IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5236 of 2013
Date of Decision:24.09.2015

Dr. Nitin Aggarwal …Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. Naresh Prabhakar, Advocate for the petitioner.

Mr. B.S. Bhatia, Advocate for respondents No.2 to 4.

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HARINDER SINGH SIDHU, J.

The petitioner is a consultant Urologist and Surgeon (M.B.B.S., M.S. (Surgery), MCH). He is the proprietor of Shri Balaji Super-Speciality Hospital, Ludhiana, which is a fully equipped super speciality Hospital for Urological services. He is aggrieved of the action of the respondents in rejecting his claim for empanelment of his hospital with ESIC Model Hospital, Ludhiana for Urological Services.

Respondent No.2 invited applications from Government/ Semi-Government/ Private Hospitals for empanelment of centres for super speciality treatment and for the facilities not available in ESIC Model Hospital, Ludhiana on cashless basis at CGHS rates in a sealed envelope. The

petitioner applied for empanelment within the stipulated time mentioning that the bed strength of the hospital is sixteen and there are four beds in ICU and that the hospital has modern up-to-date facilities. An Inspection Committee comprising of specialists visited the hospital on 31.03.2011 and after inspection expressed satisfaction with the facilities for the Uro- Surgery and recommended that the petitioner's hospital may be considered for empanelment for urological services not for renal transplant after revisit of the committee after one month. It was noted that as at the time of the visit of the Committee the Modular O.T. and ICU were under renovation for providing better facility, which would be completed within one month, hence, the Committee would re-visit after one month.

The Committee re-visited the hospital on 30.08.2011 by which time, the renovation work had been completed. Though everything else was found in order, the second inspection committee did not recommend the empanelment of the hospital on the ground that the bed strength of the hospital was eleven whereas it was required to be at least fifteen. Because of the report of the second inspection committee pointing out the deficiency in the number of beds, a communication dated 02.11.2011 (Annexure P-4) was addressed to the petitioner stating that the hospital did not qualify for tie up because it did not have the required bed strength of fifteen beds for a single

speciality.

The petitioner appealed against the aforesaid order stating that the second inspection committee had not taken into consideration the four ICU beds that were available, while compiling its report and if the same were added to the beds in the ward, which were thirteen in number then the bed strength would be seventeen beds, which was more than the minimum requirement of fifteen beds. However, the said plea yielded no positive response.

The petitioner thereafter submitted a representation to the Director General, ESIC requesting that a further inspection be carried out to verify the bed strength at the expense of the petitioner but there was no response to this representation as well.

Aggrieved, the petitioner filed the present writ petition.

In the written statement, the non-empanelment of the petitioner was justified on the ground that the petitioner did not qualify the condition of fifteen minimum beds.

When this case came up for hearing on 11.11.2014, respondent No.2 was directed to make an inspection and satisfy himself whether requisite number of beds, including beds in the ICU, exist for empaneling the petitioner for ESI. Pursuant to the direction, an inspection was carried out on 21.11.2014. The

inspection committee submitted its finding in the form of visit note. As per which, the findings in relation to the bed strength were as follows:

Floor of the hospital	Area	No. of beds
Ground Floor	General Ward (male)	03 (Three)
	Private rooms	05 (Five)
	General Ward (Female)	02 (Two)
	General Ward	03 (Three)
Second Floor	Recovery and ICU	4 (four)

Hence, on the day of inspection, the hospital had 17 beds out of which 04 (four) have been placed in an area earmarked as Recovery and ICU ward but the following points need special consideration:-

1. This recovery and ICU area has only one ventilator available for critical care.

2. The total beds are being used jointly for Gyanae patients as well as Urology patients with no clear cut demarcation hence it is not clear as how many beds are earmarked for the single specialty applied for.

Comment on the eligibility for empanelment.

The committee has noted that Dr. Nitin Aggarwal had applied for the empanelment with E.S.I.C. Model Hospital, Ludhiana in January, 2011. As per the terms of that Expression of interest (Annexure-3), minimum 15 beds were required for empanelment of the centre for a single speciality.

Presently, we follow the CGHS guidelines regarding criteria of bed strength for

empanelment and these are as following: ***Hospital having less than 100 beds can apply as a speciality hospital provided they have at least 25 beds earmarked for each specialty applied for with at least 15 additional beds. Thus, under this category a single speciality hospital would have at least 40 beds. However, under this category a maximum of three specialities are allowed. Intensive Care Unit with minimum ten beds. (Minimum 3 beds who apply for single specialty. The total bed strength is inclusive of ICU beds)***.

At present, E.S.I.C. Model Hospital, Ludhiana is empanelling centres for single specialty if the centre has minimum of 40 beds including at least three beds in ICU. Hence, the committee is not clear as to which EOI is to be followed to assess eligibility of the centre i.e. the terms of the EOI of January 2011 or the latest EOI.

Additionally, the Hon'ble Court should be informed that we do not empanel individual doctors (as suggested by its order date 11.11.2014) but individual centres.

II. REGARDING OTHER PARAMETERS REQUIRED FOR EMPANELLING THE HOSPITAL: The committee has noted the following:

a. There is no in-house catering/kitchen facility for patients but the management of the centre stated that they will outsource the kitchen services.

b. Regarding the provisions of emergency

services the committee was told that Dr. Nitin Aggarwal and his wife Dr. Vinita Aggarwal (gynecologist) stay within centre premises and they attend to all emergencies.

c. The committee was introduced to Dr. Parminder Singh reportedly anesthetist of the centre.

d. The centre has a well equipped operation theatre and the committee was also shown record of various advanced urological surgeries been done.

e. The committee was given a PPCB certificate of the hospital which had expired on 31/03/2014 and the committee was assured that the centre had latest PPCB certification applied online. However, documentation for the same was not available at the time of the visit.

III. The new guidelines with respect to numbers of beds required for empanelling the hospitals have been implemented since out EOI taken out in September, 2011 (as per CGHS guidelines). At least three EOIs have been advertised by ESIC Model Hospital, Ludhiana since then on the basis of CGHS guidelines."

Relying on the aforesaid finding, learned counsel for the respondents has argued that the petitioner hospital does not fulfill the requirement of minimum number of twenty five beds, which is required after enforcement of guidelines of June, 2013.

On 09.01.2014, learned counsel for the petitioner sought time to find out as to whether any single speciality

hospital having fifteen beds has been empaneled as ESI approved hospital after the June, 2013 guidelines. Though the petitioner could not point out any such instance but learned counsel for the petitioner has placed on record instances where the empanelment of hospitals with beds less than 25 for a single speciality has been continued by ESIC despite the June, 2013 guidelines. Nor have they have not been asked to upgrade the number of beds. In this regard, the following four instances where the existing empaneled hospitals do not have beds as per the June, 2013 guidelines were pointed out:

> *"a) Urology Department of Mohan Dai Oswal Cancer Hospital has only 17 beds (15 beds in wards and two beds in ICU) as old guidelines mandates 15 beds and new guidelines mandates 25 beds.*
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> *b) Mohan Dai Cancer Hospital has further empanelled of 10 specialties mandating 250 beds in total but they have 154 beds in total in correspondence with the previous guidelines i.e. 15 beds per specialty.*
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> *c) Ludhiana Medi way hospital has been empanelled of 14 specialities mandating 350 beds in total as per new guidelines but they have 112 beds (8 beds per specialty) in total i.e. not even in correspondence with the previous guidelines i.e. 15 beds per specialty.*
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> *d) Deep Kidney care had 15 beds as mentioned in their 2011 application and even today they have 15 beds but just to show fulfillment of new guidelines they have included procedural tables (Dialysis) and*

beds in adjacent children hospital on the other side of the road."

I have heard Ld. Counsel for the parties.

The petitioner applied for empanelment on 19.2.2011. At that time the requirement of the bed strength was fifteen. The first Inspection Committee comprising of specialists which visited the hospital on 31.03.2011, after being satisfied with the facilities for Uro- Surgery recommended that the petitioner's hospital may be considered for empanelment for urological services not for renal transplant. A revisit of the committee, after one month was recommended in view of the renovation of Modular O.T. and ICU which was then going on. The Committee which re-visited the hospital on 30.08.2011 found everything in order but did not recommend empanelment on the ground that the bed strength of the hospital was eleven instead of the required minimum of fifteen.

Vide order dated 11.11.2014 of this Court respondent No.2 was directed to carry out an inspection and satisfy himself whether requisite number of beds, including beds in the ICU, exist for empaneling the petitioner for ESI. Pursuant to this direction, an inspection was carried out on 21.11.2014. As per the visit note of this committee "*the hospital had 17 beds out of which 04 (four) have been placed in an area earmarked as Recovery and ICU ward."* The Committee noted that the petitioner had applied for empanelment with E.S.I.C. Model

Hospital, Ludhiana in January, 2011. As per the terms of the Expression of Interest, minimum 15 beds were required for empanelment of the centre for a single speciality. But subsequently CGHS guidelines were revised as per which the minimum requirement was 40 beds for a single speciality hospital. The revised CGHS guidelines of 40 beds had been implemented in the three EOI issued thereafter. The committee was not clear as to whether the hospital was to be assessed as per the EOI of January 2011 or the latest EOI.

The question for consideration thus is whether the petitioner's case would be governed by the requirements at the time of the application in January 2011 or the requirements introduced subsequently.

It is clear that there was no deficiency of bed strength pointed out at the time of the first inspection on 31.03.2011, only a revisit was recommended in view of the ongoing renovation of the OT and ICU. At the revisit on 30.8.2011, though the petitioner had the requisite number of beds, but as the committee did not take into account the four ICU beds, it made a report that the hospital had eleven beds. The third Committee which visited the hospital on 21.11.2014 pursuant to the directions of this Court, found that the hospital had seventeen beds.

From the above, it is clear that the petitioner fulfilled the eligibility condition of minimum of 15 beds at the time of

application and was recommended for empanelment. The second inspection committee had not taken into account the four ICU beds and hence its report stating that the petitioner had only eleven beds was incorrect. Resultantly, the petitioner was wrongly denied empanelment, based on a faulty report. It needs to be noted that it is not the respondent's case that the ICU beds are not to be taken into account in calculating the number of beds. Further, it is not the respondent's case that after the implementation of the new guidelines, the empanelment of the already empaneled hospitals which fall short of the requirements of the new guidelines have been revoked or that they have been asked to enhance the number of beds as per the latest requirement.

Accordingly, the petition is allowed. The order dated 5.3.2012 rejecting the empanelment of the petitioner's hospital is quashed. The respondents are directed to consider the case for empanelment of the petitioner's hospital as per the requirements specified in the EOI of January, 2011 pursuant to which the petitioner had applied.

(HARINDER SINGH SIDHU)
JUDGE

24.09.2015
Atul