



COMPETITION COMMISSION OF INDIA

Case No. 20 of 2014

In Re:

**Dr. Biswanath Prasad Singh,
Wing Commander (Retd.) General Secretary,
Veterans Forum for Transparency in Public Life, B-124,
Swarn Nagri, Greater Noida, UP -201306**

Informant

And

**Director General of Health Services (DGHS)
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi -110001**

Opposite Party No. 1

**Managing Director,
Ex-Servicemen Contributory Health Scheme (ECHS)
Maud Lines, Delhi Cantonment, New Delhi-110010**

Opposite Party No. 2

**Secretary General, Quality Council of India
II Floor, Institution of Engineers Bhawan,
Bahadur Shah Zafar Marg, New Delhi-110002**

Opposite Party No. 3

**National Accreditation Board for Hospitals
and Healthcare Providers Accredited Hospitals
and Small Healthcare Hospitals
(Through Quality Council of India)
II Floor, Institution of Engineers Building,
Bahadur Shah Zafar Marg, New Delhi-110002**

Opposite Party No. 4



सत्यमेव जयते



CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member

APPEARANCE:

For the Informant – The Informant (in person) with Mr. A. K. Dubey,
Advocate

For the Opposite Parties – None for OP-1
Lt. Col. P. Srinivas, Jt. Director, ECHS for OP-2
Mr. M.L. Lahoty, Sr. Advocate and Mr. Vikas
Chopra, Advocate for OP-3
None for OP-4

Order under Section 26(2) of the Competition Act, 2002

1. Subsequent to the order passed by the Hon'ble Competition Appellate Tribunal (hereinafter, the "**Hon'ble COMPAT**") *vide* its order dated 1st March, 2016 in Appeal No. 63/2014, the proceedings in the present matter



सत्यमेव जयते



Fair Competition
For Greater Good

were re-initiated by the Competition Commission of India (hereinafter, the “**Commission**”).

2. The information in the present matter was filed by Wing Commander (Retd.) Dr. Biswanath Prasad Singh (hereinafter, the “**Informant**”) under Section 19 (1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Director General of Health Services (hereinafter, “**OP-1**”/“**DGHS**”), Managing Director of Ex-Servicemen Contributory Health Scheme (hereinafter, “**OP-2**”/“**ECHS**”), Secretary General of Quality Council of India (hereinafter, “**OP-3**”) and 239 National Accreditation Board for Hospitals and Healthcare Providers (hereinafter, “**NABH**”) Accredited Hospitals and Small Healthcare Hospitals (hereinafter, “**OP-4**”) alleging contravention of the provisions of Section 3 of the Act. [OP-1 to OP-4 are collectively, hereinafter, referred to as the “**Opposite Parties**”/“**OPs**”]
3. As per the information, OP-1 *vide* its Office Memorandum No. S.11011/23/2009-CGHS D.II/Hospital Cell (Part I) dated 17th August, 2010 notified for fresh empanelment of private hospitals and revision of package rates applicable under Central Government Health Scheme (hereinafter referred to as “**CGHS**”) in Delhi NCR (including areas of Delhi, Faridabad, Gurgaon, Ghaziabad and NOIDA) wherein, it prescribed differential rates of reimbursement to private hospitals based on their accreditation with NABH. The Ex-Servicemen Contributory Health Scheme (ECHS) also adopted the said Office Memorandum.
4. The Informant has submitted the comparative rate list of healthcare services provided by NABH accredited and non-accredited hospitals. It is alleged by the Informant that NABH accredited private hospitals are paid an extra 15% amount. On the other hand, hospitals which are not NABH accredited are to be reimbursed without this extra 15% amount.



5. The Informant has alleged that the said Office Memorandum of OP-1 does not spell out any rationale or logic behind the differential rates of payment for treatment of a disease or medical condition as there is no relationship between NABH accreditation and efficacy of the treatment offered by a hospital. Such a categorisation of hospitals is based on wrong presumption of efficacy of NABH accreditation which is without any scientific basis. As per the Informant, this causes a wasteful expenditure of public money and favours select group of urban based hospitals. It is also alleged that if quality certification is the only criteria for higher payment, then International Standardisation Organization (ISO) certified hospitals should also get higher rate of payment at par with NABH accredited hospitals. ISO also provides certification of quality practice for hospitals. ISO is stated to be much acclaimed and universally accepted scientific body.
6. It is the case of the Informant that OP-1 is abusing its dominance for empanelment of private hospitals for the purpose of healthcare and medical services to CGHS beneficiaries in Delhi. Further, it is also alleged that OP-1 has colluded with the other OPs to give benefit to a selected few hospitals having NABH accreditation and reimburse them with payments at higher rates compared to other hospitals without NABH accreditation.
7. Based on the above, the Informant has alleged that OPs, by creating a cartel to hike up rates for a selected few hospitals and indulging in unfair trade practice, have contravened the provisions of Section 3 of the Act. The Informant has prayed that the said Office Memorandum of DGHS be declared null and void.
8. The Commission has perused the Order of Hon'ble COMPAT, the information, and the material available on record. At the outset, it is noted that, in the instant matter, the Commission had earlier passed an order, dated 23rd June, 2014 under Section 26(2) of the Act, stating that OP-1, OP-2, OP-3 and NABH are not enterprises within the prescribed definition



सत्यमेव जयते



under Section 2(h) of the Act. Aggrieved by the order of the Commission, the Informant preferred an appeal under Section 53B of the Act before the Hon'ble COMPAT. After hearing the parties and considering the provisions of the Act and case-laws, the Hon'ble COMPAT held that the activities carried out by the OPs can be covered under the definition of the enterprise and OPs are thus, subject to the jurisdiction of the Commission. The Hon'ble COMPAT allowed the appeal and set aside the order of the Commission and remitted the matter for reconsideration. The relevant extract of the Order of the Hon'ble COMPAT is reproduced below:

“In the result, this appeal succeeds. The order of the Commission is set aside. The matter is remitted to the Commission for reconsideration. In view of the observation made above, the Commission would take a prima facie view on whether a case is made out for investigation under Section 26(1) recognizing that DGHS is covered under the definition of ‘enterprise’ under Section 2(h) of the Act.”

9. In view of the aforesaid direction of the Hon'ble COMPAT, the Commission has proceeded to examine the matter treating OP-1 as an 'enterprise'. After considering the matter on 1st June, 2016, the Commission scheduled the hearings of the parties in the matter on 29th June, 2016 wherein, the Informant, OP-2, OP-3 and OP-4 appeared through their respective advocates. None appeared for OP-1. At the request of the Informant, the hearing was adjourned for 26th July, 2016 which was attended by the Informant, OP-2 and OP-3. No one appeared for OP-1 and OP-4, despite due service of notice.

10. The Informant, during the preliminary conference, reiterated the allegations against OPs as mentioned in the information. The Informant termed the rate of reimbursement discriminatory and further amounting to forcing non-accredited hospitals to take accreditation from NABH, which is stated to be against the interest of private hospitals. In reply, OPs (except



OP-1, who did not appear) submitted that the rate of reimbursement was based on quality of services provided by the accredited hospitals, in comparison to non-accredited hospitals. Further, they submitted that accreditation is voluntary and there is no prohibition on CGHS beneficiaries to go and avail the healthcare services from non-accredited private hospitals. In response to the allegation of the Informant regarding why International Standardisation Organization (ISO) certified hospitals are not covered under the ambit of the Office Memorandum, OPs submitted that though ISO provides proprietary, industrial and commercial standards relating to various products, procedures and services, it does not exclusively provide accreditation for healthcare system which NABH does.

11. The Commission notes that OP-1 is an attached office of the Department of Health and Family Welfare under the Ministry of Health and Family Welfare, Government of India. It renders technical advice on all medical and public health matters and is involved in the implementation of various health services. It also prescribes the rates of reimbursement to the hospitals under the CGHS scheme. CGHS provides comprehensive health care facilities to the Central Government employees and pensioners and their dependents residing in CGHS covered cities. OP-2 heads the ECHS Central Organisation which runs the Ex-Servicemen Contributory Health Scheme, a comprehensive healthcare scheme authorised and financed by the Ministry of Defence, Government of India, for the benefit of ex-servicemen pensioners and their dependants. OP-3 was set up jointly by the Government of India, Associated Chambers of Commerce and Industry of India (ASSOCHAM), Confederation of Indian Industry (CII) and Federation of Indian Chambers of Commerce and Industry (FICCI), to establish and operate national accreditation structure and promote quality through National Quality Campaign. OP-3 functions through executive boards in specific areas *i.e.* accreditation for: Conformity Assessment Bodies, Healthcare Establishments and Education & Vocational Training Providers. OP-4 consists of private hospitals accredited by NABH. NABH



is a constituent of Board of Quality Council of India which consists of private set up to establish and operate accreditation programme for healthcare organizations. It is structured to cater to the needs of the consumers and to set benchmarks for the progress of health industry. NABH has been established with the objective of enhancing the health system and promoting continuous quality improvement and patient safety. NABH provides accreditation to hospitals regardless of their ownership, legal status, size and degree of independence.

12. The Commission observes that the gravamen of the present matter is that the DGHS has prescribed differential rates of reimbursement to the private hospitals, based on their accreditation and non-accreditation with NABH which is, according to the Informant, unfair and done in collusion with the other OPs, to give benefit to a selected few hospitals. The Informant has alleged violation of Section 3 of the Act by OPs. The Commission, in the present matter, has also looked into the issue of abuse of dominant position as directed by the Hon'ble COMPAT in light of Section 4 of the Act. The Hon'ble COMPAT while deciding Appeal No. 63/2014 figured out following two issues:-

- (1) Whether DGHS and ECHS can be termed as 'enterprise' under Section 2(h) to make them liable under Section 3 or 4 as the case may be.*
- (2) Whether there has been any discrimination introduced by the fact of accreditation of hospitals to NABH by fixing higher rates for the accredited hospitals and thereby creating a discriminatory environment not based on sound reasons leading to abuse of dominance by Respondent Nos. 1 and 2.*

13. For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, the Commission is required to assess whether OPs enjoy a position of strength required to operate



सत्यमेव जयते



independently of the market forces in the relevant market. Only when such a position is enjoyed by OPs, it is imperative to examine whether the impugned conduct amounts to an abuse.

14. The Commission notes that neither in the information nor during the preliminary conference has the Informant made any submission regarding the relevant market. The Commission has, thus, delineated the relevant market, as per Section 2(r) of the Act. Section 2(r) of the Act states that the relevant market can be defined either in terms of relevant product market or relevant geographic market or both.

15. As per Section 2(t) of the Act, “relevant product market” means “*a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.*”

In the instant matter, allegations are related to discriminatory and unfair reimbursement with respect to NABH accredited and non-accredited private hospitals by OP-1. OP-1 is an attached organization under the Ministry of Health and Family Welfare which, *inter alia*, empanels hospitals for medical and healthcare services for CGHS beneficiaries. OP-1 is not directly availing these services from hospitals, however it manages and monitors the CGHS and empanels hospitals for the same. Thus, OP-1 is an indirect procurer of services of the hospitals for CGHS beneficiaries. Under the healthcare segment, hospitals can be broadly divided into public and private hospitals. Public hospitals (popularly called as government hospital also) are generally established and operated by the government or through its departments and offer healthcare services at low prices considering the larger public goal and mandate of welfare. Further, funding for public hospitals are administered by the Government itself and hence, profit does not occupy centre stage. Whereas, the establishment, funding, management and administration of private hospitals are done by private bodies and hence, earning profit remains a goal which results into costly



healthcare services in comparison to government hospitals. Thus, private and public hospitals are not found to be substitutable and interchangeable, though, both provide healthcare services. Further, the Commission notes that the alleged Office Memorandum issued by OP-1 is applicable only on private hospitals. In view of these aspects, according to the Commission, the relevant product market in the matter, would be “*market for provision of medical and healthcare services by private hospitals*”.

16. Coming to the issue of relevant geographic market, the Commission notes that the relevant geographic market has been defined as a “*market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas*”. The Commission notes that CGHS covers total 27 cities in India, however, the said Office Memorandum of OP-1 pertains to fresh empanelment of private hospitals under CGHS for Delhi NCR (including areas of Faridabad, Gurgaon, Ghaziabad and NOIDA). The areas of Delhi, Faridabad, Gurgaon, Ghaziabad and NOIDA constitute part of National Capital Region (NCR). Therefore, the relevant geographic market has been delineated from the perspective of the procurer and not from the perspective of service providers *i.e.*, hospitals. Accordingly, the Commission is of the view that the relevant geographic market in the matter would be ‘*Delhi-NCR Region*’.

17. Based on the above, the Commission is of the view that the relevant market in the instant matter is “*Market for provision of medical and healthcare services, by private hospitals, in Delhi-NCR*”.

18. After delineation of the relevant market, the Commission shall now proceed to assess the dominant position of OP-1 in the relevant market. The Commission observes that the Informant has not submitted any fact or figure to demonstrate the purported dominance of OP-1 in the relevant



market. As per the National Health Profile-2016, released by the Central Bureau of Health Intelligence, Government of India, out of 9,61,259 number of total CGHS card holders in India, there are 4,35,012 number of CGHS card holders residing in Delhi-NCR. Further, in terms of the number of CGHS beneficiaries, there are 14,39,185 beneficiaries residing in Delhi-NCR out of 29,52,251 number of total CGHS beneficiaries in India. Though the concentration of beneficiaries is the highest in Delhi-NCR region, OP-1 is actually covering/enabling the beneficiaries to seek health care services from the empanelled hospitals, whereas, the empanelled hospitals are catering to not only the CGHS beneficiaries, but also to the general population residing in Delhi-NCR region.

19. The Commission notes that according to the figures of Census 2011 [“Population Enumeration Data (Final Population) http://www.censusindia.gov.in/2011census/population_enumeration.html], the total population of Delhi-NCR is approx. 22,195,818 (Two Crore Twenty One Lac Ninety Five Thousand Eight Hundred Eighteen). The proportion of CGHS beneficiaries residing in Delhi-NCR in comparison to the total population of Delhi-NCR is very low *i.e.*, 6.48%. The miniscule consumer base of CGHS beneficiaries, as compared to the total population of Delhi-NCR, indicates that a significantly large segment of the population is non-CGHS beneficiaries and they are the largest segment seeking health service from the hospitals including private empanelled hospitals. Thus, in terms of market share, OP-1 is a miniscule procurer of health services in Delhi-NCR region. As OP-1 is not dominant in the relevant market defined *supra* the question of examination of abuse does not arise.

20. Next, regarding Section 3 of the Act, the Commission notes that the primary allegation of the Informant is that OP-1 reimburses 15% lesser amount to non-NABH accredited private hospitals as compared to NABH accredited private hospitals. As per the Informant, this conduct of OP-1 is



anti-competitive in terms of provisions of the Act. The Commission observes that accreditation of services is a global norm and is encouraged by various countries in the world to instil confidence amongst people. Accreditation agencies ensure compliance of certain basic standards necessary to elevate and upgrade the services for the consumers. Sectors like education, engineering and health *etc.*, are the areas where accreditation is desired not only by private agencies but also by the government agencies. There are various national and international accreditation agencies for standardisation of goods and services such as National Accreditation Board for Testing and Calibration Laboratories (NABL, India), The National Assessment and Accreditation Council (NAAC, India), National Accreditation Board for Education and Training (NABET, India), Haute Autorite de Sante (HAS, France), Australian Council on Healthcare Standards (ACHS, Australia), the Japan Council for Quality in Health Care (JQ, Japan), the National Committee for Quality Assurance (NCQA, USA) *etc.* OP-1 being a department of the Government is duty bound to provide best healthcare services to its target group who are CGHS beneficiaries and for that, empanels accredited hospitals besides non-accredited hospitals. Sensitivity and importance attached with the issue of healthcare further warrants adherence of higher quality standards and minute scrutiny of service providers. Accredited hospitals obtain accreditation after satisfying the stipulations/threshold decided by the accreditation bodies and that requires expenditure on their part to maintain the same level of standard and for that, they charge relatively higher for their services. Therefore, based on the abovementioned reasons, the Commission is of the opinion that the different rates for reimbursement, followed by OP-1 on the basis of accreditation, are based on the premise of compensating more for observing higher standards in healthcare segment. Thus, there appears to be a valid justification in the pricing policy and as such, it cannot be said to be unfair or discriminatory.



सत्यमेव जयते



21. The Commission is further of the view that every consumer/procurer must have freedom to exercise its choice freely in the procurement of goods and services. Such choice is sacrosanct in a market economy as the consumers are in the best position to evaluate what meets their requirements and provides them competitive advantage in provision of services. While exercising such choice, they may stipulate standards for procurement which meets their requirement and the same as such cannot be held as anti-competitive. Moreover, the Commission notes that as per the said Office Memorandum, OP-1 decided the rates of reimbursement through a tender process where the rate quoted by L-1 was decided to be the base price/benchmark price for reimbursement. The principle followed for the differential package rates as provided in the said Office Memorandum is:-

- a. *Where L-1 rates were arrived at on the basis of rates quoted by non-NABH accredited hospitals/super speciality hospitals, NABH accredited hospitals will be entitled to reimbursement of certain percentage of additional amount over and above the L-1 rates;*
- b. *Where L-1 rates were arrived at on the basis of rates quoted by NABH accredited hospitals, then non-NABH accredited hospitals would be entitled to an amount lower by certain percentage than the reimbursement made to NABH accredited hospitals at L-1 rates.*

22. Therefore, the Commission observes that the price for each category of health services availed/ medical condition treated for both NABH accredited and non-accredited private hospitals has been discovered through a competitive bidding process which is not arbitrary or one-sided, rather it indicates a procedure by which the procurer discovers the price. Thus, the allegation of the Informant that rates for the reimbursement for treatment of CGHS beneficiaries are arbitrarily fixed is without any basis and hence, negated.



23. Further, the Commission considers it pertinent to mention that through the said Office Memorandum, OP-1 has not imposed complete prohibition or restriction on non-accredited private hospitals to provide their services to the CGHS beneficiaries. It has simply provided differential rates of reimbursement.
24. In view of the aforesaid examination of facts, as regards violation of Section 4, the Commission does not find any contravention of the provisions of Section 4 of the Act by OP-1. As regards OP-2, the Commission observes that it runs the ECHS for the benefit of ex-servicemen pensioners and their dependants. It follows the Office Memorandum issued by OP-1. The aforesaid examination done for OP-1 in this regard would also apply for OP-2. Thus, a separate analysis with respect to OP-2 under Section 4 of the Act is not required. Moreover, the Informant has not alleged any violation of the provisions of Section 4 against OP-3 and OP-4.
25. As regards the allegations of cartel under Section 3 of the Act, the Informant has alleged that OP-1, in collusion with other OPs, is giving arbitrary and unreasonable benefit/advantage to NABH accredited private empanelled hospitals in terms of higher rate of reimbursement. The Commission observes that as per the provisions of Section 3(3) of the Act, the existence of an agreement/understanding amongst OPs, engaged in similar services, is a condition precedent for any form of collusion. The Commission has perused the information and observes that the Informant has not submitted any cogent material stating the existence of any agreement, in any manner, amongst OPs in this regard. Further, it is observed that while OP-1 and OP-2 are procurers, OP-3 and OP-4 are certification bodies indicating that the activities performed by them are not similar in nature and they are not related either horizontally or vertically. Thus, no case for the contravention of the provisions of Section 3 of the Act is made out against OPs.



सत्यमेव जयते



26. In view of the aforesaid, the Commission holds that no *prima facie* case is made out against OPs for violation of the provisions of either Section 3 or Section 4 of the Act.

27. Accordingly, the Commission deems it fit to close the proceedings of the case under the provisions of Section 26(2) of the Act. The Secretary is directed to communicate to the parties accordingly.

**Sd/-
Devender Kumar Sikri)
Chairperson**

**Sd/-
(S .L. Bunker)
Member**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U. C. Nahta)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

**New Delhi
Date: 14.03.2017**