

CWP-9382-2021(O&M) and other connected petitions

-:1:-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CWP-9382-2021(O&M)

Neelkanth Hospital

..... Petitioner

Versus

Union of India and others

..... Respondents

2. CWP-10434-2021(O&M)

Life Kare Hospital

..... Petitioner

Versus

Union of India and others

..... Respondents

3. CWP-10435-2021(O&M)

Gupta Multispeciality Hospital

..... Petitioner

Versus

Union of India and others

..... Respondents

4. CWP-12301-2021(O&M)

Akashdeep Hospital

..... Petitioner

CWP-9382-2021(O&M) and other connected petitions

-:2:-

Versus

Union of India and others

..... Respondents

5.

CWP-12311-2021(O&M)

Madaan Hospital

..... Petitioner

Versus

Union of India and others

..... Respondents

6.

CWP-13402-2021(O&M)

Jeevan Jyot Hospital

..... Petitioner

Versus

Union of India and others

..... Respondents

7.

CWP-19075-2021(O&M)

Verma Hospital

..... Petitioner

Versus

Union of India and others

..... Respondents

Reserved on 11.10.2021

Date of pronouncement :-13.10.2021

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

CWP-9382-2021(O&M) and other connected petitions

-:3:-

Present: Mr.R.S. Rai, Senior Advocate with
Mr.Gautam Dutt, Advocate
for the petitioner(s) in CWP-10434-2021 and
CWP-10435-2021.

Mr.Akshay Bhan, Senior Advocate with
Mr.Sandeep Wadhawan, Advocate
for the petitioner(s) in CWP-9382-2021,
CWP-12301-2021 & CWP-12311-2021.

Mr.K.S. Kang, Advocate
for the petitioner in CWP-13402-2021.

Mr.Gaurav Mohunta, Advocate
for the petitioner in CWP-19075-2021.

Mr.Ashok Kumar Arora, Advocate
for the respondent – Union of India.

H.S. MADAAN, J.

1. Vide this order, I shall dispose of total seven civil writ petitions
i.e. **CWP-9382-2021, CWP-10434-2021, CWP-10435-2021, CWP-
12301-2021, CWP-12311-2021, CWP-13402-2021 and CWP-19075-
2021.**

2. Briefly stated, the facts of the case are that for the purpose of
treatment of members of Ex-Servicemen, Director Regional Centre, Ex-
Servicemen Contributory Health Scheme (hereafter referred to as ECHS),
Jalandhar had empanelled various hospitals including Neelkanth Hospital,
Life Kare Hospital, Gupta Multispeciality Hospital, Akashdeep Hospital,
Madaan Hospital, Jeevan Jyot Hospital and Verma Hospital – petitioners;
separate memorandums of agreements were entered into between the
President of India acting through Director Regional Centre, ECHS,
Jalandhar and the hospitals in question; various terms and conditions, which

had been agreed upon between the two sides were incorporated and mentioned in the agreement; it was agreed that the hospitals/diagnostic laboratories shall provide the services as per the requirement specified by the ECHS, however, in case of initial violation of the provisions of memorandum of agreement in the form of refusal of service or refusal of credit to eligible categories of ECHS beneficiaries or on account of any negligence liquidated damages were agreed to be payable providing that in case of repeated defaults, the total amount to PBG shall be forfeited and action shall be taken for removing the hospital/diagnostic laboratory from the empanelment of ECHS as well as termination of the agreement. Further, it has been provided in the agreement that before initiating action under sub Clause (a) to (c) above ECHS shall serve a show cause notice to the hospital/diagnostic laboratories, which shall respond within 10 days of the receipt of notice. It is further provided that in case of any dispute or difference, the dispute shall be referred to Arbitrator. The cases of violation of conditions of memorandum of agreement have been categorized in three levels i.e. Level-I, Level II and Level III, details of such violations have been given under the respective head. In terms of paras No.5 to 9, a detailed procedure for handling complaints has been provided. For ready reference those paras are being reproduced as under:

5. While dealing with complaints, instructions of Central Vigilance Commission (CVC) on action on complaints shall be kept in mind. On receipt of a complaint whether directly or from MoD/DoESW against an empanelled hospital or as a part of surprise check, MD, ECHS shall seek a preliminary inquiry report from the

Director of concerned Regional Centre. The inquiry shall be conducted by an officer nominated by Director of concerned Regional Centre as authorized by MC, ECHS within a period of one month.

6. If the complaint is found to be prima facie true but it is felt that the complaint is not conclusively proven on the basis of documents/statements and further detailed enquiry is required, then MD, ECHS shall order a detailed inquiry by an officer of the RC other than the officer who conducted the preliminary inquiry. If required MD, ECHS may constitute/request appropriate authority to constitute a Board of Officers for this purpose which shall not include the officer who conducted the preliminary inquiry. The inquiry officer/Board shall issue detailed show cause notice to the empanelled medical facility. The show cause notice should clearly spell out the allegations and the conclusions of the preliminary inquiry together with the grounds on which such conclusions were reached. The inquiry officer/Board shall make such inquiry as it deems fit. The Board shall also take statements of all the parties concerned. Finally the inquiry officer/Board shall submit its findings along with all the documents, show cause notice, reply to show cause notice, statements made by the parties etc. to Director regional Centre. On receipt of this report, the Director, Regional Centre concerned shall submit the inquiry report along with his views/recommendations with detailed reasons to MD, ECHS.

7. Where the case is considered fit for issue of warning only or

the complaint is proven in preliminary inquiry on the basis of documents/statements, detailed inquiry may be dispensed with by MD, ECHS.

8. MD/ECHS shall take the following course of action depending on the gravity of the lapse as indicated in Para No.4 above:

(i) In case of violations of Level I nature, Director Regional Centre will issue a warning to the empanelled medical facility. Repetition of Level I violations will be treated as Level II violations.

(ii) If the violation is considered Level II in nature and proven in the enquiry with documentary evidences and/or statements, MC, ECHS shall impose suitable financial penalty from the amount of PBG and / or impose 'Stop Referral' upto three months upon the medical facility concerned and submit the complete details of the case within seven working days to MoD/DoESW for information. However, the total amount of PBG shall be maintained by the hospital being a revolving guarantee.

(iii) If the lapse is of Level III nature, and proven in the enquiry with documentary evidences and / or statements, MD ECHS shall issue an order for forfeiture of total amount of PBG and / or issue an order of stop referral for a period of three months against the medical facility concerned and submit the complete details of the case within seven working days to MoD/DoESW for information.

(iv) Where, as per provision of Para 11 of this letter, the case is fit for dis-empanelment, and the case is proven in an enquiry, the order for “Stop Referral” shall be issued by MD, ECHS “until further

orders”. In this case complete details of the case shall be submitted by MD, ECHS to MoD/DoESW indicating the reasons and justification for issue of stop referral within 7 working days and proposal for disempanelment will be submitted to MoD/DoESW within 30 working days.

(v) For overbilling and unnecessary procedure, the extra amount so charged shall also be deducted from the pending/future bills of the medical facility.

(vi) For offence listed in para 4(c) (ii) i.e. Criminal offences by staff of a medical facility against any ECHS beneficiary, where FIR has been lodged by the concerned ECHS beneficiary, MD, ECHS shall issue stop referral orders against that medical facility which shall remain in force till final outcome of the police investigations. Based on the final outcome of the police investigations, the case shall be processed further by MD, ECHS for either revocation of the stop referral or for disempanelment.

9. In all cases mentioned at Para 8 (i) to (vi) above, MD ECHS shall record detailed reasons in writing for taking/recommending to MoD/DoESW action against the empanelled medical facility.

3. There is provision of filing appeal against imposition of financial penalties from the PBG and in case of issue of stop referrals. Further procedure has been provided for dis-empanelment.

4. According to the version of the respondents, they had received various instances of malpractices and wrong activities indulged into by the empanelled hospitals. Accordingly, stop referral orders were passed. The

concerned hospitals were aggrieved by the same and had filed the present writ petitions.

5. Notice of the writ petitions was given to the respondents, who put in appearance through counsel and oppose the writ petitions praying for their dismissal defending the orders under challenge to be legal and valid further contending that since the allegations against the hospitals disclosed commission of criminal offences, an FIR No.184 dated 2.10.2020 for the offences under Sections 420, 465, 467, 468, 471 and 120-B IPC has been registered with Police Station Cantonment under jurisdiction of Police Commissionerate, Amritsar against various hospitals and the concerned doctors, levelling allegations of cheating, mischief, forgery, making false documents and breach of contract to grab huge amount by showing false record and misleading veterans for collecting their ECHS cards with the intention of forgery to cheat by way of using genuine ECHS cards. As per the allegations in the FIR, the accused had made fraudulent admissions including false extended admissions with the intention to play fraud with the complainant violating the terms of contract.

6. During the pendency of the writ petitions, the hospitals were dis-empanelled and they had amended the writ petitions accordingly, challenging the order of the dis-empanelment labelling those as illegal and unsustainable under the law.

7. I have heard learned counsel for the parties besides going through the record.

8. A perusal of the record goes to show that the procedure detailed in the memoranda of agreements for taking action against the hospitals

CWP-9382-2021(O&M) and other connected petitions

-:9:-

concerned and their dis-empanelment has not been followed and proper opportunity of being heard and presenting their view points has not been afforded to the hospitals in question. Therefore, the impugned orders are not sustainable since they cannot pass judicial scrutiny and are liable to be set aside.

9. The civil writ petitions are accordingly accepted, the impugned orders are set aside. However, Since the impugned orders have been set aside on technical grounds only and merits of the case have not been gone into at all, the respondents are granted opportunity to proceed against the petitioners-hospitals by adopting proper procedure as provided under the memoranda of agreements entered into between the parties and observing principles of natural justice.

10. Nothing discussed above shall be taken as any opinion on the merits of the case and shall not have any effect on the criminal proceedings initiated by the respondents against the petitioners-hospitals in that regard.

Since all the petitions stand allowed, the miscellaneous applications, if any, stand disposed of accordingly.

**(H.S. MADAAN)
JUDGE**

13.10.2021
Brij

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**