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

% *Date of Decision: 10th June, 2020*

+ W.P.(C) 3453/2020

SUSHEEL MAHAJAN Petitioner

Through: Mr.N.Pradeep Sharma, Adv.
with Mr.Harsh Sharma, Adv.

Versus

MINISTRY OF HEALTH AND FAMILY WELFARE,
UNION OF INDIA & ANR Respondents

Through: Mr.Ripudaman Bhardwaj,
CGSC with Mr.Priyanka Arora, Adv. for
R-1/UOI.

Mr.Abhimanyu Verma, Adv. for R-2.

Mr.Hetu Arora Sethi, Adv. for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings of the matter have been conducted through video conferencing.

C.M.No.12243/2020 (exemptions)

Exemptions allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) No.3453/2020

1. Learned counsel for the petitioner has taken this Court to the prayers in the writ petition which are as under:-

“In the facts and circumstances above mentioned the Applicant most respectfully prays that this Hon’ble Court may graciously

be pleased to:-

a) Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents to implement the Covid - 19 guidelines effectively.

and

b) Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents not to allow any installation of any chemical chamber / tunnel at public places / offices / homes / offices etc.

and

c) Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents not to allow the installation of any Ultra Violet radiation tunnel at public places/offices or any other place in the interest of health of the citizens.

and

d) Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondent No.3 to book such persons / companies as per the applicable provisions of law.

and

e) pass such other and further order/orders as deemed fit and proper in the facts and circumstances of the present case and in the interest of justice.”

2. Learned counsel for the petitioner has also taken this Court to Annexure – II to the memo of this writ petition, which is an interim guidance issued by the World Health Organization (‘WHO’) dated 15th May, 2020. The heading of the aforesaid guidance reads “**Cleaning and disinfection of environmental surfaces in the context of COVID-19**”.

3. We have perused the aforesaid Annexure-II issued by the WHO.

4. Learned counsel for the petitioner has further taken this Court to

internal page No.3 of this guidance which reads as under:-

“Spraying disinfectants and other no-touch methods:-

In indoor spaces, routine application of disinfectants to environmental surfaces by spraying or fogging (also known as fumigation or misting) is not recommended for COVID- 19. One study has shown that spraying as a primary disinfection strategy is ineffective in removing contaminants outside of direct spray zones.³⁸ Moreover, spraying disinfectants can result in risks to the eyes, respiratory or skin irritation and the resulting health effects.³⁹ Spraying or fogging of certain chemicals, such as formaldehyde, chlorine based agents or quaternary ammonium compounds, is not recommended due to adverse health effects on workers in facilities where these methods have been utilized.

Spraying environmental surfaces in both health-care and non-health care settings such as patient households with disinfectants may not be effective in removing organic material and may miss surfaces shielded by objects, folded fabrics or surfaces with intricate designs. If disinfectants are to be applied, this should be done with a cloth or wipe that has been soaked in disinfectant.

Some countries have approved no-touch technologies for applying chemical disinfectants (e.g. vaporized hydrogen peroxide) in health-care settings such as fogging-type applications. Furthermore, devices using UV irradiation have been designed for health-care settings. However, several factors may affect the efficacy of UV irradiation, including distance from the UV device; irradiation dose, wavelength and exposure time; lamp placement; lamp age; and duration of use. Other factors include direct or indirect line of sight from the device; room size and shape; intensity; and reflection. Notably, these technologies developed for use in health-care settings are used during terminal cleaning (cleaning a room after a patient has been discharged or transferred), when rooms are unoccupied for

the safety of staff and patients. These technologies supplement but do not replace the need for manual cleaning procedures. If using a no-touch disinfection technology, environmental surfaces must be cleaned manually first by brushing or scrubbing to remove organic matter.

Spraying or fumigation of outdoor spaces, such as streets or marketplaces, is also not recommended to kill the COVID-19 virus or other pathogens because disinfectant is inactivated by dirt and debris and it is not feasible to manually clean and remove all organic matter from such spaces. Moreover, spraying porous surfaces, such as sidewalks and unpaved walkways, would be even less effective. Even in the absence of organic matter, chemical spraying is unlikely to adequately cover all surfaces for the duration of the required contact time needed to inactivate pathogens. Furthermore, streets and sidewalks are not considered to be reservoirs of infection for COVID-19. In addition, spraying disinfectants, even outdoors, can be harmful for human health.

Spraying individuals with disinfectants (such as in a tunnel, cabinet, or chamber) **is not recommended under any circumstances**. This could be physically and psychologically harmful and would not reduce an infected person's ability to spread the virus through droplets or contact. Moreover, spraying individuals with chlorine and other toxic chemicals could result in eye and skin irritation, bronchospasm due to inhalation, and gastrointestinal effects such as nausea and vomiting.”

5. Learned counsel appearing for the petitioner has also taken this court to the internal page No.5 of the abovesaid guidance which reads as under:-

“Personal safety when preparing and using disinfectants

Cleaners should wear adequate personal protective equipment (PPE) and be trained to use it safely. When working in places where suspected or confirmed COVID-19 patients are present,

or where screening, triage and clinical consultations are carried out, cleaners should wear the following PPE: gown, heavy duty gloves, medical mask, eye protection (if risk of splash from organic material or chemicals), and boots or closed work shoes. Disinfectant solutions should always be prepared in well ventilated areas. Avoid combining disinfectants, both during preparation and usage, as such mixtures cause respiratory irritation and can release potentially fatal gases, in particular when combined with hypochlorite solutions. Personnel preparing or using disinfectants in health care settings require specific PPE, due to the high concentration of disinfectants used in these facilities and the longer exposure time to the disinfectants during the workday.⁴⁹ Thus, PPE for preparing or using disinfectants in health care settings includes uniforms with long-sleeves, closed work shoes, gowns and/or impermeable aprons, rubber gloves, medical mask, and eye protection (preferably face shield). In non-health care settings, resource limitations permitting, where disinfectants are being prepared and used, the minimum recommended PPE is rubber gloves, impermeable aprons and closed shoes. Eye protection and medical masks may also be needed to protect against chemicals in use or if there is a risk of splashing.”

6. Learned counsel appearing for the petitioner submitted that these guidance ought to have been implemented by the respondents in its letter and spirit and, thus, the disinfectants cannot be sprayed over the public streets, paths etc. and much less upon human beings, as the same can be extremely dangerous to their lives.

7. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that this petitioner has preferred representations before the respondents, which are at annexed to be writ petition as Annexures – VI, VII and VIII.

8. We, therefore, direct the concerned respondent authorities to

appreciate these representations. The grievances ventilated therein shall be looked into in the light of the aforesaid guidance issued by WHO and also keeping in mind the directions issued by the Central/State Governments and also in accordance with law rules, regulations, Government policies and circulars applicable to the facts of the case. Needless to say, that the respondent authorities have already constituted a Committee of Experts which includes doctors and other experts, and their advice may be taken to decide about the use of the disinfectant and the use of Ultraviolet radiation tunnels etc.

9. With these observations, the writ petition is disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

JUNE 10, 2020

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