

IN THE HIGH COURT OF DELHI AT NEW DELHI

ORIGINAL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Dr. Kaushal Kant Mishra

... Petitioner

Versus

Govt. of NCT of Delhi & Anr.

...Respondents

**WRIT PETITION/PUBLIC INTEREST LITIGATION
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
PRAYING FOR A WRIT OF CERTIORARI FOR
QUASHING OF IMPUGNED ORDER NO. F-
23/(413)/GEN/Circular/NHC/DGHS/HQ/5366-77 DATED
24.05.2020 ISSUED BY RESPONDENT NO.2
DIRECTORATE GENERAL OF HEALTH SERVICES**

To,

The Hon'ble Chief Justice of the Hon'ble Delhi High Court and his
Companion Judges of the Hon'ble High Court

The humble petition of the Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. The Petitioner has no personal interest in this litigation, and this petition is not guided by self gain or for gain of any

other person/institution/body and there is no motive other than public interest in filing this Writ Petition.

2. The Petitioner is a Doctor and Orthopedic Surgeon by qualification. The Petitioner was previously with AIIMS and is now with Primus Super Specialty Hospital, Delhi. The Petitioner is also the President of Youth for Equality, which has filed a number of PIL's before the Hon'ble Supreme Court and before this Hon'ble Court on several occasions, opposing caste-based quotas, seeking guidelines for the media in reporting sub-judice cases, insulation of the bureaucracy from political interference and seeking transparency in judicial administration. In his personal capacity as well, he has been a Petitioner in various PILs on the above issues over the last 10 years. Petitioner also filed a public interest litigation before this Hon'ble Court challenging the Government's decisions to allow large-scale destruction of Delhi's tree cover for the purposes of construction of redevelopment colonies in Sarojini Nagar, Nauroji Nagar, Netaji Nagar, etc. As a medical practitioner who is interested in the health and welfare of the citizens, it is a responsibility of the Petitioner to approach this Hon'ble Court in this petition which affects the fundamental right to health of the public at large. It was during the said course of his medical practice that the Petitioner has gained knowledge of the facts alleged in this Writ Petition and did

research/inquiry into the said facts, which have all been presented in this Writ Petition.

3. This Writ Petition has been filed for the benefit of all citizens of India and of the citizens of Delhi in particular. The class is wide spread and diverse and the issues raised in this Writ Petition affect all citizens, in the face of the COVID-19 pandemic. The class is therefore incapable of coming together as a whole to access the Hon'ble Court to present and deal with the issue raised in this petition, which are matters of public interest.
4. The persons/bodies/institutions who are likely to be affected by orders sought in this Writ Petition are the Government of NCT of Delhi, which has been impleaded as Respondent through the Department of Health & Family Welfare, and the Directorate General of Health Services of the Government of Delhi represented through its Director General. Both the Respondents are State within the meaning of Article 12 of the Constitution of India. The other persons likely to be affected are the public at large. Such persons are too numerous and diverse to be impleaded as Respondents. To the knowledge of the Petitioner no other persons/bodies/institutions are likely to be affected by the orders sought in the Writ Petition.

5. The background and qualifications of the Petitioner are as set out in para 2 above, and are not being reiterated for the sake of brevity. The said averments show the competence of the Petitioner to espouse this cause. The Petitioner has the means to pay any costs imposed by this Hon'ble Court and undertakes to do so, if so ordered by this Hon'ble Court.
6. The Petitioner has not made any representation before the Respondent Government before filing this petition, as the issues are emergent and require immediate intervention of this Hon'ble Court.
7. The Petitioner has previously filed a number of Public Interest Litigations in his individual capacity as well as in his capacity of President of Youth for Equality as stated above.

FACTS CONSTITUTING THE CAUSE OF ACTION

8. Through this Writ Petition the Petitioner seeks quashing of impugned order F-23/(413)/GEN/Circular/NHC/DGHS/HQ/5366-77 dated 24.05.2020 issued by the Respondent No. 2 Directorate General of Health Services, which functions under the control of the Respondent No. 1 Government of NCT of Delhi. Vide the said impugned order, the Respondents have directed that all 117 private hospitals/nuring homes which are registered under the Delhi Nursing Homes Registration

Act, 1953, having bed capacity of 50 beds or more, will have to reserve/earmark at least 20% of their total bed strength for COVID-19 patients. True copy of impugned order F-23/(413)/GEN/Circular/NHC/DGHS/HQ/5366-77 dated 24.05.2020 issued by the Respondent No. 2 Directorate General of Health Services is annexed as **Annexure P-1**.

9. In December 2019 the COVID-19 disease surfaced in Wuhan in China. At the time not much was known about the disease, but since then it has proved to be highly contagious and has spread across the world. On 11.3.2020 the World Health Organization declared COVID-19 as a global pandemic. India is today one of the worlds worst affected nations by the COVID-19. Within India, Delhi is among the highest affected regions with over one thousand COVID-19 positive cases being reported daily as on date of filing of this Writ Petition.
10. Apart from the various measures undertaken by the Central Government to combat the pandemic, the Delhi Government also has taken various steps including notifying various hospitals in Delhi as exclusive hospitals for treating COVID-19 patients. Apart from the Government hospitals, ten private hospitals were notified as COVID-19 dedicated facilities on various dates.

11. On 28.3.2020 the Union Ministry of Health & Family Welfare issued a letter to the Chief Secretaries of all State Governments, highlighting that while preparing isolation beds for COVID-19 patients in hospitals, there was a need to ensure preparation of separate dedicated blocks in hospitals, or dedicating the entire hospital for COVID-19, so as to avoid inter mingling of COVID-19 and non COVID-19 patients and avoid the hospital itself becoming a hub for transmission of the disease. True copy of letter dated 28.3.2020 issued by Ministry of Health & Family Welfare is **Annexure P-2**
12. As stated above, in Delhi as well, apart from Government hospitals, ten private hospitals were dedicated for COVID-19 patients. However, it appears that given the rising number of cases on a daily basis, there is a projected shortfall of hospitals beds to cater to COVID-19 patients in the city. As per the impugned order, it is found that most of the beds in the dedicated private hospitals are already occupied and therefore a need was expressed to increase the bed capacity for COVID-19 patients in the private hospitals in Delhi. In this view of the matter the impugned order was passed on 24.5.2020 by the Respondent No. 2, directing inter alia that all 117 private hospitals/nuring homes which are registered under the Delhi Nursing Homes Registration Act, 1953, having bed capacity of 50 beds or more, will have to

reserve/earmark at least 20% of their total bed strength for COVID-19 patients. The Petitioner is aggrieved with this the impugned order as it is manifestly arbitrary, violates Articles 14 and 21 of the Constitution of India, and has an adverse effect on public health and will not aid in combating the pandemic.

13. On 25.5.2020, the Delhi Voluntary Hospitals Forum sent a representation to the Respondent No. 2 pointing out the various practical difficulties with the impugned order dated 24.5.2020 and how it would lead to increase in risk of spreading and contracting COVID-19 infection, including for health care workers. True copy of representation dated 25.5.2020 is **Annexure P-3**.
14. On 27.5.2020, a news article was published by India Today titled '*COVID-19: Private Hospitals oppose decision to reserve beds in Delhi*'. In this article the Petitioner was interviewed and he expressed his opinion that the impugned order could lead to spread of the disease. True copy of news article dated 27.5.2020 published in India Today titled as '*COVID-19: Private Hospitals oppose decision to reserve beds in Delhi*' is **Annexure P-4**
15. On 8.6.2020, a news article was published in Times of India titled "*Novel Coronavirus may spread across half the*

hospital surfaces in 10 hours". The article is about a research done by researchers from University College Hospital College and Great Ormond street Hospital in the UK. The research notes that the virus DNA left on the hospital bed rail was found on half of all sites sampled across a ward within 10 hours, and persisted for at least 5 days. True copy of news article dated 8.6.2020 published in Times of India titled "*Novel Coronavirus may spread across half the hospital surfaces in 10 hours*" is **Annexure P-5**.

16. On 9.6.2020, a news article was published in The New Indian Express titled "*Kerala changes tack on Covid 19*" , which noted that how a Convention Centre in Ernakulum has been converted into a 300 bed facility for asymptomatic Covid patient. True copy of news article sated 9.6.2020 published in The New Indian Express titled "*Kerala changes tack on Covid 19*" is **Annexure P-6**.
17. On 9.6.2020 respondent No. 1 came with another order No. 52/DGHS/PH-IV/Covid 19/2020/perseyhwf/12056-12035, which was issued in continuation of impugned order. As per this order the enclosed list of 22 private hospitals will dedicate additional 20% beds for Covid patients. True copy of order No. 52/DGHS/PH-IV/Covid

19/2020/perseyhwf/12056-12035 dated 9.6.2020 is annexed herewith as **Annexure-P/7**.

18. Since then the Respondents have continued to implement the impugned order dated 24.5.2020 and it is the contention of the Petitioner that the impugned order ought to be quashed for the reasons given below.
19. This Writ Petition is filed on the following amongst other grounds, which are taken without prejudice to each other –

GROUND

- 19.1 Because the impugned order is contrary to Articles 14 and 21 of the Constitution of India. It does not achieve the stated objective of treatment and containment of COVID-19, thereby violating Article 14, and further, it results in endangering public health, which is a violation of Article 21 of the Constitution of India.
- 19.2 Because while there is a need to increase the treatment capacity for COVID-19 in view of the rising number of infections, the Respondents failed to appreciate that directing registered private hospitals/nursing homes to reserve 20% of their bed capacity for COVID-19 patients is arbitrary and will not achieve the desired objective.
- 19.3 Because the Respondents failed to appreciate that not all

the 117 hospitals/nursing homes are designed in a manner where COVID-19 patients can be effectively segregated from non COVID-19 patients. If there is intermingling then there is a definite increase in the risk of spreading the infection. Most of the hospitals/nursing homes are constructed as a single building, and not as separate blocks where COVID-19 patients can be housed. In such buildings, the challenges start from common entry and exit point, common lobby, common lifts, common washrooms, etc. All patients whether COVID-19 or not will be using the common facilities which definitely increases the risks of infection, despite the facility taking all possible care of reducing intermingling. In such a case, the hospitals/nursing homes themselves will become centers for spread of COVID-19, which will defeat the very purpose for which the impugned order is passed.

- 19.4 Because most of the hospitals are designed in terms of airconditioning, other supplies like pharma, engineering services, oxygen supply etc. to achieve segregation.
- 19.5 Because there is also a stringent protocol for disposal of biomedical waste of COVID-19 patients, and for partial compliance of 20% of beds, it would not be possible to follow those protocols to avoid segregation of biomedical

waste of the COVID-19 patients.

- 19.6 Because such proper segregation can be achieved only if a separate physical block can be dedicated for COVID-19 patients, or the entire facility is declared as dedicated for COVID-19 treatment.
- 19.7 Because the Respondents failed to appreciate that many of the hospitals are providing super specialised treatment in fields of oncology, dialysis, trauma, Spine, cardiology, acute / chronic diseases, etc. These patients are anyway vulnerable and have low immunity. In the eventuality of treating covid and non covid patients under one roof, it will lead to increased risk of mortality of such patients if they contract COVID-19 as anyway their immunity levels are very low. Further many of these patients are senior citizens who are anyway at increased risk.
- 19.8 Because another real possibility is that if all hospitals are used for COVID-19 treatment, even if in part, then many patients will be dissuaded from coming there for necessary treatment. While treatment of some illness/diseases can be postponed, there are several patients suffering from various conditions who need ongoing treatment. If they do not come to hospital for fear of contracting COVID-19 infection, then it will adversely affect their health and lead to further deaths,

which are entirely avoidable.

- 19.9 Because this lack of segregation would violate the instructions issued by the Central Government through its letter dated 28.3.2020, which stressed upon the importance of proper segregation to avoid hospitals becoming centers for spread of COVID-19.
- 19.10 Because the Respondents failed to appreciate that the said 117 private hospitals/nursing homes are spread all over the city, including in areas where there is less spread of infection as opposed to other areas of the city where there is higher spread, and where there may be containment zones. Bringing COVID-19 patients to hospitals/nursing homes in less infected areas will lead to spreading of infection in such areas, which is against the stated purpose of treating infected patients while containing the spread of the COVID-19 pandemic.
- 19.11 Because another unintended consequence of the impugned order is that there is increased risk to the healthcare workers if all hospitals/nursing homes are made to treat COVID-19 patients. This may lead to healthcare workers getting infected in larger numbers, which will lead to shortage of the health care staff and will worsen the situation as proper treatment wont be

available in the hospitals.

- 19.12 Because there is hardly any possibility to segregate staff under one roof. The hospitals/nursing homes may be able to somehow manage to segregate doctors treating COVID-19 patients, but nurses, paramedical staff, housekeeping, and many others may not be segregated as they have to cater to all parts of the premises including to non COVID-19 patients.
- 19.13 Because a more effective solution would be to be create new centers dedicated to treatment of COVID-19 patients, such as hotels, which are lying closed for the moment. There can be provision of doctors and nursing staff and medical staff made therein, which will result in treatment of COVID-19 patients in a segregated environment and avoid risk of infection to non COVID-19 patients. Also the Government could take over large public spaces such as banquet halls, stadiums, etc. and create treatment facilities in a closed environment.
- 19.14 Because further, entirely taking over of few hospitals/nursing homes in each District would also give the Government much needed capacity for COVID-19 treatment, which is the issue sought to be addressed by the impugned order.

- 19.15 Because in a worst case scenario, if after taking over of all alternative sites still there is a need felt for reserving more beds for COVID-19 patients, then only should the larger hospitals providing specialized treatment be taken over for COVID-19 patients. In such a case, the hospital should be taken over entirely otherwise the infection will spread if there is partial takeover and there is bound to be intermingling of COVID-19 and non COVID-19 patients.
- 19.16 Because thus, in the present form, the impugned order is against the stated purpose of treating infected patients while containing the spread of the COVID-19 pandemic. It is arbitrary as it has not taken all relevant factors into account. The impugned order bears no nexus with the object sought to be achieved and thus fails the test of Article 14 of the Constitution of India. Further the resulting danger of spread of infection by improper segregation, and increased risk to already vulnerable patients undergoing treatment for other illnesses, increases the risk to public life and health and thus is offends Article 21 of the Constitution of India as well.
20. The Petitioner states that he has not filed any other Petition seeking the same or similar relief before any other Hon'ble Court.

PRAYER

Therefore in view of the above pleadings, it is most respectfully prayed that this Hon'ble Court may be pleased to—

- A) Issue a Writ of Certiorari and quash the impugned order F-23/(413)/GEN/Circular/NHC/DGHS/HQ/5366-77 dated 24.05.2020 issued by the Respondent No. 2 Directorate General of Health Services;
- B) Pass such other further order(s) as this Hon'ble Court may deem fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Petitioner

Through

New Delhi
Date

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