

(2018) 05 CAL CK 0194

Calcutta High Court

Case No: W.P No. 4516(W) of 2018

E-Meditek Insurance (Tpa) Ltd.

APPELLANT

Vs

National Insurance Company
Ltd. & Anr.

RESPONDENT

Date of Decision: May 15, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: TAPABRATA CHAKRABORTY, J

Bench: Single Bench

Advocate: Joydip Kar, Sanaya Dadachaudji, Shovendu Banerji, Dipaya Choudhury, P. Choudhury, S Choudhury, Bikash Ranjan Bhattacharya, Debajyoti Datta, Arijit Dass Mullick

Final Decision: Dismissed

Judgement

Affidavit-of-service filed by the petitioner be kept on record. The subject matter of challenge in the present writ petition is a notice for suspension of

services of the petitioner dated 27th February, 2018. The petitioner company is a third party administrator with whom the respondent no.1 has entered

into health service agreements from time to time since the year 2002. The present health service agreement is due to expire on 11th of August, 2018.

The present writ petition was affirmed before this Court on 27th of March, 2018 and at that time a ceasework by the lawyers was continuing and as

such the petitioner approached the Honâ€™ble Supreme Court by filing a Special Leave Petition (in short, the SLP).

In the SLP an interim order of stay of the notice of suspension dated 27th February, 2018 was passed on 3rd April, 2018. The SLP again appeared on

11th April, 2018 and was directed to be listed on 13th April, 2018. In the midst thereof, an application for vacating the said interim order was served

upon the petitioner on 11th April, 2018. The SLP was thereafter heard on 19th April, 25th April, 26th April and lastly on 1st of May, 2018. Paragraph

6 of the order dated 1st May, 2018 runs as follows:

“As regards the merits of the case, we now permit the petitioner to move the High Court. The interim order will continue till 15th May, 2018. It will

be open to either side to mention the matter before the High Court for being taken up and request the High Court to take up the matter atleast with

regard to the interim order to be passed at the earliest. The High Court may deal with the matter without being influenced by the fact that interim

order was passed by this Court.”

Mr. Kar, learned senior counsel appearing for the petitioner submits that the impugned order suffers from a jurisdictional error since the said order

was passed considering a complaint pertaining to policies of the years 2014 and 2015 and the health service agreements of the respondent no.1 with

the petitioner which were operative at the said juncture had already expired. In the present health service agreement among the respondent no.1 and

the petitioner there is no provision for suspension.

The absence of power as an express term in the contract would mean that the respondent no.1 had no authority to issue the impugned notice and as

such the said order suffers from a jurisdictional error. In support of such contention reliance has been placed upon a judgment delivered in the case of

Management of Hotel Imperial, New Delhi & Ors vs. Hotel Workers’ Union, reported in AIR 1959 SC 1342.

Per contra, Mr. Bhattacharya, learned senior counsel appearing for the respondent no.1 submits that in the agreement there is an arbitration clause

and as the writ petition involves disputed questions of fact the Writ Court should refuse to exercise its discretion. The dispute involved among the

parties cannot be made the subject matter of an application under Art. 226. In support of such contention he has placed reliance upon a judgment

delivered in the case of Joshi Technologies International Inc. vs. Union of India & Ors., reported in (2015)7 SCC 728.

Prima facie it appears that there is no clause towards suspension in the present health service agreement executed on 11th of August, 2016 and it also

appears that the complaint on the basis of which the impugned notice has been issued pertains to policies of the years 2014 and 2015 and the health service agreements operative at that juncture had already expired.

Accordingly, there shall be an interim order in terms of prayer (d) of the writ petition till the end of June, 2018 or until further orders whichever is

earlier. The respondents are directed to file their affidavit-in-opposition within 8th June, 2018. Reply thereto, if any, be filed within 15th June, 2018. List

this matter for final hearing in the daily supplementary list of this Court on 21st June, 2018.