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

+ LPA 602/2019 and CM APPL. 41295/2019, 4524/2020

ASSOCIATION OF HEALTH CARE PROVIDERS (INDIA)

..... Appellant

Through: Mr. Rajshekhar Rao and Ms. Gauri Puri,
Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Kamal Kant Jha, Senior Panel
Counsel with Mr. Prabhakar Thakur, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **04.02.2020**

1. The appellant/petitioner is aggrieved by an order dated 09.05.2019, passed by the learned Single Judge, dismissing a writ petition filed by it praying *inter alia* for issuing a writ of mandamus to the respondents/UOI, to constitute a Committee to oversee and monitor the implementation of the Central Government Health Scheme (in short, 'CGHS') and the contracts entered into by the respondents with empanelled hospitals and medical institutions.

2. By the impugned order, the learned Single Judge has declined to entertain the writ petition on the ground that the issue sought to be raised by the appellant/petitioner relates to contractual arrangements between the respondent No.2/Directorate General, Health Services (DGHS) and third parties and opined that if there is a grievance of the hospitals/healthcare

establishments whose bills have not been cleared fully by the respondent No.2/DGHS, they are entitled to agitate their grievance by seeking recovery of amounts due to them.

3. For ease of reference, we may extract below, para 6 of the impugned order:-

“6. This Court is not inclined to entertain the present petition, principally, for the reason that the issue sought to be flagged by the petitioner relates to a contractual arrangement between respondent no. 2 and third parties. Clearly, the hospitals / healthcare establishments whose bills have not been cleared fully have full right to agitate their grievance in this regard and seek recovery of the amounts due to them. There may be cases where healthcare establishments / hospitals are willing to accept a short payment notwithstanding the contractual terms with respondent no.2. Clearly, no interference in such cases would be warranted. However, if the concerned hospital/healthcare establishments are not willing to accept any short payment, they are not precluded from availing legal remedies, as available in law. This Court is also informed that there is an arbitration clause in the agreements entered into between various healthcare establishments/hospitals with respondent no.2. Thus, the concerned healthcare establishments/hospitals have also agreed on the method of resolution/adjudication of their inter se disputes with the respondents and are not precluded from availing of their remedies as available under the Arbitration and Conciliation Act, 1996.”

4. Mr. Rao, learned counsel for the appellant/petitioner submits that the appellant is a registered Society having a country wide membership of 2000 healthcare institutions/hospital and the grievance of all the members of the appellant is in respect of the unlawful deduction by the respondent No.2/DGHS of 10% from the bills raised by them, whereas the said

deduction is permissible only if the bills are cleared within ten days from the date they are raised on the respondent No.2/DGHS. It is stated that the said deduction of 10% from all the bills, irrespective of when they are cleared, is contrary to the terms of the contract and is impermissible but the respondent No.2/DGHS is continuing to make the deduction as a matter of practice despite a series of correspondence exchanged between the members of the appellant/petitioner and the appellant/Association on the one hand and the respondent No.2 on the other hand.

5. It is submitted that it was in this background that the appellant/petitioner has sought a direction to the respondent No.1/UOI to constitute a Committee to look into all aspects relating to implementation of the CGHS. Learned counsel for the appellant/petitioner also cites a common judgment dated 09.07.2015 passed by the very same Single Judge in Delhi Voluntary Hospital Forum and Ors. vs. Ministry of Health and Family Welfare and Ors. and Sundar Lal Jain Charitable Hospital vs. Ministry of Health and Family Welfare and Ors. reported as **2015 SCC OnLine Del. 10254**, to state that in the captioned cases, though one of the petitioners was a body representing hospitals, the said petition was duly entertained in the teeth of an objection raised by the respondent/UOI regarding its maintainability.

6. We are not inclined to interfere in the impugned order and are in complete agreement with the view expressed therein. If any member of the petitioner/Association finds it financially unviable to have its bill discounted by 10% even though the payment is made by the respondent No.2/DGHS after the agreed period of 10 days, then it is for the said establishment to take a decision as to whether it wishes to continue extending its services to

the parties covered by the CGHS. Even otherwise, as observed in the impugned order, there is an arbitration clause in the Memorandum of Agreement executed between the hospitals/healthcare establishments with the respondent No.2/DGHS. In view of the fact that the said remedy is available under the Arbitration and Conciliation Act, 1996, if aggrieved, it is for the members of the appellant/Association to invoke the arbitration clause and refer their disputes to the Arbitrator.

7. As for the decision in the case of Delhi Voluntary Hospital Forum (supra), we may note that in the said case, the challenge laid was to an Office Memorandum dated 07.02.2013, whereunder the rates for treatment in cases of Coronary Angioplasty and Coronary Angioplasty with Balloon were reduced by the Government of India. Aggrieved by the reduction in the rates, the petitioners therein had filed writ petitions where the court was called upon to examine as to whether reduction in the CGHS rates for treatment of angioplasty, as specified in OM dated 07.02.2013, was arbitrary and unreasonable and whether the rates notified constituted a breach of the Memorandum of Agreement entered into by the Government with various hospitals. After considering the submission made by counsel for the parties, the learned Single Judge was of the opinion that there was no material available on the record, with the respondents for reducing the rates of treatment or recommending a lower rate than what was approved earlier and had therefore, quashed the OM. The fact circumstances of the aforesaid case are entirely different and in our opinion, cannot be of any assistance to the appellant/petitioner herein. Members of the appellant/Association have a remedy in law which they are free to exercise, without invoking the extraordinary powers vested in the Court under Article 226 of the

Constitution of India.

8. The impugned order is upheld and the present appeal is dismissed alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 04, 2020

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