

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.31538 OF 2018

Dated:20.03.2019

Between:

M/s. Medwin-NP Dialysis Units,
A joint venture between M/s. Nephrocare
Health Services Private Limited and
Medwin Hospitals, rep., by Vikram Vuppala,
Address 1-8-702/33/48, Padma Colony,
Nalla Kunta, Hyderabad and another .. Petitioners

And

Union of India, rep., by Secretary,
Department of Labour & Employment,
Rafi Marg, New Delhi and others .. Respondents



This Court made the following:

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ORDER:

Heard learned counsel for the petitioners, Sri N. Rajeswara Rao, learned Standing Counsel for the Central Government and Sri B.G. Ravinder Reddy, learned Standing Counsel for the Employees' State Insurance Corporation (ESIC) Super Specialty Hospital appearing for respondents 2 to 4.

2. An agreement was entered into on 12.06.2012 between the petitioners and the ESIC Super Specialty Hospital. By this agreement, petitioners are required to set up a dialysis unit and provide dialysis services. Alleging deficiency in service, notice was issued on 05.06.2018. Another notice was issued on 11.07.2018 and by notice, dated 04.08.2018, impugned in the Writ Petition, the contract was terminated.

3. The primary ground of challenge against the said termination is that the said termination violates Clause 1-D of the Memorandum of Understanding.

4. According to learned counsel for the petitioners, pointing out defects in the performance of services of the petitioners, notice should be issued for corrective measures with 90 days time and if corrective measures are not taken, the contract can be terminated by either party with 180 days written termination and this time schedule was not observed while terminating the contract.

5. Learned Standing Counsel does not dispute the requirements of Clause 1-D of the Memorandum of Understanding, but only points

out that extreme step was taken as non-compliance of the instructions were severely affecting patients and therefore in the larger interest of the patients, a decision for termination was taken.

6. The relationship between the petitioners and the respondent – ESIC is governed by the contract and therefore any decision taken to terminate the contract has to be strictly in accordance with the terms of contract. As per Clause 1-D of the Memorandum of Understanding, there must be 90 days notice pointing out the deficiencies and to take corrective measures. If no corrective measures are taken, the respondent – ESIC is entitled to terminate the contract by giving 180 days written termination notice. These two clauses are required to be complied before terminating the contract and they are not complied in the instant case. Though the reasons assigned may be valid, but having regard to the specific clause in terms of the contract, the respondent – ESIC could not have taken such course contrary to the terms of contract and therefore the same is *ex facie* illegal.

7. The Writ Petition is accordingly allowed and the notice impugned in the Writ Petition is set aside. However, it is open to the respondent – ESIC to take appropriate course of action as warranted in terms of the agreement and continuation of services of the petitioners are strictly in accordance with the terms of agreement. There shall be no order as to costs. Pending Miscellaneous Petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:20.03.2019

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