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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C). 3032/2020 & C.M. No. 10552/2020

KARAN SETH

... Petitioner

Through: Mr. Darpan Wadhwa, Senior Advocate and Mr. Arjun Syal, Advocate for and along with the petitioner Mr. Karan Seth.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Ms. Anjana Gosain & Ms. Himanshi Aggarwal, Advocates for the respondent No.1/ UOI.

Mr. Anand Varma, Advocate for the respondent/AIIMS.

Mr. Rahul Mehra, Standing Counsel with Mr. Chaitanya Gosain & Mr. Gautam Narayan, Advocates for the State/ GNCTD.

Mr. Parvinder Chauhan, Advocate along with Mr. N.H. Sharma, Director (Night Shelter Home), for the respondent/ DUSIB.

Mr. Vaibhav Pratap Singh, Advocate for and along with Ms. Rachna Malik/ proposed proforma respondent.

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HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

22.05.2020

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1. During the course of hearing, certain aspects have come to light with regard to the night shelter managed by DUSIB at AIIMS. Two patients,

who were housed in the night shelter, namely Jitender Singh, aged 35 years and Gaya Prasad, aged 25 years, who had been visiting Jan Kalyan Hospital at Karol Bagh for their treatment i.e. dialysis process, were found Covid positive. This followed testing of 51 occupants of the night shelter, even though, the number of persons occupying the night shelter was 105 as on 19.05.2020 and 93 as on 21.05.2020.

2. It has been stated before us during the course of hearing by Mr. Chauhan that the doctors of the Delhi Health Service decided that only 51 of the occupants at the night shelter managed by DUSIB need to be tested for COVID-19, and not all. An affidavit be filed by the Doctors who visited the night shelter, and took the said decision to disclose the basis for testing only 51 of the occupants of the night shelter, and not the other occupants.

3. During the course of hearing, Mrs. Rachna Malik, who is a volunteer, and who has been regularly visiting the said night shelter at AIIMS, has brought to our attention some matters of concern. Firstly, she states that there is no potable drinking water facility at the night shelter, and that she has been providing drinking water at the said night shelter by purchasing the same, for which she also has the bills, etc.

4. She also points out that the toilet facility at the night shelter is inadequate and highly filthy, and not properly maintained throughout the day, due to lack of sufficient water. Though, the toilets are cleaned twice a day, due to lack of water, they get soiled very fast, and there is also chalking of the sewer line.

5. The aforesaid aspects are disputed Mr. Chauhan, on the instructions of Mr. N.H. Sharma, Director, Night Shelter, who is also present with Mr. Chauhan during the hearing. Mr. Chauhan states that the toilets of the night

shelter are separate and they are regularly maintained. Whenever there is choking of the toilets, the same is attended to by DUSIB.

6. There is also some difference in the versions of Ms. Malik and Mr. Sharma with regard to entry to the night shelter. Whereas, Ms. Malik states that one of the accesses to the night shelter is through the Vishram Sadan of AIIMS, and the other is from outside – often leading to the patients and the attendees approaching the night shelter through the Vishram Sadan, Mr. Chauhan states that though the two facilities are within the AIIMS complex, their entries and exits are entirely different.

7. Ms. Malik also states that the occupants of the night shelter use the toilets of the Vishram Sadan, and also use the kitchen where cooking facility is made available.

8. With regard to cooking facility, Mr. Chauhan, on the instructions of Mr. Sharma, states that a separate cooking facility is available for the night shelter and the occupants of the night shelter do not use the cooking facility at the Vishram Sadan. Similarly, the occupants of the night shelter use their own toilets, and not the toilets in the Vishram Sadan.

9. Another aspect raised by Ms. Malik is that there is absolutely no regulation or monitoring of persons who visit the night shelter. She states that a register should be maintained at the night shelter, since several volunteers like her visit the facility during the course of the day. This position is again disputed by Mr. Chauhan, on instructions from Mr. Sharma, who states that, firstly, night shelters cannot be accessed by any outsider and, secondly, there is monitoring of persons who come there and their particulars are maintained.

10. In the light of the aforesaid different versions that have emerged, we

direct that a local inspection be conducted without any delay. Ms. Malik states that Mr. Sanjeev Malik, her husband would be able to go for local inspection right away, since she has placed herself in self-quarantine presently. Mr. Arjun Syal, learned counsel for the petitioner also volunteers to join in the said visit. Mr. Sharma, Director, DUSIB, should ensure that the representative of DUSIB is also present. Others concerned may join the proceeding. The inspection shall be conducted today at 12:30 P.M. itself. No further notice shall be required to be given and the parties shall not wait for a copy of this order to proceed to carry out the inspection. The entire proceedings shall be video recorded by Mr. Malik. The video recording shall be made available to the other counsels. The statements of those who are occupying the night shelter shall also be recorded – to ascertain the correct factual position.

11. We are informed, and it is a matter of concern, that the attendant with Mr. Gaya Prasad, who tested positive for Covid, i.e. his mother, has left the night shelter without waiting for the Covid test result. It is pointed out by Mr. Vaibhav Pratap Singh that Ms. Malik had raised the said aspect with the caretaker at the night shelter, yet the mother of Gaya Prasad was allowed to leave for her native place and not quarantined. She has tested positive.

12. The status report filed by DUSIB also discloses that the patients who have been tested positive, have been shifted to two hospitals, namely Lok Nayak Jai Prakash Narayan Hospital and Rajiv Gandhi Super Speciality Hospital, both run by the GNCTD. Since, the aforesaid two patients and others who were found positive on Covid testing – which are 22 in number, were all occupying the night shelter which falls within the AIIMS premises, we are at loss to understand as to why they were not taken to the AIIMS

Covid facility, and why they have been shifted to far off hospitals. On this aspect, we call upon the Principal Secretary, Health, GNCTD, the concerned Director of DUSIB, and the authorised officer of AIIMS to file their respective affidavits, explaining as to why the said persons were not accommodated at the Covid facility at AIIMS itself, particularly when the patients were, even otherwise, receiving non-Covid treatment at AIIMS itself.

13. We had earlier permitted Ms. Rachna Malik to remain present in these proceedings. However, it appears that that direction is not complied with in as much, as, she has not been served with the status reports and her counsel states that he was not sent the link for hearing. Accordingly, we implead Ms. Rachna Malik as a party per forma respondent. This has been done on the suggestion of learned counsel for the petitioner himself.

14. We direct that today's order be placed before the Chief Secretary, GNCTD and after examining the report that may be prepared after today's visit, including the videograph, we direct him to examine the position with regard to the manner in which the night shelter at AIIMS is being managed by DUSIB, and to undertake all corrective measures, as are called for, without any delay. A further status report be filed by DUSIB, GNCTD, AIIMS and Ms. Malik.

15. List on 27.05.2020.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

MAY 22, 2020

N.Khanna