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

Date of decision: 05 November, 2019

+ W.P.(C) 3254/2018 and CM No. 12843/2018

INDER LAL MARWAH

..... Petitioner

Through: Dr.(Maj.) J.C. Vashista,
Ms. Yashika Sood and Mr. Madan Lal Rathore,
Advs.

versus

SECRETARY MINISTRY OF HEALTH & FAMILY WELFARE
& ORS

..... Respondents

Through: Mrs. Maninder Acharya, ASG with
Mrs. Suparna Srivastava, CGSC, Ms. Nehul
Sharma, Mr. Harshul Chaudhary, Ms. Ikshita
Singh and Mr. Viplav Acharya, Advs. for R-1
to 4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

05.11.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

W.P.(C) 3254/2018

1. The present writ petition/public interest litigation has been preferred with the following prayers :

“a) Issue a necessary writ of mandamus or any other appropriate writ/direction to stay the opening/ issuance of financial bid in respect of CGHS open tender notice no.F.No.55-01/2016-I7.CGHS/NSD/ALC dated 25th January 2018 wherein technical bids have already been

opened on 26th February 2018, which is under scrutinization and in the process of issuance of financial bids to successful bidders;

b) Issue a writ of certiorari/mandamus or any other appropriate writ, order or direction, directing the Respondents to set-aside e-tender notice for empanelment of authorised local chemists for CGHS Delhi (FY 2018-2021) bearing open tender notice no.F.No.55-01/2016-17.CGHS/NSD/ALC dated 25th January 18 and opening of technical bids on 26th February 2018.

c) Issue a writ of mandamus or any other appropriate writ, orders or directions, directing the Respondents to issuance of a fresh tender incorporating/ reintroducing the distance criteria for the bidders, reintroduction of authorization slip and door delivery system besides continuing the reimbursement system at chemist level.

d) Pass such other or further orders, as this Hon'ble Court may deem fit and proper in the light of facts and circumstances enumerated herein above in the interest of justice and fairness.”

2. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that this petitioner has ventilated several grievances about the notice inviting tender issued in respect of the Central Government Health Services Scheme. A notice inviting tender was issued in the year 2018, for a technical bid, and at the stage of opening and calling for the financial bid, this writ petition was preferred.

3. By now, even the financial bids have been opened and the notice inviting tender has already been finalised.

4. Counsel appearing for the petitioner has iterated several grievances about the scheme floated by the Central Government, viz 'the Central Government Health Services Scheme'.

5. As per the earlier Scheme, which was prevalent in the year 2013, 2014 and 2016 for the Central Government employees in service and those who have been retired, if they are suffering from any disease, they were entitled to be treated by an empanelled doctor. The empanelment of the doctor is carried out by the Central Government. The Central Government also allows, the employees, both in service and retired, to go to a doctor other than those who are empanelled. These doctors, after checking the health of the employees, including retired employees of the Central Government, issued prescriptions for medicines advised by them, and thereafter this prescription was to be brought to a Wellness Centre by the employee. At the Wellness Centre, few of the medicines were readily available and if the medicine prescribed by the doctor is available at the Wellness Centre, the same was to be given. If the medicine is not available with the Wellness Centre, then an 'authority slip' was issued by the Wellness Centre and the employee could go to an authorised local chemist, who has participated in the tender for getting the medicine, and the medicine is made available at a concessional rate or at a discounted rate. Earlier, the condition for a local chemist to be an 'authorised chemist' was that it should have been situated within the radius of 5 kms., from the Wellness Centre.

6. There are 5 lakh card holders under the Central Government Health Scheme and there are approximately 17 lakhs beneficiaries.

7. If the authorised local chemist did not have the medicine prescribed by the doctor, then the Central Government employee could get the medicine from any other chemist. In this eventuality, the other chemist who was not authorized, would not provide the medicine at a concessional price and therefore, the difference of price would have to be borne by the local authorised chemist. This difference had to be reimbursed to the local authorised chemist. Moreover, in this eventuality, as per earlier Scheme, a penalty of ₹ 500/- per default would also be levied by the Central Government. Counsel appearing for the petitioner submits that prior thereto, a higher penalty at ₹ 1000/- per default.

8. Counsel appearing for the Central Government submits that this Scheme was being misused by several beneficiaries and instead of prescribed medicines, they were purchasing from the local authorised chemist commodities like tooth brush, toothpaste, cosmetics, Horlicks etc. and thus, the scheme was being misused by several beneficiaries.

9. It is further contended that the terms of a Scheme can never be final, and schemes are bound to be amended. Looking at the need of the public at large, the Scheme is bound to be amended to curb the loopholes in earlier schemes and looking to the static need of the beneficiaries. The Government should be given freedom to amend the Scheme which is also known as “Free Movement in Joints”. The terms and conditions cannot be finalised by this Court while exercising powers under Article 226 of the Constitution of India.

10. Counsel for the Central Government narrated the latest amended Scheme.

11. As per the new Scheme, now the Wellness Centre is procuring the medicine from the chemist and will provide it to the employee. Thus, the

requirement of issuance of an authority slip by the Wellness Centre is, thus, given a go-by. Thus, once the medicine is prescribed by the doctor, an employee can go to any Wellness Centre and that Wellness Centre will call for the medicine from the chemist, if not already available at the Wellness Centre. Thus, the chance of purchasing things like a tooth brush, tooth paste, cosmetics and Horlicks instead of medicine is brought to a zero because now patients have not to go to the local authorised chemist but the medicine will be provided by the Wellness Centre.

12. In case of an emergency, the Wellness Centre will provide the medicine after getting them from the authorised chemist, at the residence of the Central Government employee. Thus, even in case of emergency, the probability of the purchase of commodities like tooth brush and tooth paste etc. is brought to a halt. This is an elegant policy by the Central Government.

13. As per the amended policy, there is no limitation of area and the *modus operandi* of receiving the medicine has also been changed. This has, thus, increased the participation of the chemists in the notice inviting tender. Moreover, as per the amended policy, tender failure rate has been minimised. Moreover, the fine of ₹ 500/- is reduced to ₹ 100/- per failure, and has increased the participation as per the Central Government. Moreover, better discounts are now being given by the participants/bidders because more is the competition. Earlier, as submitted by the Central Government counsel, the discount given was 15 to 17% in the cost of medicine, whereas now, after the modified Scheme, the available discount is 20% to 30% in the price of medicine.

14. The Central Government has all power, jurisdiction and authority to modify the Scheme and we see no reason to interfere with the modified

Scheme known as Central Government Health Services Scheme. It is left open for the Central Government as to how to provide health benefits to their employees, either in service or retired. It is for the Central Government to prescribe the *modus operandi* for supplying medicines to their employees. It is not obligatory on the part of the Central Government that they must authorise local chemist who are situated within the radius of 5 kms. from the Wellness Centre. Government has to be given free momentum in joints. More the misuse of the Government Welfare Schemes, more tight will be the procedural aspects while granting such benefits. Sometimes, even Government can chose close down such Schemes, if the Schemes are misused. In the facts of the present case, the Scheme is continued but with modification. It appears that now the patient has not to go to local chemist but the medicine will come to the patient via Wellness Centre and in the case of emergency, the medicine will reach at the home of the patient through Wellness Centre. Thus, the contact between the employee and the local chemist is brought to zero. We see, therefore, no reason to interfere with the modified Central Government Health Scheme and much less therefore, we see any reason to interfere with the notice inviting tender floated by the Central Government in pursuance of the modified Central Government Health Services Scheme. Much has been pointed out by the Counsel for the petitioner about the benefits of the earlier Scheme. This Court sees no reason to even replace a better policy. The Government has all power to modify their scheme and the clauses of the scheme. We are not entering into the merit of the policy but suffice it to say, *prima facie*, that modified policy in no way causes any harm in providing medicines to the Central Government employees. Chemists, on the pretext of medicines, cannot sell cosmetics or other commodities but the court needs to balance the interests of the society even if it may cause some loss to a chemist. We

are not concerned with the beneficiaries and by no stretch of imagination, it can be said that Central Government employees are going to lose their medicines. Hence also, we see no reason to interfere with the modified Central Government Health Services Scheme and consequently, we see no reason to interfere with the notice inviting tender by the respondents under the aforesaid Central Government Health Services Scheme.

15. As a result, there is no substance in this writ petition and the same is therefore dismissed.

CM No. 12843/2018

16. Stay granted earlier stands vacated. The application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

NOVEMBER 05, 2019/kr