

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18497 of 2018

ORDER:

This Writ Petition is filed challenging the proceedings of the 1st respondent dated 26.04.2017 in proceedings Rc. No.4894-II/P4/2015.

Heard Sri B.Chandrasen Reddy, learned counsel for the petitioner and learned Government Pleader for Medical and Health appearing for respondents 1 to 3.

The only issue involved in this case what is the effective date for the purpose of treating the period of seven years for commencement of the facility.

Learned counsel for the petitioner by placing reliance on the Terms and Conditions Precedent in Concession Agreement dated 16.07.2010, submits that the agreement shall enter into force and effect on the date of its execution by both parties and shall remain in effect for a period of seven years starting from the actual commissioning date occurring last, unless terminated early in accordance with its terms. He submits that the Concession Agreement for providing of advance radiology services in the hospitals and according to 4.1 of the terms and conditions, the actual commissioning date occurring last. He submits that the last actual commissioning date for the last facility at Visakhapatnam started on 19.09.2011, therefore, the period of seven years comes to an end by 19.09.2018. He submits that the 1st respondent issued proceedings dated 08.11.2017 in respect of Visakhapatnam facility. He submit that according the proceedings of the 1st respondent dated 08.11.2017, the lease period expires by 19.09.2018, but whereas the respondents

issued the impugned proceedings treating the actual commencement of date as 06.06.2011 and held that concession agreement expired by 05.06.2018 and petitioner was asked to vacate the premises.

On the other hand, learned Government Pleader for Medical & Health submits that in respect of the petitioner, as per Article 10.5.3 of the Concession Agreement for Advanced Radiology Services, dated 16.07.2010 the actual commencement of advanced radiology services was on 05.06.2011 and same expired by 06.06.2018. He submits that as per the definitions provided under Appendix 1, the Actual Commissioning Date is defined in Article 10.5.3 of the Concession Agreement.

In this case, it is to be seen that the Actual Commissioning date of the facility by the petitioner in respect of Mahatma Gandhi Memorial Hospital of Warangal is 05.06.2011 and there is no dispute with regard to the said date. It is also not in dispute that the Concession Agreement in respect King George Hospital at Visakhapatnam commenced on 19.09.2011 and since the said facility occurred last, the period of seven years expired by 19.09.2018.

Article 10.5.3 of the Appendix 1 of the Concession Agreement provides the definition of the 'Actual Commissioning Date', which reads as follows:

The "Actual Commissioning Date" is applicable to any given Facility shall be the earlier of the following dates:

- (a) The date of the notice of contractual completion in respect of said Facility; or,
- (b) The expiry of the ten (10) day period set out above in respect of the said Facility, in the event if the Grantor fails to conduct any inspection of said Facility and does not issue a notice informing the concessionaire of the failure of contractual completion for said Facility within the said ten (10) day period.

In the course of the joint inspection, the Grantor and the Concessionaire shall draw up a list of minor defects and the schedule in which such minor defects shall be remedied by the Concessionaire,

it being agreed that all such minor defects shall have been remedied within three (3) months of the Actual Commissioning Date for said Facility, or such later date as may be mutually agreed between the Parties. Failure to have remedied all defects within the agreed schedule shall constitute a Concessionaire Event of Default.”

As per sub-clause (a) of the aforesaid definition, the Actual Commission Date is the date on which the notice of contractual completion in respect the facility was issued. In the counter affidavit, it is stated that as per Clause 10.5.2, the Medical Healthcare Private Limited has sent a notice dated 21.05.2011 to the Director of Medical Education, Andhra Pradesh, Hdyyerabad stating that the site at MGM Hospital, Warangal was ready for commissioning from 27.05.2011 and has requested to see that the site is formally inspected to start the operations. The first invoice raised by the petitioner at the Facility in MGM Hospital, Warangal on 01.06.2011 and the invoice clearly shows that radiology services started on 6th June, 2011 which also proves that the commissioning of the facility at MGM Hospital was even prior to 06.06.2011. The Superintendent, MGM, Warangal has inspected the site on 07.06.2011 and has informed the Director of Medical Education, Andhra Pradesh, Hyderabad that the site was ready and as per the Article 10.5.3, the Actual Commissioning date application to any given facility shall be the date of notice of contractual completion in respect of the said facility or the expiry of 10 day period set out for inspection by the grantor i.e., Director of Medical Education/Hospital authorities, which ever is earlier. It is to be seen that as the notice was served on 21.05.2011 by the petitioner which as per clause 10.5.3 becomes the Actual Commissioning date for this facility i.e., MGM Hospital, Warangal. As per clause 4.1 of the agreement, it only means that the agreement remains in force till 19.09.2018 i.e, till 7 year

period for the Visakhapatnam facility is over, but it does not mean that the commissioning of facility at MGM Warangal is also on 20.09.2011. In this case, admittedly, the 1st respondent issued proceedings dated 26.04.2018 informing the petitioner that the lease period expires by 05.06.2018. The definition of Actual Commissioning Date under Article 10.5.3 read with Article 4.1 of the Agreement, the period of lease comes to an end by 06.06.2018 only. That apart, the issue involved in this Writ Petition pertains to contractual obligations between the parties and this Court is not inclined to entertain writ petition by exercising the power of judicial review under Article 226 of the Constitution of India, as petitioner has other alternate efficacious remedies.

In view of above facts and circumstances, I do not see any merit in the Writ Petition and same is liable to be dismissed and accordingly dismissed. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

03-07-2018
kvs

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