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- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
- + **W.P.(C) 3031/2020 & C.M. Nos. 15227-29/2021, 15358-363/2021, 15481-482/2021, 15652-653/2021, 15845/2021, 15869/2021, 15962-963/2021 & 16081-85/ 2021**
- RAKESH MALHOTRA Petitioner
versus
GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF INDIA AND ORS Respondents
- + **W.P.(C) 5050/2021 & C.M. Nos. 15464-66/2021 & 15694/2021**
- BHAVREEN KANDHARI Petitioner
versus
GOVT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 5256/2021 & C.M. Nos.16155-56/2021**
- MANISHA CHAUHAN Petitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR. Respondents
- + **W.P.(C) 5593/2021 & C.M. Nos. 17436-37/2021**
- MANVI SHARMA Petitioner
versus
GOVERNMENT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 5594/2021 & C.M. No. 17440/2021**
- ADHISHREE BELSARE & ANR. Petitioners
versus
GOVERNMENT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 5100/2021 and C.M. No. 15623/2021**
- MANISHA GUPTA Petitioner
versus
GOVT. OF N.C.T OF DELHI & ANR. Respondents

- + **W.P.(C) 5102/2021 and C.M. No. 15635/2021, C.M. No.15636/2021**
 ASEEMIT SOCIAL PROJECTS FOUNDATION Petitioner
 versus
 UNION OF INDIA & ANR. Respondents
- + **W.P.(C) 5241/2021**
 SH. MANJIT SINGH Petitioner
 versus
 GOVT. OF N.C.T OF DELHI Respondent

MEMO OF APPEARANCE

For Petitioners:

Petitioner in person in W.P.(C) 3031/2020
 Mr. Sanjeev Sagar and Ms. Nazia Parveen, Advocates in W.P.(C) 5256/2021.
 Mr. Krishnan Venugopal, Senior Advocate with Mr. Manan Verma,
 Mr. Aditya N Prasad, Mr. Kaushik Mishra & Ms. Anmol Srivastava, Mr.
 Piyush Sharma, Mr. Shivendra Singh, Advocates in W.P.C No. 5050/2021.
 Mr. Sacchin Puri, Senior Advocate with Mr. Praveen K. Sharma and
 Mr. Dhananjay Grover, Advocates in W.P.(C) Nos. 5100/2021
 Ms. Karuna Nundy, Mr. Sarthak Maggon & Ms. Upasana, Advocates in
 W.P.(C.) No. 5102/2021.
 Mr. Vivek Sood, Senior Advocate with Mr. Anish Chawla, Advocate in
 W.P.(C) No. 5241/2021

For Respondents:

Mr. Tushar Mehta, SGI, Mr. Chetan Sharma, ASG, Ms. Aishwarya Bhati,
 ASG along with Ms. Monika Arora, Mr. Amit Mahajan, Mr. Anil Soni &
 Mr. Kirtiman Singh, CGSCs, Mr. Syed Husain Adil Taqvi, GP, Mr. Jivesh
 Kr. Tiwari, Ms. Nidhi Parashar, Mr. Kanu Aggarwal, Mr. Kritagya Kumar
 Kait, Mr. Shriram Tiwary, Mr. Amit Gupta, Mr. Akshay Gadeock, Mr. Sahaj
 Garg & Mr. Vinay Yadav, Mr. Vidur Mohan, Mr. Waize Ali Noor and Mr.
 Taha Yasin, Advocates for UNION OF INDIA in all the matters.
 Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant & Mr. Nitnem
 Singh, Advocates for respondent/ UOI/ MOHFW/ ICMR.
 Mr. Rahul Mehra, Senior Advocate along with Mr. Satyakam, Mr. Santosh
 Tripathi, SC Mr. Gautam Narayan, Mr. Anuj Aggarwal & Mr. Anupam
 Srivastava, ASCs with Mr. Aditya P. Khanna, Ms. Dacchita Sahni, Ms.

Ritika Vohra and Mr. Chaitanya Gosain, Ms. Aayushi Bansal, Advocates for GNCTD in all the matters.

Mr. Rajshekhar Rao, Senior Advocate (Amicus Curiae), Mr. Anandh Venkataramani, Mr. Vinayak Mehrotra, Ms. Mansi Sood, Mr. Karthik Sundar, Ms. Sonal Sarda, Mr. Areeb Y Amanullah, Advocates in all the matters.

Mr. Anil Grover, Senior Additional Advocate General for Haryana along with Ms. Bansuri Swaraj, Additional Advocate General for Haryana and Mr. Siddhesh Kotwal, Ms. Manya Hasija & Ms. Ana Upadhyay, Advocates.

Mr. Divya Prakash Pande, Advocate for respondent/ North Delhi Municipal Corporation & South Delhi Municipal Corporation.

Mr. Tushar Sannu, Standing Counsel, IHBAS and EDMC with Mr. Ankit Bhadouriya and Mr. Subham Jain, Advocates

Ms. Sakshi Popli, Additional Standing Counsel for NDMC.

Ms. Malvika Trivedi, Senior Advocate with Mr. Tanmay Yadav, Ms. Abhisree Saujanya, Ms. Nihaarika Jauhari, Ms. Eysha Marysha, Ms. Vidhi Jain, Advocates along with Ms. Kritika Gupta, applicant in person.

Ms. Garima Prashad, Senior Advocate with Mr. Abhinav Agrawal, Advocate for respondent in W.P.(C.) No. 3031/2020.

Mr. Ankur Mahindro & Ms. Sanjoli Mehrotra, Advocates for interveners.

Mr. Om Prakash & Mr. Pradeep Kumar Tripathi, Advocates for the applicant in C.M. No. 15651/2021.

Ms. Himanshi Nailwal with Mr. Ambuj Tiwari, Mr. Ankur Garg, Mr. Akhil Mitta, Advocates in C.M. No. 15922/21

Ms. Nitya Ramakrishnan, Sr. Adv. with Mr. Prasanna S, Ms. Vinoothna Vinjam and Mr. Ritesh D, Advocates in C.M. No. 15962/2021.

Mr. Anand Grover, Senior Advocate with Mr. Talha Abdul Rahman, Mr. M. Shaz Khan & Mr. Irshaan Kakkar, Advocates for the intervenors in W.P.(C) 5050/2021.

Mr. Rizwan, Advocate for the petitioner in W.P.(C) 5593/2021.

Mr. K.K. Singh, Advocate for the petitioner in W.P.(C) 5594/2021.

Mr. Aseem Chaturvedi & Mr. Ajay Bhargav, Advocates for M/s INOX.

Mr. Abhinav Tyagi, Advocate for M/s Seth Air Products.

Mr. Rohit Priya Ranjan, Advocate for M/s Goyal Gases.

Ms. Shweta Kabra, Advocate for M/s India Glycols Limited.

Ms. Prabhsahay Kaur, Advocate for Bachpan Bachao Andolan.

Mr. Abhishek Nanda, Advocate for IRDAI.

Ms. Urvi Mohan, Advocate for DBOCWW Board.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

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ORDER
04.06.2021

1. In relation to the status of the PSA plants, and Oxygen Storage Tanks, the GNCTD has filed its status report dated 04.06.2021, which discloses the status of the said plants and tanks as follows:

**"STATUS REPORT OF PSA PLANTS & OXYGEN
STORAGE TANKS AS ON 03.06.2021."**

I. Donor funded Oxygen PSA Plants :

- 1) 13 Plants with a combined capacity of 6440 LPM (11.59 MT) have been commissioned in different hospitals.
- 2) 14 Plants with a combined capacity of 4881 LPM (8.79 MT) have reached the respective hospitals and will be installed within a week. Out of these 14 Plants, installation of 3 Plants at Janakpuri Super Speciality Hospital would take time as gas pipeline work is yet to be completed.
- 3) 20 Plants with a combined capacity of 11310 LPM (20.36 MT) are expected to be received during the month of June 2021.
- 4) 2 Cryogenic Bottling Plants with a combined capacity of 6668 LPM (12.00MT) will be installed before the end of July 2021.
- 5) These 49 Plants would have a combined capacity of 29299 LPM (52.74 MT)

II. PSA Plants sanctioned by Government of India:

- 1) 6 Plants with a combined capacity of 4500 LPM (8.1 MT) have been installed.

2) 9 Plants with a combined capacity of 7800 LPM (14.04 MT) will be installed by 31.07.2021.

3) All the 15 Plants sanctioned by Government of India would have a combined capacity of 12300 LPM (22.14 MT).

III Total Plant :

In all, 64 Plants, with a combined capacity of 41599 LPM (74.88 MT), either Donor Funded or purchased by Government of Delhi or sanctioned by Government of India, have been installed / will be installed by 31.07.2021.

IV. Oxygen Storage Tanks

1) 3 Oxygen Storage Tanks of 57 MT each have been offered to the Government with the support of Save Life Foundation. They are being installed at the following places :-

(i) Siraspur Hospital Site

(ii) Baba Saheb Ambedkar Hospital, and

(iii) Deen Dayal Upadhyaya Hospital

The tanks have reached the respective sites and are in the process of being installed, which is likely to be completed within a week.

2) 2 Storage Tanks of 50 MT each are being procured from M/s. INOX with the support of Indraprastha Gas Limited and are proposed to be installed at GTB Hospital and Indira Gandhi Hospital. Oxygen Storage Tanks are likely to reach Delhi by 10.06.2021.

3) These 5 Oxygen Storage Tanks would have a combined capacity of 271 MT."

2. The said status is taken on record. The GNCTD shall endeavour to stick to the timelines mentioned in the said status reports. Further progress shall be placed before the Court, which shall be considered on 07.07.2021.

3. In its status report filed today, the GNCTD has placed on record a

copy of the communication dated 28.02.2018 written by the Commissioner, North Delhi Municipal Corporation to the Municipal Secretary, North Delhi Municipal Corporation with regard to the handing over of 6 hospitals of the North Delhi Municipal Corporation, and Medical College to the Central Government. The case made out in the said communication is in relation to the six hospitals being run by the North Delhi Municipal Corporation post trifurcation of the Municipal Corporation of Delhi in 2012. The said six hospitals are Hindu Rao Hospital, Kasturba Hospital, R.B.I.PMT Hospital, Girdhari Lal Hospital, M.V.I.D. Hospital and Balak Ram Hospital. The said communication sets out the consolidated expenditure incurred in running of the said hospitals in the years 2014-15, 2015-16 and 2016-17, and advocates that these hospitals should be handed over to the Central Government, so as to reduce the annual expenditure incurred by the North Delhi Municipal Corporation on Hospitals and Medical College to the tune of about Rs.500-600 crores.

4. Mr. Mehra submits that the reason why the said communication has been brought on record before this Court in these proceedings, is that this Court is considering various aspects relating to COVID management, and one of the aspects which this Court has dealt with, particularly in the second wave of the Pandemic, is the shortcomings in the medical infrastructure in the NCT of Delhi. He submits that since the North Delhi Municipal Corporation is presently in financial stringency, the said hospitals and medical college are facing difficulty in day to day management, and further development of these hospitals, considering the large parcels of land with some of them, is not taking place.

5. Mr. Mehra submits that the proposal contained in the letter for takeover of the management of the said hospitals and medical college by the Central Government should be considered by the Central Government and, in case, the Central Government is not willing to take them over, the GNCTD would be willing to take over the said hospitals and medical college considering the fact that health is a State Subject. He further submits that this communication itself points out that, in the past as well, organisations such as Fire Brigade, Delhi Vidhyut Board, Delhi Jal Board, etc. have been taken over by the GNCTD from the Municipal Corporations. Mr. Pande, who appears for the North Delhi Municipal Corporation, submits that the said communication is an internal communication from the Commissioner, North Delhi Municipal Corporation to the Municipal Secretary, North Delhi Municipal Corporation and it is not clear as to whether the North Delhi Municipal Corporation passed any resolution in terms of the said communication. He submits that the North Delhi Municipal Corporation shall file a status report disclosing the present status of the said proposal, and also place before the Court, the expenditures being incurred by the North Delhi Municipal Corporation in running the said six hospitals and Medical College presently. Status report in this regard be filed by North Delhi Municipal Corporation, which shall be considered on 08.07.2021. In case the Central Government is in receipt of such a proposal for taking over of the six hospitals and Medical College, the Central Government shall place the status of the said proposal before the Court, which shall also be considered on 08.07.2021.

6. Mr. Rao points out that the notification appointing Mr. Suresh Puri,

Director General and CEO, CMSS as the Nodal Officer for installation of PSA Plants has been placed on record by the Union of India.

7. In pursuance of our order dated 01.06.2021, the ICMR has issued the Advisory on Treatment of COVID-19 Associated Mucormycosis (CAM) and Important Considerations. The same have been placed before the Court, and discussed in detail. The said Advisory has been circulated by the ICMR to Shri Rajesh Bhushan, Secretary, Ministry of Health and Family Welfare with the Forwarding Letter dated 03.06.2021. The Forwarding Letter in the opening states that the National Task Force on COVID-19 reviewed the treatment of COVID-19 associated Mucormycosis (CAM). The scarcity of medicines used in CAM was highlighted by the Co-chairs/ Experts. Recommendations on the various treatment options are recorded in the advisory attached to this communication.

8. A perusal of the said Advisory shows that the ICMR has advocated the use of Amphotericin B Deoxy Cholate as the standard treatment for CAM, while observing that the same causes Nephrotoxicity. It also advises as to how the said drug should be administered, so as to reduce Nephrotoxicity, and goes on to state that in cases of Cerebral Mucormycosis and in case of intolerance to Amphotericin B Deoxy Cholate, the patient be administered Liposomal Amphotericin B. It also advises on the aspect of use of Posaconazole in case of non-availability of Amphotericin B, or salvage therapy in patients with renal compromise or intolerant infusion reaction.

9. On 01.06.2021, Dr. U.B. Das, Senior Chief Medical Officer in the Directorate General of Health Services, Ministry of Health, Govt. of India had joined the proceedings, and informed us that Liposomal Amphotericin B

is the drug of choice to treat Mucormycosis (Black Fungus).

10. In the light of the said statement, we put it to both Mr. Ahluwalia and Mr. Kirtiman Singh, whether the Advisory issued by the ICMR should clearly state that the said Advisory has been framed in the background of short supply of Liposomal Amphotericin B. They took time to take instructions, and in the post-lunch session, Dr. Jerin Jose Cherian, Scientist-E, ICMR has joined the proceedings. During our interaction with him, it has been brought to our notice that the Advisory has been framed with the object of keeping Liposomal Amphotericin B available for treatment in cases of Cerebral CAM, or cases where the patients show intolerance to Amphotericin Deoxy Cholate and with that objective in mind, the ICMR has suggested that Amphotericin Deoxy Cholate should be used. He submits that about 80% patients in India, over the decades, have been treated with Amphotericin Deoxy Cholate, and the Advisory also takes into account the vast difference in the prices of Amphotericin Deoxy Cholate and Liposomal Amphotericin B. He has stated that, either the amended Advisory would be issued, or an addendum to the existing Advisory would be issued to indicate that they have been framed in the context of the shortage of Liposomal Amphotericin B, and the same would be reviewed every two weeks for the next three months. Let the same be done.

11. In the light of the aforesaid, we are satisfied with the Advisory issued by the ICMR, and the ICMR shall issue the necessary addendum, and continue to review the Advisory every 2 weeks for the next 3 months, as already noticed above.

12. Mr. Rao has referred to Section 135 read with Schedule VII of the

Companies Act, 2013 (“Act”) – which mandates certain categories of Companies to undertake Corporate Social Responsibility (CSR) Activities. The activities include, *inter alia*, activities pertaining to “*eradicating hunger, poverty and malnutrition, promoting health care including preventive health care*” and “*disaster management, including relief, rehabilitation and reconstruction activities*”. As per Section 135 (5) of the Companies Act, certain companies must spend at least 2% of the average net profits of the preceding three financial years in pursuance of their CSR policy. The Companies (Corporate Social Responsibility Policy) Rules, 2014 (“Rules”) provides further guidance in this regard. Rule 2(1)(d) defines CSR and expressly excludes “*activities undertaken in pursuance of normal course of business of the company*”, with a limited exception for research & development (R&D) activities.

13. Mr. Rao submits that in the present context, if a company undertaking production of vaccines were to provide vaccines free of costs towards CSR activities; or a company running a hospital were to provide free medical treatment for COVID-19 at its hospital, the aforesaid proviso may come in the way, by not recognising such an activity as a CSR Activity.

14. Mr. Rao has drawn our attention to a judgment passed by this Court in ***Mohd. Ahmed (Minor) Vs. Union of India*** [(2014) SCC OnLine Del 1508], WP(C) No. 7279/2013. In this case, the Court called upon the Ministry of Corporate Affairs (MCA) to deal with the aforesaid limitation in the Rules. The judgment observes: “*the Ministry of Corporate Affairs filed a letter dated 24.03.2014 before this Court stating “Ministry of Corporate Affairs has decided to amend the Schedule VII of the Companies Act, 2013 to bring*

*in clarity regarding the ambit of ‘promoting preventive healthcare’ as included in the said Schedule. It has been decided to amend the said item in Schedule VII as follows: ‘promoting healthcare including preventive healthcare’. This would encompass the entire healthcare area, including the treatment of diseases, etc.”..... **This Affidavit clarifies that an activity carried out by a Company covered under Schedule VII which is a part of its core business, if not done with a profit motive, amounts to a CSR Activity. The aforesaid letter and affidavit of Ministry of Corporate Affairs are taken on record and accepted by this Court. Government of India is held bound by the same**”.* (emphasis supplied)

15. Mr. Rao submits that despite the aforesaid communication from the Ministry of Corporate Affairs (MCA), the amendment to the relevant Rules has not been incorporated yet.

16. We may note that in the light of the position placed before this Court, by the MCA, the MCA would be bound by their statement made to the Court, and we hope and expect that consequential steps shall be taken by the MCA to amend the relevant Rules so as to expand the definition of CSR Activities. Let the status report in this regard be filed. This aspect shall be considered on 07.07.2021.

17. The note circulated by the learned Amicus dated 04.06.2021 also raises the issue with regard to the Resident Welfare Associations (RWAs) being permitted to carry out vaccinations for the residents of the locality. On 29.05.2021, the Ministry of Health and Family Welfare has issued a clarification regarding the scope of COVID-19 vaccination by private hospitals in accordance with the National COVID Vaccination Programme.

As per this order, private hospitals are permitted to carry out COVID-19 vaccinations through private COVID-19 vaccination centres run by them, and that apart there is no other avenue to carry out vaccination under National COVID Vaccination Programme. The States and Union Territories have been asked to monitor the vaccination in their respective States to ensure adherence to the prescribed guidelines. The learned Amicus points out that prior to issuance of this Order, several RWAs across Delhi had organised vaccination drives/ camps within their respective colonies for their residents in collaboration with different private hospitals. This was done keeping in view the convenience of the residents, and to avoid overcrowding at other vaccination centres. The submission of learned Amicus is that looking to the significant role played by RWAs in organising vaccination drives/ camps in the context of the overall management of the COVID-19 Pandemic, the Union of India should consider issuing specific clarification in this regard so that the RWAs, in collaboration with private hospitals may be able to qualify as private COVID Vaccination Centres of the hospitals.

18. In our view, the said aspect deserves serious consideration, and unless there are any specific reasons why the Central Government would not want the RWAs to play a role in the vaccination drive, there should be no impediment in designating the camps organised by the RWAs in association with private hospitals as vaccination centres run by private hospitals. Permitting vaccinations to be undertaken at such camps would go a long way in making it convenient and safe for the residents of the colonies to get themselves vaccinated at such centres. The Central Government should, therefore, seriously consider this proposal at the earliest. In case, the Central

Government finds merit in this suggestion, the position may be clarified without any delay, and without waiting for any further orders. Status report in this regard be filed by 07.07.2021. However, in case, the Central Government, for any good reason, is not inclined to permit RWAs to organise such camps in association with private hospitals, the reasons therefor shall be disclosed in the next status report.

19. The learned Amicus has further disclosed that in pursuance of the order dated 20.05.2021 and 25.05.2021, a meeting was convened on 26.05.2021 with the DDA. It appears that to expedite the establishment of PSA Plants in hospitals, it is necessary that the DDA should expedite the process of issuing necessary clarifications with regard to ground coverage and utilisation of space for setting PSA plants, etc. for purposes of computation of Floor Area Ratio (FAR). We direct the DDA to expedite the said process, and status in this regard shall be reported to the Court by 07.07.2021. The said aspect would be taken up for consideration on 08.07.2021.

20. List all these matters on 07.07.2021.

VIPIN SANGHI, J

JASMEET SINGH, J

JUNE 04, 2021

N.Khanna