

Biswanath Prasad Singh v. Director General of Health Services (DGHS), Ministry of Health and Family Welfare and Ors. (MANU/CO/0027/2017)

Decision Date: 14.03.2017

Key Words: *abuse of dominance; anti-competitive agreement*

Issue: Whether differential rate of reimbursement based on accreditation amounts to an anti competitive agreement and whether there is an abuse of dominant position?

Rule: Sec. 3(1) and (3) and Sec. 4 of the Competition Act, 2002

In the present case the Informant, filed a case against OP-1 (DG of Health services) OP-2, OP-3 and OP-4 (National Accreditation Board for Hospitals and Healthcare Providers) alleging contravention of Sec. 3, of the Act. As per the allegation OP-1 has prescribed differential rate of reimbursement to private hospitals under a government scheme for medical services for army men, based on their accreditation or non-accreditation by OP-4, which is unfair and done in collusion with other OP's to give benefit to a select few hospitals.

Further since the COMPAT held OP-1 and OP-2 to be an enterprise within the meaning of the Act, the informant also alleges abuse of dominant position under Sec. 4.

The commission defines the relevant market as the “market for provision of medical and healthcare services, by private hospitals, in Delhi-NCR”. The commission then holds that since the number of the health scheme is miniscule compared to the population of Delhi there is no dominant position of OP-1 as a procurer of health services and thus no violation under Sec 4 is possible.

Further the issue of differential rates of reimbursement is held to be justified by the CCI on the grounds that NABH is an objective body, which certifies that the accredited hospitals have a higher standard of quality. Furthermore the accreditation did not mean that non-accredited hospitals would not be part of the health scheme but merely that they would get a lower reimbursement. Thus the same was not held to be anti competitive.

Further the commission also rejects the allegation of collusion under Sec. 3(3), of the Act on the ground that under the Act the OP's must be engaged in similar services for the same to be held as collusion. Since in the present case OP-1 and OP-2 are procurers of health services and OP-3 and OP-4 are certifying bodies, they are not engaged in similar services either horizontally or vertically thus no collusion under Sec. 3(3) is possible.

In conclusion, the Commission directed the closure of the case under Sec. 26(2).

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