



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 – 201306, UP

Informant

And

Director General of Health Services

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, Delhi -10

Opposite Party No. 2

Secretary General, Quality Council of India

Institution of Engineers Bhawan,

Bahadur Shah Zafar Marg, New Delhi - 2

Opposite Party No. 3

National Accreditation Board for Hospitals

and Healthcare Providers Accredited Hospitals

and Small Healthcare Hospitals

Opposite Party No. 4

CORAM

Mr. Ashok Chawla

Chairperson



भारत
भारत



Mr. Anurag Goel

Member

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Present: The Informant-in-person and Mr. A. K. Dubey, Advocate for the Informant

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

The present information has been filed by Wing Commander (Retd.) Dr. Biswanath Prasad Singh (hereinafter referred to as the '**Informant**') under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against Director General of Health Services (hereinafter referred to as the '**Opposite Party No. 1**'/'**DGHS**'); Managing Director, Ex-Servicemen Contributory Health Scheme (hereinafter referred to as the '**Opposite Party No. 2**'/'**ECHS**'); Secretary General, Quality Council of India (hereinafter referred to as the '**Opposite Party No. 3**'); and 239 National Accreditation Board for Hospitals and Healthcare Providers (NABH) Accredited Hospitals and Small Healthcare Hospitals (hereinafter referred to as the '**Opposite Party No. 4**') [collectively hereinafter referred to as the '**Opposite Parties**'] alleging *inter alia* contravention of provisions of Section 3 of the Act.

2. As per the information, DGHS vide its office memorandum No. S.11011/23/2009-CGHS D.II/Hospital Cell (Part I) dated 17.08.2010 notified for fresh empanelment of private hospitals and revision of package rates applicable under Central Government Health Scheme ('**CGHS**') in Delhi wherein it prescribed different rates of reimbursement to the private hospitals



CGHS



based on their accreditation with NABH. The Ex-Servicemen Contributory Health Scheme (ECHS) has also adopted the said office memorandum.

3. The Informant alleged that the said office memorandum of DGHS does not spell out any rationale or logic behind the different rates of payment for treatment of a disease or medical condition as there is no relationship between NABH accreditation and efficacy of treatment offered by a hospital. Such a categorization of hospitals is based on wrong presumption of efficacy of NABH accreditation without any scientific basis. As per the Informant, this causes a wasteful expenditure of public money and favours select group of urban based hospitals.
4. It is the case of the Informant that DGHS is abusing its dominance for empanelment of private hospitals for purpose of healthcare and medical services to CGHS beneficiaries in Delhi and NCR. Further, DGHS has colluded with the other Opposite Parties 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.
5. Based on the above the Informant has alleged that the Opposite Parties by creating a cartel to hike up hospital rates for a selected few and indulging in unfair trade practice have contravened the provisions of Sections 3 and 4 of the Act.
6. The Commission carefully perused the information and all the material available on record and heard the arguments put forth by the advocate appeared for the Informant.
7. The essence of the present matter is that DGHS has prescribed different rates of reimbursement to the private hospitals based on their accreditation with NABH which is, according to the Informant, is unfair and the same has been done in collusion with the other Opposite Parties to give benefit to a selected



few hospitals. Thus, the Informant alleged violation of Section 3 and Section 4 of the Act by the Opposite Parties.

8. For applicability of the provisions of Section 4, the entity or entities in question must be an enterprise in terms of section 2 (h) of the Act. In the instant case the allegations of the Informant primarily against DGHS which is working under the Ministry of Health and Family Welfare, Government of India. The activities being performed by DGHS cannot be covered in the definition of 'enterprise' because it is not directly engaged in any economic and commercial activities. Its role is limited to control and regulate the health care system in the country.
9. Similarly, the Ex-Servicemen Contributory Health Scheme is a comprehensive healthcare scheme authorised and financed by Ministry of Defence, Government of India for the benefit of ex-servicemen pensioners and their dependants. The Quality Council of India was set up jointly by the Government of India and the three industry associations i.e., 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. The Commission also notes that NABH is a constituent board of the Quality Council of India, set up to establish and operate accreditation programme for healthcare organizations. It has been established with the objective of enhancing health system & promoting continuous quality improvement and patient safety. The activities performed by the above said entities cannot be covered under the definition of enterprises in terms of Section 2(h) of the Act as they are not engaged in any commercial or economic activities and as such provisions of Section 4 of the Act are not attracted against them. Therefore no, *prima facie*, case is made out under the provisions of Section 4 of the Act in the matter.



10. Moreover, the alleged conduct of the Opposite Parties does not give rise to any competition concern. The different rates prescribed by DGHS for NABH accredited hospitals cannot be considered as anti-competitive in any manner, rather it would act as an incentive to non-accredited hospitals to secure such accreditation and provide quality health care services, which will ultimately benefit the patients. In a developing country like India, health care system operates within an environment of rapid social, economical and technical changes which raise concern for the quality of health care. Hospitals are an integral part of health care system and accreditation would be the single most important approach for improving the quality of hospitals. Accreditation is an incentive to improve capacity of hospitals to provide quality health care. A well developed national accreditation system for hospitals ensures that hospitals, whether public or private, play their expected roles in national health system.
11. As regards the allegations of violation of Section 3 of the Act, the Informant has not submitted any cogent evidence stating existence of any agreement, in any manner, between the Opposite Parties in the matter. Thus, *prima facie*, no case in terms of Section 3 of the Act is made out against the Opposite Parties.
12. In view of the aforesaid, the Commission holds that no *prima facie* case is made out against the Opposite Parties either under the provisions of Section 3 or Section 4 of the Act for making a reference to the Director General for conducting investigation into the matter.
13. Accordingly, the Commission deems it fit to close the proceedings of the case under the provisions of Section 26 (2) of the Act.
14. The Secretary is directed to communicate the decision of the Commission to the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson



संयुक्त
सचिवालय



**Sd/-
(Anurag Goel)
Member**

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

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

New Delhi

Dated: 23/06/2014