

15 -ാം കേരള നിയമസഭ

2 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 3528

05-08-2021 - ൽ മറുപടിയ്ക്ക്

സർക്കാർ ജീവനക്കാരുടെ ഇൻഷുറൻസ്

ചോദ്യം		ഉത്തരം	
ശ്രീ. മോൻസ് ജോസഫ്		Shri K N Balagopal (ധനകാര്യ വകുപ്പ് മന്ത്രി)	
(എ)	<p>സർക്കാർ ജീവനക്കാർക്കുള്ള ഇൻഷുറൻസ് പദ്ധതിയായ മെഡിസെപ് സ്കീമുമായി ബന്ധപ്പെട്ട് ഹൈക്കോടതിയിൽ എത്ര കേസുകൾ നിലവിലുണ്ട്; വ്യക്തമാക്കാമോ;</p>	(എ)	<p>മെഡിസെപ് സ്കീമുമായി ബന്ധപ്പെട്ട് ബഹു: ഹൈക്കോടതിയിൽ ഒരു കേസ് നിലവിലുണ്ട്. അഡ്വക്കേറ്റ് ജനറൽ കേരളയുടെ നിയമോപദേശത്തിന്റെ അടിസ്ഥാനത്തിൽ Request For Proposal (RFP)യിൽ ഉൾപ്പെടുത്തിയ നിബന്ധനകളെക്കുറിച്ച് (Special Clause) റിലയൻസ് ജനറൽ ഇൻഷുറൻസ് കമ്പനി ബഹു. ഹൈക്കോടതിക്ക് മുൻപാകെ റിട്ട് പെറ്റീഷൻ (WP(C)2938/2021) ഫയൽ ചെയ്യുകയുണ്ടായി. ആയത് തള്ളിക്കളഞ്ഞു കൊണ്ട് വിധി വന്നതിന്റെ അടിസ്ഥാനത്തിൽ ധനകാര്യ ബിഡ് 07.04.2021-ൽ തുറന്നിരുന്നു. എന്നാൽ ടി വിധിക്കെതിരെ സർക്കാറിനെതിരെ റിലയൻസ് കമ്പനി ബഹു. ഹൈക്കോടതിയിൽ ഫയൽ ചെയ്ത റിട്ട് അപ്പീൽ (WA.No.615/2021) ഇപ്പോഴും കോടതിയുടെ പരിഗണനയിലാണ്.</p>
(ബി)	<p>പ്രസ്തുത വിഷയത്തിൽ സർക്കാർ നൽകിയ സത്യവാങ്മൂലത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കാമോ;</p>	(ബി)	<p>ടി വിഷയത്തിൽ സർക്കാർ നൽകിയ സത്യവാങ്മൂലത്തിന്റെ പകർപ്പ് ഇതോടൊപ്പം ഉള്ളടക്കം ചെയ്യുന്നു.</p>
(സി)	<p>ഏതെങ്കിലും ജീവനക്കാരോ സംഘടനകളോ കേസിൽ കക്ഷി ചേർന്നിട്ടുണ്ടോ; എങ്കിൽ വിശദമാക്കാമോ?</p>	(സി)	<p>അഡ്വക്കേറ്റ് ജനറൽ കേരളയുടെ ഓഫീസിൽ നിന്നും ടി വിഷയവുമായി ബന്ധപ്പെട്ട കേസിൽ ഏതെങ്കിലും ജീവനക്കാരോ സംഘടനകളോ കക്ഷി ചേർന്നിട്ടുള്ളതായി നാളിതുവരെ അറിയിപ്പ് ഒന്നും ലഭിച്ചിട്ടില്ല.</p>

സെക്ഷൻ ഓഫീസർ

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

W.P(C) No.2938/2021

Reliance General Insurance Company Limited : Petitioner

Vs.

The State of Kerala : Respondent

**COUNTER AFFIDAVIT FILED ON BEHALF OF THE
RESPONDENT**

I, Tixy.S.Nelson, aged 50 years, D/o. K. Nelson, residing at Kallolini, T.C 14/1176, Palayam, Thiruvananthapuram, do hereby solemnly affirm and state as follows:-

1. I am the Joint Secretary to Finance Department, Secretariat, Thiruvananthapuram. I am conversant with the facts of the case as disclosed from the relevant records. I am duly authorized to swear to this counter affidavit on behalf of the respondent herein. All the allegations and averments contained in the Writ Petition except those that are specifically admitted hereunder are incorrect and hence denied.

2. In the above writ petition the main challenge is against one of the conditions in Exhibit P27 request for proposal. The further prayer seeking to get relaxed from the specific condition in Section A of Exhibit 27 is also not maintainable. It is submitted that the writ petition under



Article 226 of the Constitution is not maintainable challenging the conditions in request for proposal/NIT etc., as the proposed bidder has no fundamental right to carry on business with the Government. Writ petition seeking to include the petitioner in the bid against the provisions of NIT/RFP is legally unsustainable.

3. Further the challenge against Exhibit P23 revocation is also not sustainable as same is highly belated and also for the reasons that the petitioner itself had accepted revocation and abstained from challenging the same. The prayer in the writ petition to participate the petitioner in Exhibit P24 against its provisions is also legally unsustainable. It is true that the petitioner had participated in Exhibit P1 and petitioner's bid at annual premium of Rs.2992.48 per employee/pensioner was accepted by the respondent as per Exhibit P2. The averments that after investing a lot of time and effort into analyzing the beneficiary data shared by the respondent, the petitioner became aware that there were several gaps/inconsistencies in the data of beneficiaries provided by the respondent etc., are devoid of merit.

4. The further statement that all the data provided by the respondent was uploaded on to the portal created by the petitioner for the scheme and same was shared with the respondent is also not fully correct.

5. The petitioners contention is that they were not able to empanel certain super speciality private hospitals

owing to the package limits specified by the respondent, is incorrect. Such contention cannot be allowed to as the respondent have clearly notified the package rates and hospital requirements vide the RFP dated 01/01/2019 and its Corrigendum and the petitioner had considered those points before submitting their bid.

6. The petitioner's contention that the respondent assured to take a lenient view regarding the gap in package rates approved by the tender and that by hospitals. In this context, it is pertinent to note that such an assurance was given specifically with respect to Govt. institutions such as RCC, MCC, CCC (Cancer centres) and SCTIMST(SreeChithra) only. Such an assurance was on because of the fact that as per empanelment guidelines (ANNEXURE II to RFP dated 01/01/2019) all the secondary and tertiary public hospitals and super speciality institutions including RCC, MCC, CCC and SCTIMST, all Govt. Medical Colleges, District & General Hospitals, Women & Child hospitals **shall be automatically included in the provider network.**

7. The petitioner alleges that the respondent without having provided the necessary beneficiary data for MEDISEP, issued letter dated 29.07.2019 stating that the petitioner failed to take necessary steps for empanelment. It may be noted that since the scheme is intended to provide medical/ surgical treatment to the beneficiaries, the most important and foremost factor is participation of good profile popular

hospitals. The respondent being the employer has the responsibility to ensure that its' subjects are served with a worthy scheme. The respondent cannot advise its' subjects to avail treatments from the hospitals which are not meeting required quality standards after having collected premium from them and handing over the same to the petitioner. Hence the respondent held discussions with prominent hospitals and feedback from such discussions was intimated to the petitioner on 29/07/2019.

8. The petitioner's allegation that 25% hike in surgical package rates was not contemplated in the RFP terms, is not correct. It may be noted that vide Corrigendum to RFP dated 01/01/2019 the following addition to ANNEXURE I was made. "The insurer shall have the discretion to reduce the package rates provided they can ensure hospital empanelment as per the guidelines specified. However, enhancement of package rates of surgical procedures is allowed and limited to a maximum of 25% over the listed rates in case of surgical procedures only." Hence it is evident that the same is contemplated in the RFP.

9. The averments that the final agreement with the petitioner was only circulated on 29.07.2019 and in the same there were several deviations from Exhibit P1 tender etc are not fully correct.

10. The contention urged that the proposal was to remain valid for a period of 180 days from the deadline for

submission of tenders and the said period of 180 days expired on 10.08.2019 and despite lapses of more than 6 months from being awarded the contract the respondent failed to notify the commencement of Medisep Scheme, etc., are absolutely against facts. The petitioner had failed to comply with his obligations and the requirements as per Exhibit P1 request for proposal and the empanelment guidelines for Medisep was not complied by the petitioner. Exhibit P1 was published on 01.01.2019 and the last date for submission of proposal was extended up to 11.02.2019 and going by that the period of 180 days provided in Exhibit P1 RFP expired on 08.8.2019. Even as on that date admittedly the mandatory compliance of empanelment guidelines for Medisep was not done by the petitioner.

11. The petitioner admits that the respondent informed about the decision of respondent not to go ahead with the MEDISEP scheme and subsequently expressed their interest to participate in and implement the scheme if the respondent decides to call for a fresh RFP. From the above admission it is evident that the petitioner wanted to back out from the scheme and hence petitioner's contention that the revocation order was to the shock of the petitioner is not factually correct.

12. In Exhibit P22 the petitioner itself admit that they failed to comply with the empanelment conditions and they are ready to implement the scheme only with modified terms and conditions and revised rates. Exhibit P23 was issued for the lapses and breaches on the side of the petitioner in

complying with the mandates of Exhibit P1. In Exhibit P23, P is specifically notified that revocation of the award was on account of the failure to fulfill the empanelment criteria in all three categories as per RFP conditions. Before Exhibit P23, on 29.07.2019 the respondent had issued a notice to expedite the empanelment proceedings as per the scheme as it is to commence on 12.08.2019. True copy of the same is produced and marked as **Exhibit R1(a)**.

13. Again on 01.08.2019 the respondent had issued another letter as the demand in letter dated 29.07.2019 has not complied with. True copy of the letter dated 01.08.2019 is produced herewith and marked as **Exhibit R1(b)**.

14. In reply to Exhibit R1(b) the petitioner had issued letter dated 08.08.2019 in which it was informed that the petitioner RGICC will not be in a position to implement the scheme. The reason assigned for the same is against the specific provisions of RFP which was stands amended as per the corrigendum. True copy of the same is produced and marked as **Exhibit R1(c)**. From the same it is clear that even as on that date empanelment of the hospitals was not completed as mandated in Exhibit P1.

15. Therefore it is clear that Exhibit P23 was issued solely for the breaches on the part of the petitioner company. It is pertinent to note that petitioner chosen to accept Exhibit P23 at that time. Now, only for the purpose of challenging Exhibit P27 challenge is sought to be made against Exhibit

P23. As per Exhibit P24 the petitioner had accepted the decision in Exhibit P23 and expressed their interest to participate and implement the Medisep scheme in the future with modified service standards.

16. The petitioner alleges that Ext. P 23 revocation order is issued on the pretext that the petitioner did not empanel hospitals as required by the RFP. It is stated that the petitioner has empanelled 120 network hospitals and it is only due to the extremely low package rate specified by the respondent that the petitioner was not able to empanel more private hospitals.

17. Such contention cannot be allowed to as the respondent have clearly notified the package rates and hospital requirements vide the RFP dated 01/01/2019 and its Corrigendum and the petitioner should have definitely considered those points before submitting their bid. More over after analysing the empanelment list provided by the insurer the respondent found that the empanelment of speciality hospitals is poor, lacks comprehensive coverage and fragmented in nature. Further realized that such type of empanelment of hospitals cannot ensure a proper access to patient care and not sufficient for smooth functioning of such a large health insurance program. (detailed observations attached) The list of hospitals provided by the insurer was uploaded in the website dedicated for the scheme and the response from beneficiaries was alarming.

18. It is further relevant to note that the petitioner had participated in Exhibit P25. But respondent had decided to cancel Exhibit P25 as per Exhibit P26. As clear from Exhibit P26 the decision to re-tender RFP afresh for the implementation of Medisep was to incorporate specific clauses to protect larger public interest and same decision was accepted by the petitioner.

19. Exhibit P27 tender published in 22/01/2021 proposes many changes as compared to Exhibit P1 tender published on 01/01/2019 in order to suit the changes in current health scenario ranging from sum insured to comprehensive coverage and packages & its rates. The mere comparison of Exhibit P1 to P27 reveals that there were substantial changes in many heads including that of the benefit provided to the Government Employees and Pensioners, the medical facility provided, the rate for various procedures and other clauses to see that scheme is timely implemented.

20. It is submitted that it is the choice of the employer to modify the provisions of RFP in order to achieve requirement of the project and therefore same is beyond judicial scrutiny under Article 226 of the Constitution of India. The very intention of the petitioner is to delay the project and it is relevant to note that the project sought to be implemented in February, 2019 is delayed for two years for the lapses on the side of the petitioner which is against larger public interest

and also causes huge losses to the public exchequer. The very interest of about 5 lakhs of employees and of 5 lakhs of pensioners are seriously affected by the lethargy on the side of the petitioner company. Therefore the contention of the petitioner company cannot be accepted at all.

21. The respondent is not inclined to specifically exclude any one from conducting business with respondent or blame any one, rather wants to protect the larger public interest and to provide best medical insurance to its subjects.

22. The contention of the petitioner that Exhibit P23 is in violation of principle of natural justice and therefore liable to be interfered by this Hon'ble Court is absolutely illegal and unsustainable. The further contention that despite all the efforts, time and resources spent by the petitioner in empanelment scheme the respondent has issued the new RFP to exclude the petitioner from participating in the tender under the strength of illegal revocation order, is also against the facts and law. It is submitted that there is no question of specific exclusion of the petitioner, as petitioner have no fundamental right to submit bid based on Exhibit P27 and to get the project awarded. The contention against Exhibit P23 revocation at this belated stage, is also unsustainable. Further the petitioner itself had accepted Exhibit P23 and no challenge was made against the same and also it is relevant to note that the petitioner participated in the subsequent re-tender.

23. Ext.P23 revocation order issued back in 22.08.2019 is being challenged after an elapse of 17 months. The petitioner admits that the respondent informed about the decision of respondent not to go ahead with the MEDISEP scheme on 20.08.2019 and subsequently expressed their interest to participate in and implement the scheme if the respondent decides to call for a fresh RFP. From the above admission it is evident that the petitioner wanted to back out from the scheme and the revocation was literally sought by the petitioner .

24. It may be noted that since the scheme is intended to provide medical/ surgical treatment to the beneficiaries, the most important and foremost factor is participation of good profile popular hospitals. The respondent being the employer has the responsibility to ensure that its' subjects are served with a worthy scheme. The respondent cannot advise its' subjects to avail treatments from the hospitals which are not meeting required quality standards after having collected premium from them and handing over the same to the petitioner. More over after analysing the empanelment list provided by the insurer the respondent found that the empanelment of speciality hospitals is poor, lacks comprehensive coverage and fragmented in nature. Further realized that such type of empanelment of hospitals cannot ensure a proper access to patient care and not sufficient for smooth functioning of such a large health insurance program. The list of hospitals provided by the insurer was uploaded in

the website dedicated for the scheme and the response from beneficiaries was alarming. Exhibit P27 tender published in 22/01/2021 as compared to Exhibit P1 tender published on 01/01/2019 proposes many changes in order to suit the changes in current health scenario ranging from sum insured to comprehensive coverage, packages & its rates.

25. The respondent being the employer have to definitely safeguard the interests of the beneficiaries which involve a larger public amounting to about 11lakh families. The respondent is inclined to provide the best health insurance coverage and the best service provider without further elapse of time. The respondent cannot afford to further stalling of the project which is already stalled for 2 years and wants to avoid repetition of past experience in this regard. The respondent is not inclined to specifically exclude anyone from conducting business with respondent or blame anyone, rather wants to protect the larger public interest and to provide best medical insurance to its subjects.

26. The contention that Exhibit P23 revocation order is without jurisdiction and violative of principles of natural justice is quite unsustainable, because for the purpose of revocation of award, as there was no concluded contract, question of notice of hearing does not arise. But in this case so many notices has been issued warranting revocation and thereafter a meeting has been convened by the respondent and same is also an admitted fact and thereafter the petitioner itself had informed the respondent that they are not intending

to continue with the project. Only thereafter Exhibit P23 was issued.

27. The averment in the writ petition that after the expiry of the validity period there is no subsisting proposal, and as such, the entire process falls away as it automatically lapses, as the contention which is against the other challenge in respect of Exhibit P23. As already explained, till the expiry of the bid validity period the mandatory requirement to comply the empanelment guidelines was not complied by the petitioner. Same is an admitted fact also. Evidently the reason for lapsing 180 days is on account of the failure on the part of the petitioner company. Going by the contention that since there is no validity to the proposal there is nothing for the respondent to revoke the challenge against Exhibit P27, has no significance. Going by the above contention the only option, before the respondent is to invite new RFP. The further contention that Exhibit P23 revocation was not challenged at the time of its issue, since the petitioner was under the genuine belief that the same will not be held against it, is also does not deserves any merit as in Exhibit P23, it is specifically notified that it was revoked for the failure on the side of the petitioner. The attempt to explain the delay is only an abortive one and serve no purpose.

28. The petitioner repeatedly explains the efforts undertaken by them for implementation of the scheme and alleges that the respondent unilaterally tries to punish the petitioner. It may be reiterated that the intention of the

respondent is only to safeguard the interest of its subjects which involves a larger public interest and to provide the best service and best service provider rather than punishing the petitioner or anyone else and the respondent firmly believes to have the right to do so.

29. The further contention that the clauses in Exhibit P27 is the stigmatic nature and that it has been rendered will adversely and gravely affect the petitioner's business and reputation especially participating in all tender/RFPs, both of the respondent and other Governments across the country, are without any merit. The respondent neither blacklisted nor banned the petitioner from any contract as per Exhibit P27. The respondent invite proposal constituting the requirements of the project and if the petitioner desires and satisfies the requirement, he can participate. There is no debarring of petitioner in Exhibit P27. The Clauses in Exhibit P27 are applicable to all the Insurance Companies and not only to the petitioners and company. The invitation for proposal in which those who qualified can participate. Those who could not participate is not debarred or blacklisted as stated by the petitioner and non-participation in the Exhibit P27 does not disqualify or affect their participation in other RFP/bids.

30. The further contention that Exhibit P27 targets the petitioner and it is having a colour of banning/blacklisting etc., and such an execution made on the basis of an illegal order of revocation etc., are absolutely illegal and unsustainable. The further contention that neither was a show cause notice issued

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to the petitioner nor was the petitioner heard before issuing Exhibit P1. revocation is also factually incorrect and legally unsustainable.

31. The allegation that, going by the low package rate prescribed by the respondent in Exhibit P1 RFP, the petitioner could not complete the empanelment is also untenable for the reason that the petitioner submitted their bid originally, strictly knowing the implications of Exhibit P1. RFP. Therefore the petitioner is not authorized to disown his bid based on Exhibit P1 after steps has been taken against the petitioner for breaches to comply with the provisions of Exhibit P1.

32. In view of the above facts and circumstances the above writ petition is liable to be dismissed with cost.

All the facts stated above are true to the best of my knowledge, belief and information.

Dated this the 9th day of February, 2021.

[Signature]
DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the day of February, 2021 at the Office of the Government Secretariat, Finance, Thiruvananthapuram.

K.V. MANOJ KUMAR
SENIOR GOVERNMENT PLEADER

sl/C/

