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

+ **W.P.(C) 5157/2021**

MADHURI GAUR

..... Petitioner

Through: Mr. Saurabh Kansal and Ms. Ashu  
Chaudhary, Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE  
& ORS.

..... Respondents

Through: Mr. Satvik Verma, Sr. Advocate with  
Mr. Tanveer Oberoi, Advocate for  
Respondent No.1  
Mr. Farman Ali, Advocate for  
Respondent No.2  
Ms. Shobhna Takiar, Mr. Anjum  
Javed & Mr. Devendra Kumar,  
Advocates for Respondent No.3

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

% **12.05.2021**

1. This hearing has been done through video conferencing.
2. The present petition has been preferred by the Petitioner, who is aged 44 years and is suffering from Esophageal (Food Pipe) Cancer.
3. The case of the Petitioner is that she was being treated at the National Cancer Institute located at AIIMS, Jhajjar, Delhi where she was required to undergo treatment of Chemotherapy and Radiotherapy in two phases. The first phase of her Chemotherapy and Radiotherapy was conducted on 7<sup>th</sup> April, 2021 and the second phase was scheduled for 30<sup>th</sup> April, 2021. However since elective surgeries have been postponed during the Covid-19 pandemic, the second phase of the Petitioner's treatment is not being

conducted.

4. On the last date of hearing, i.e., 4<sup>th</sup> May 2021, the Id. Counsel for the Petitioner had expressed his apprehension that if the surgery is delayed indefinitely, there could be irreparable loss to the Petitioner's medical condition. Hence he prayed for a direction to be given to the Respondent AIIMS to conduct a time bound surgery.

5. Vide order dated 4<sup>th</sup> May 2021, this Court had observed:

*“7. The Court has perused the documents on record which clearly show that the Petitioner has been undergoing treatment at the National Cancer Institute, AIIMS, Delhi. The discharge summary dated 7th April, 2021 is placed on record which clearly shows that the next phase of the treatment was scheduled for 30th April, 2021.*

*8. Issue notice. Mr. Satvik Verma, Id. Senior counsel who is present in Court, is requested to accept notice on behalf of AIIMS, Delhi.*

*9. Let a report be placed on record by the Petitioner's treating Doctor from National Cancer Institute, AIIMS, Delhi as to the status of the Petitioner's phase-II Radiotherapy and Chemotherapy. The report would also consider as to when would be the appropriate time for the second phase surgery to be conducted, without the Petitioner's medical condition deteriorating. Further, the report would also state the earliest when the second phase treatment can be undertaken. Let the report be filed within one week. After perusing the report, further directions shall be issued.”*

6. As per the above direction, a status report has been placed on record

on behalf of AIIMS, in spite of very short time having been granted for the same. The contentions in the status report are as under:

*“1. The above mentioned patient is a known case of carcinoma esophagus. She was registered and seen by multidisciplinary oncology team (Medical, Radiation and Surgical Oncology) teams at NCI and planned for preoperative Chemoradiotherapy followed by surgery in-view of locally advanced nature of disease. She received neoadjuvant chemoradiotherapy at National Cancer Institute, Jhajjar, till 07-April-21. She was referred by medical oncology team for surgery and was seen by surgical oncology team at NCI.*

*2. Meanwhile due to rapid surge in COVID cases in Delhi in early April, AIIMS administration has decided to convert NCI as COVID hospital and took a decision to close all OPDs and elective surgeries at AIIMS till the covid situation improves and diverted most of human resources and infrastructure for covid care. Patient was referred to IRCH, AIIMS and she was seen by surgical team at IRCH, AIIMS on 28<sup>th</sup> April and was explained regarding the crisis situation at AIIMS and was asked to get a CT scan done and come for surgical review.*

*3. Surgery for Esophageal cancer is considered as Elective Surgery and it is generally recommended to perform the surgery with in 8 weeks after chemo radiotherapy.*

*4. International guidelines also recommend to defer elective thoracic surgeries during urgent setting of COVID pandemic, overwhelming health care resources of the city and hospital which currently Delhi is experiencing.*

5. *The surgical procedure planned is a complex procedure requiring all the hospital facilities and ICU care. In general these patients are at high risk of contracting covid during prolonged hospitalization and can develop serious covid related complications.*

6. *The overall situation was explained to the patients relative and was asked to get a CT scan done for assessment of response to chemo-radiotherapy and evaluate whether patient is suitable for surgery or not in the second week of May. They were asked to and keep in touch with the surgical team for updates and the patient was assured that she will be take-up for surgery on priority, subject to CT scan report showing good response, improvement in COVID situation at AIIMS and resumption of elective surgeries.”*

7. Today, Id. counsel for the Petitioner submits that in fact the status report filed by AIIMS supports his case, to the effect that the Petitioner requires surgery on top priority. He submits that so long as the surgeon in AIIMS can schedule a surgery, within a reasonable time period, so as not to adversely affect the condition of the Petitioner, the Petitioner would be satisfied.

8. In so far as AIIMS is concerned, Mr. Verma, Id. Senior Counsel, submits that currently the entire hospital has been made a COVID hospital, and no elective surgeries are being performed. He submits that the CT Scan report of the Petitioner was required for the surgeon to take a call as to whether the Petitioner's condition was improving. He further submits that despite the fact that Petitioner had undergone chemotherapy on 7<sup>th</sup> April, 2021 and the notification relating to the COVID-19 pandemic and of the

closure of elective surgeries was issued on 19<sup>th</sup> April, 2021, the Petitioner was again evaluated and seen by the concerned Doctor in AIIMS on 28<sup>th</sup> April, 2021. He finally submits that no mandamus can be issued by this court, directing AIIMS to get a particular surgery performed.

9. Ld. Counsel for the Petitioner, in rejoinder, submits that the Petitioner has already gotten a CT Scan done and the report has been shown to the private doctor whom he had shown, according to whom, there has been an improvement. He submits that the Petitioner wishes to show the CT scan report to the surgeon in AIIMS, who is dealing with the Petitioner, again.

10. Heard ld. Counsels for the parties. A perusal of the status report filed by AIIMS shows that the said report confirms the fact that the Petitioner has received Chemo-radiotherapy at the National Cancer Institute, Jhajjar till 7<sup>th</sup> April, 2021. Thereafter, all OPDs and elective surgeries at AIIMS were closed due to the COVID-19 situation. The report also confirms that the Petitioner was to get a CT scan done for surgical review. Paragraph 3 of the status report is significant to the effect that it recommends the surgery to be performed within eight weeks of the Chemo-radiotherapy. However, the difficulties due to the pandemic have been reflected in the later paragraphs of the report extracted above.

11. Considering the overall facts and circumstances of the case, as also the status report that has been filed on behalf of AIIMS, the following directions are issued:

- i) The CT scan report along with the CT scan itself, may be transmitted to the surgeon concerned, through ld. Senior counsel Mr. Verma. The Petitioner's counsel shall hand over the CT scan report to Mr. Verma, so that it can be passed on to the doctor/

surgeon concerned who is dealing with the Petitioner's case.

- ii) After the surgeon has examined the CT scan report, a tele-consultation be arranged between the surgeon/ Oncology team concerned and with the Petitioner, in order to fix the date of the surgery, keeping in mind the COVID situation in AIIMS, as also the probable date of resumption of the elective surgeries.

12. This Court is confident that the team at AIIMS dealing with Petitioner's case in the Department of Surgical Oncology, would ensure that a correct balance is drawn between ensuring the well-being of the Petitioner as also the COVID-19 situation which is prevalent currently. Steps for conduct of the surgery are directed to be taken immediately upon the surgeon/team in the concerned department recommending the same for the Petitioner, keeping in mind the overall facts and circumstances.

13. With these observations, the petition is disposed of. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRATHIBA M. SINGH, J**

**MAY 12, 2021**

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