

\$~2-9.

- * **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) 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
- + **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

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

Mr. Manish Vashist, Sr. Adv. with Mr. Prashant Rajput, Mr. Manashwy Jha and Ms. Sanjana Nangia, Advocates in C.M. NO. 19606/2021.

Dr. Abhishek Manu Singhvi, Sr. Advocate with Mr. Amit Bhandari, Mr. Talha Rahman, Mr. M. Shaz Khan, Mr. Prashant Rajput and Mr. Aman Sharma, advocates in C.M. No. 19606/2021.

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 Sarada, 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 intervener.

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

ORDER
% **07.07.2021**

W.P.(C) 5100/2021 and C.M. No. 15623/2021

Learned counsel for the petitioner states that the above captioned petition has become infructuous in view of the orders passed by this Court on the issues raised in this petition. He, therefore, does not wish to press tis petition any further.

The petition is dismissed as withdrawn.

W.P.(C) 5256/2021 & C.M. Nos.16155-56/2021

Mr. Sagar, who appears for the petitioner states that the petition has become infructuous, since the prices of Oxygen Concentrators, has been fixed by the Government.

The petition is disposed of as infructuous.

W.P.(C) 5593/2021 & C.M. Nos. 17436-37/2021

Learned counsel for the petitioner seeks leave to withdraw the petition since the patient has recovered from Mucormycosis. The petition is, accordingly, dismissed as withdrawn.

C.M. Nos. 19606 & 19607/2021

Mr. Singhvi, learned senior counsel for the applicants, after some arguments, states on instructions that the applicants wish to withdraw these

applications with liberty to prefer such other remedies, as may be available in law. The applications are, accordingly, dismissed as withdrawn with liberty as prayed for.

C.M. No. 19609/2021

After some arguments, Mr. Vashisht, learned senior counsel for the applicant states on instructions that the applicant wishes to withdraw the application with liberty to file another appropriate proceeding to pursue the rights of the applicant.

Dismissed as withdrawn with liberty as prayed for.

W.P.(C) 3031/2020 , W.P.(C) 5050/2021 , W.P.(C) 5102/2021 , W.P.(C) 5241/2021 and W.P.(C) 5594/2021

1. Mr. Rao, the learned Amicus points out that the Union of India has taken steps to fix the prices of imported Oxygen Concentrators. Let the relevant notifications/ orders in this regard be placed on record by the Union of India, including the Office Memorandum dated 09.06.2021 fixing MRPs of Oxygen Concentrators, and capped Trade Margin at Price to Distributors at 70% for Oxygen Concentrators.
2. Mr. Rao further points out that the Union of India has supplied compressor for the PSA Plants installed at Dr. Baba Saheb Ambedkar Hospital and Satyawadi Raja Harish Chandra Hospital. The GNCTD shall file a status report within a week with regard to completion of work of installation and operationalisation of the said PSA plants.
3. The Union of India file a further status report with regard to the status of the manufacturers of Remdesivir for exports. It should be disclosed whether the export of Remdesivir has been started, and the status of the

stocks held by the exporters – which had been restrained, and whether they have been permitted to produce for domestic market, should also be disclosed. Further status report in this regard be filed within a week.

4. With regard to making of accommodation and transport facilities available to health workers, Mr. Rao submits that the Union of India and the GNCTD may be asked to provide the status of such facilities made available, as well as the data with regard to the usage of both these facilities by the health workers, so as to plan for the future. Both the Union of India and the GNCTD should file a further status reports in the above terms within a week and should also indicate whether such facilities can be provided on short notice, in case, we again face another wave of the pandemic.

5. By reference to our order dated 20.05.2021, Mr. Rao submits that the Union of India had to inform the Court with regard to the steps taken to augment the capacity of cryogenic oxygen tankers for use in Delhi. Mr. Kirtiman Singh seeks time to report in this regard. Let the same be done within a week. Mr. Mehra submits that the IIT, Delhi had submitted a report on the aspect of supply chain logistics of Liquid Medical Oxygen to Delhi, which has been submitted by the GNCTD to the DPIIT, Government of India for consideration.

6. The status report to be filed by the Union of India should also contain the response of the Union of India to the said report, and the steps it proposes to take, if any, in compliance to the said recommendation.

7. Again by reference to our order dated 20.05.2021, Mr. Rao submits that the Union of India had to indicate the steps taken to fulfil the obligation cast on the Union of India by the Supreme Court in its order dated 30.04.2021 to set up buffer stocks of Oxygen for use in Delhi. Mr. Kirtiman

Singh again seeks time to respond to the said aspect. Let the same be done positively within a week, since it has been pending for a long time.

8. On the aspect of availability of imported *Liposomal Amphotericin B*, and domestic production of *Liposomal Amphotericin B*, we had passed orders on 20.05.2021. Mr. Rao submits that the Union of India had earlier filed status reports with regard to the steps being taken by it for import and production of *Liposomal Amphotericin B*. Let a further status report be filed by the Union of India within a week indicating the current status of availability of *Liposomal Amphotericin B* in the country; the quantities of the said medicine actually imported and the status of the orders placed with Gilead, and the outstanding supplies. The status of production of the said drug domestically should also be disclosed.

9. With regard to activation of helpline Nos. such as 1098, 1075 and 08046110007 dedicated for specific purposes, the Union of India should file a further status report disclosing the current facilities/ capacities, and with regard to preparedness to meet any eventuality arising with surge of cases of COVID-19 during the third wave.

10. Mr. Rao has submitted that with the medical experience of over a year now in dealing with COVID-19 disease, there is need to study the effectiveness of several medications prescribed and administered by the practising doctors, and on that basis to determine the effectiveness of one, or the other, medicine. For example, *IVERMECTIN* is one of the medicines which several medical practitioners are claiming to be effective as a preventive drug. However, the ICMR, and the WHO have taken the stand that there is not sufficient data available to positively state whether the said medicine works as a preventive, or even for treatment of COVID19. It is

essential that the concerned institutions of the Union of India undertake the exercise of compiling, and analysing the data with regard to the use of medications which have been used for preventing and treatment of COVID-19, and on that basis to come out with their reports. Mr. Rao has pointed out that the National Centre for Disease Control (NCDC) has a role to play in this regard. Mr. Rao has shared with us, the mandate of the NCDC, which, inter alia, reads as follows:

“Mandate

The mandate of the Institute broadly covers three areas viz. services, trained health manpower development and research

I. Services

The Institute takes leading role in undertaking investigations of disease outbreaks all over the country employing epidemiological and diagnostic tools. It also provides referral diagnostic services to individuals, community, medical colleges, research institutions and state health directorates. The service component provided by the Institute also includes making available scientific research material, teaching aids, storage and supply of vaccines and quality control of biologicals. A brief of different services provided are mentioned below:

A. Outbreak investigations

The institute investigates and recommends control measures for the outbreak of various communicable diseases in the States/UTs all over the country as well as to some neighbouring countries in the South East Asia Region. The institute also undertakes monitoring of outbreaks through-out the country, especially during its early rising phase by collecting information from the states and districts. The institute conducts emergency preparedness training for the officials in the state as well as investigates rumors in cases of diseases that have been considered as eradicated e.g. Smallpox case rumors.

B. Referral Services

i) Referral Diagnostic Services: *The institute provides referral diagnostic services for various communicable diseases of microbial origin specially for those for which diagnostic facilities are ordinarily not available in hospitals and medical colleges. These include:*

- *Viral diseases- Poliomyelitis, Measles, Coxsackie virus, other Enteroviruses, Hepatitis virus, AIDS, Rabies, Arbo-viral infections, Rubella, Cytomegalovirus etc.*
- *Bacterial diseases- Meningitis, Diphtheria, Acute Respiratory Infections, Cholera and newer Entero-pathogens, Plague, Anthrax, Brucellosis, Rickettsioses etc.*
- *Mycotic diseases- Common fungal infections, superficial as well as deep.*
- *Parasitic Diseases- Malaria, , Kala-azar, , Leptospirosis, Hydatidosis*
.....
.....

3. Research

Applied integrated research in various aspects of communicable as well as some aspects of non-communicable diseases has been one of the prime functions of the Institute. To achieve this, the institute is actively engaged in research in the following broad areas.

- i. Applied research in the field of bacteriology, virology, mycology, parasitology, immunology, biotechnology, epidemiology, entomology and quality testing of vaccines and other biologicals with an aim of improving diagnostic capabilities of diseases of public health importance and providing laboratory support to the investigation and control of disease out breaks. The important diseases include Cholera, Polio, Measles, Yaws, Diphtheria, Meningitis, Tetanus, Hepatitis, AIDS, Rubella, Rabies, Dengue, Japanese Encephalitis, Kala-azar, Guinea Worm, Malaria, Filaria, Plague ,Leptospirosis, Anthrax etc.*
- ii. Applied field based research through longitudinal surveillance studies of various epidemic prone diseases.*
- iii. Laboratory and field oriented research in the transmission dynamics of arthropod borne diseases with the ultimate objective of vector control.*

- iv. *Evaluation of new formulations of insecticides and biocides and screening of indigenous herbs to evaluate their insecticidal properties. Studies on biological hazards of pesticides.*
- v. ***In- vitro** cultures of organisms, development of reagents, rapid diagnostic tests including molecular techniques using modern equipment and latest technology.*
- vi. *Research on hormonal disorders”*

11. In our view, looking to the mandate of NCDC, it is primarily for them to conduct the aforesaid exercise and place before the Court, a report in that regard. Accordingly, we issue notice to NCDC. Mr. Ahluwalia accepts notice on behalf of NCDC. The NCDC shall file a status report with regard to the steps taken for conduct of such a study within the next 2 weeks.

12. By reference to our order dated 02.06.2021, Mr. Rao has pointed out that though the Data Privacy Policy has been uploaded on the website of the Union of India, however, it is unclear whether the “captcha box” is made operational. Let the Union of India disclose the status in this regard within a week.

13. Mr. Rao has drawn our attention to our order dated 04.06.2021. In the said order, we had taken note of the judgment passed by this Court in *Mohd. Ahmed (Minor) Vs. Union of India* [(2014) SCC OnLine Del 1508], WP(C) No. 7279/2013, and noticed that despite the aforesaid decision, the amendment to the relevant CSR Rules had not been incorporated. We had expressed the hope that consequential steps would be taken by the Ministry of Corporate Affairs to amend the relevant Rules, so as to expand the definition of CSR activities. A status report has been filed by the Union of India. Unfortunately, in the status report, it is not clear whether any steps

have been to amend the relevant rules. Mr. Kirtiman Singh expresses regret, and seeks one week's time to file a status report in this regard. In case, steps have not yet been taken to amend the relevant Rules, we direct the Ministry of Corporate Affairs to take steps to comply with the decision in *Mohd. Ahmed* (supra), and file a status report in this regard within a week.

14. Let the DDA file a compliance report with regard to issuance of necessary clarification in respect of Ground Coverage and utilisation of space for setting up PSA plants, etc. for the purpose of computation of Floor Area Ratio in terms of our order dated 04.06.2021 within a week. This order shall be communicated to the standing counsel for the DDA, as well as to the Vice Chairman, DDA for compliance.

15. Mr. Mehra has taken us at some length through the status report of the GNCTD in response to the various directions issued by this Court. He has drawn our attention to the Chart filed by the Chief Secretary, Delhi in terms of our Order dated 28.05.2021. Status report has been shared with Mr. Talha. A. Rehman, Advocate as well as Mr. Abhay Gupta, Advocate. They seek certain time to respond to the same. They may file their responses with the learned Amicus. He may file a report within 3 days. The status report shall be considered on 15.07.2021.

16. List the matters on 15.07.2021.

VIPIN SANGHI, J

JASMEET SINGH, J

JULY 07, 2021

N.Khanna