surfactant Solution for intratracheal instillation, L-1 should be derived on the basis of the lowest price quoted per milligram of phospholipids.

10. We have no material before us to indicate that this decision of the expert body is, in any way, arbitrary or *mala fide*.

11. For all these reasons, we find no merit in the present writ petition. The same is dismissed.

BADAR DURREZ AHMED, J

May 13, 2016
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SANJEEV SACHDEVA, J

