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

Date of Decision: 27th July, 2020

+ W.P.(C) 3250/2020 & CM APPL.11769/2020

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Om Prakash, Amicus Curiae

versus

STATE OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel
with Mr. Anuj Aggarwal, ASC,
Mr. Chaitanya Gosain, Mr. Ankit
Monga & Mr. Shikhar Sheel, Advs.
for GNCTD.

Mr. Chetan Sharma, ASG with
Mr. Sahaj Garg, Adv. for UOI.

Mr. Dayan Krishnan, Sr. Adv. with
Mr. Mahesh Agarwal, Ms. Parul
Shukla & Mr. Anirudh Bhatia, Advs.
for Intervener (Indraprastha Apollo
Hospitals).

Ms. Nancy Roy, Adv. for Intervener
in CM No.11769/2020.

+ W.P.(C) 3376/2020

KRISHNA KR. SHARMA

..... Petitioner

Through: Petitioner-in-person.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Hetu Arora Sethi, ASC, GNCTD.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

D.N. PATEL, Chief Justice (Oral)

Proceedings of the matter have been conducted through video conferencing.

1. W.P.(C) 3250/2020 has been initiated by the Court on its own motion on the basis of the video clipping circulated through Mobile No.9971993060. Vide order dated 26.05.2020, *suo moto* cognizance was taken by this Court, especially about the inadequate arrangements to deal with patients of Covid-19 who require hospitalisation and treatment, including easy access to helplines, availability of beds, ambulances, etc.
2. W.P.(C) 3376/2020 has been preferred as a Public Interest Litigation with the following prayers:

"i. Issue a writ in the nature of Mandamus or any other writ of like nature thereby passing order or direction to the Respondent for ensuring that those Government and Private Hospital or Nursing home in the National Capital Territory that refuses emergent medical care to the person amid Covid-19 pandemic, an immediate action shall be taken against those defaulters.

ii. Issue a writ in the nature of Mandamus or any other writ of like nature thereby passing order or direction to the Respondent for ensuring that the Government and Private Hospitals shall not deny the admission of asymptomatic and symptomatic Covid-19 patient and complying with the order of the Respondent pertaining to the treatment and admission of asymptomatic and symptomatic or (COVID-19 and non-COVID-19) patients.

iii. Issue a writ in the nature of Mandamus or any other writ of like nature thereby passing order or direction to the Respondent

for ensuring that Covid-19 test shall not be mandatory before admitting elective and even emergency patients by Government and Private Hospitals.

iv. Issue a writ in the nature of Mandamus or any other writ of like nature thereby passing order or direction to the Respondent for ensuring that Hospitals are not forcing Frontline health worker to wear used PPE.

v. Issue a writ in the nature of Mandamus or any other writ of like nature thereby passing order or direction to the Respondent for ensuring that hospitals are not charging high amount for PPE (beyond the actual cost) from patients, shall charge reasonable.

vi. Pass any other appropriate Order or Direction as this Hon'ble Court may deem fit."

3. We have heard learned counsel for both the sides including counsel appearing for Indraprastha Apollo Hospital.

4. Learned counsel appearing for Government of National Capital Territory of Delhi (hereinafter, "GNCTD") has submitted in detail about the various steps taken by the GNCTD. Multiple affidavits have been filed during the course of these proceedings regarding the various facilities which have been put in place. It is *inter alia* stated therein as to how the respondent/Government has extended the centralised helpline 1031 along with 50 hunting lines through which the public at large can avail the details of the availability of beds in the hospitals and the other facilities.

5. For ready reference, paragraph 3 of the counter affidavit filed by GNCTD dated 15.07.2020 reads as under:

"3. That the deponent has gone through the directions issued by this Hon'ble Court and the following submissions are being made for kind perusal of this Hon'ble Court:

a)It is humbly submitted that 50 hunting lines have been added to augment the capacity of helpline number 1031 and therefore

more calls are being attended simultaneously and effectively. In the period ranging from 01.07.2020 to 09.07.2020, a total of 37,289 calls were received out of which 34,087 calls were attended by call center executives and 2479 calls were attended via interactive voice response system. The number of unattended called are dropping significantly over the period of time. The details of call logs for the aforesaid period is attached herewith as **ANNEXURE-R1.**

b) It is submitted that presently there are 273 Ambulances dedicatedly available for COVID-19 patients and an additional 294 ambulances have been made available for non-COVID patients. Furthermore, 9 ambulances are equipped with ALS while 294 ambulances which includes CATS ambulances, army ambulances, DSHM Rakshak Ambulance, Medulance and DHS ambulance are equipped with BLS and BLS GVK facility. Presently, the total fleet of ambulance (including 200 taxis for non-critical patients) have significantly increased to 602 as against the last availability of total 334 Ambulances as were available on 05.06.2020. Further efforts are being made to enhance the ambulance fleet. A copy table containing the details of the ambulance fleet as on 09.07.2020 is attached herewith as **ANNEXURE- R2.**

c) A major overhauling of COVID testing has been carried out by the Answering Respondent, keeping in mind the ever-increasing demand of testing kits in the near future. There are three types of testing kits available which differ with each other in the process they use to give results. These are Rapid Antigen Detection Kits, RT PCR molecular testing and CBNAAT/TrueNat testing.

d) It is submitted that Rapid Antigen testing has been recently introduced in Delhi. A total of 11.0 lac Rapid Antigen Detection Kits have been procured by NCT of Delhi. The Answering Respondent has a sufficient buffer of 8.27 lac testing kits as on 14.07.2020 to meet the future demands. Furthermore, orders for testing kits will be placed in advance as and when required in case the buffer is reduced by a significant quantity. The Antigen testing model for COVID is capable of giving results in roughly 30 minutes and is the frontline testing method being used. NCT of Delhi has taken various steps to augment testing and make

testing available and accessible to the general public with considerable ease. It is pertinent to mention that the quantity acquired of these testing kits are sufficient to meet the demand of testing for more than two months. Since its inception on 18/06/2020, accessibility of Rapid Antigen Detection Tests has been increased across Delhi. Apart from Containment zones/Hotspots, this testing has been made available at 37 hospitals with all Delhi Govt, hospitals offering the Point of care test for which results are available within 30 minutes. Rapid Antigen Testing is being further expanded to Delhi Govt. dispensaries and Polyclinics.

e) It is pertinent to mention that Rapid Antigen testing has been made available free of cost at all government hospitals and 182 Delhi government dispensaries. Furthermore, the Answering Respondent vide order dated 05.07.2020 and 09.07.2020 has directed all health facilities to compulsorily conduct Rapid Antigen Testing for individuals in high risk group like asymptomatic elderly patients with co-morbidities (>65 years), asymptomatic patients seeking admission for chemotherapy, HIV patients, asymptomatic transplant patients etc. The copies of order dated 05.07.2020 and 09.07.2020 is attached herewith as **ANNEXURE-R3 (colly)**.

f) The testing kits available to undertake RT PCR based molecular testing which is the gold standard for testing, are sourced from multiple Public-sector labs including the Indian Council of Medical Research, State procurement, Philanthropic donations and procurement by individual labs/institutions. RT PCR testing takes minimum 2-5 hours. Kits to undertake RT PCR based testing are now available with all the labs. The RT PCR testing is primarily being used on those symptomatic individuals who are reporting as “negative” under the rapid antigen testing (taken from SR).

g) Furthermore, Kits to undertake CBNAAT/TrueNat based testing which also provide quick results, is sourced from Public sector that includes supply from Govt. of India (Revised National Tuberculosis Control Program /Central TB Division) and procurement by individual labs/institutions. There has been scarcity of CBNAAT testing kits available because of its limited

availability, however, the Answering Respondent is making continuous efforts to ensure its availability.

h) The capping of price of testing has been done by NCT of Delhi based on the recommendations of the committee under Dr. V.K. Paul , Member, NITI Aayog. The GNCTD vide its order dated 18/06/2020 capped the price of RT PCR based molecular testing at Rs. 2,400/- inclusive of taxes in order to keep the prices of the testing kits affordable for the public at large. A copy of the order dated 18.06.2020 is attached herewith as **ANNEXURE- R4**. Furthermore, ICMR has capped the price of Rapid Antigen Detection Kit at Rs. 450/-. The Answering Respondent currently has 51 ICMR accredited labs (21 in public sector and 30 in private sector) to carry out COVID- 19 testing through RT PCR /CBNAAT/TrueNat.

i) It is submitted that an e-mail was sent to all private sectors labs to ensure that home-sample collection is not being refused on any grounds. A copy of the email dated 29.06.2020 is attached herewith as **ANNEXURE- R5**. It is humbly submitted that the number of tests being conducted has increased from 18,000 (as previously submitted before this Hon'ble Court) to approximately 22,000 per day. The Answering Respondent is making all efforts to ensure that sufficient amount of testing is conducted to combat the COVID-19 situation. A table showing the number of tests undertaken during the period ranging from 09.07.2020 to 15.07.2020 is attached herewith as **ANNEXURE - R6**.

j) The Government of NCT of Delhi vide order dated 28.06.2020 endorsed the advisory of the ICMR to increase the number of tests in the state, both in public and private sector, and the same is being implemented. A copy of order dated 28.06.2020 is attached herewith as **ANNEXURE-R7**.

k) It is submitted that the Answering Respondent vide order dated 09.07.2020 has directed all hospitals to update data on the mobile application called Delhi Corona and the website, in the given Integrated Disease Surveillance Program (IDSP) format. A copy of the Order dated 09.07.2020 passed by the Principal Secretary (H&FW) directing all hospitals to comply with the directions of this Hon'ble Court in relation to updating information on the mobile app and the website in IDSP format is

attached herewith as **ANNEXURE- R8**. It is submitted that the aforesaid order is issued as a warning to all hospitals.

l) It is humbly submitted that the Answering Respondent is under the process of collating data pertaining to IDSP and Real time data as per this Hon'ble Court's direction vide order dated 26.06.2020 and the same shall be filed as an additional affidavit at the earliest.

m) It is humbly submitted that Nodal officers have been appointed to mitigate any difficulty faced by the public at large and to also ensure that there is no communication gap between the government and the hospitals. The nodal officers will exercise general superintendence and control over their respective hospitals. All the relevant details qua the nodal officers so appointed, are as under:-

LIST OF NODAL OFFICERS APPOINTED

<i>Name of the officer</i>	<i>Name of the hospital</i>
<i>Mr. Arava Gopi Krishna</i>	<i>Lok Nayak Hospital</i>
<i>Mr. Binay Bhusan, IAS</i>	<i>GTB Hospital</i>
<i>Mr. Vikram Singh Malik, IAS</i>	<i>Burari COVID health centre</i>
<i>Ms. Akriti Sagar, IAS</i>	<i>Satyavadi Raja Harish Chandra Hospital</i>
<i>Mr. Ravi Dhawan, IAS</i>	<i>Ambedkar Nagar Hospital</i>
<i>Mr. Vikram Singh Malik, IAS</i>	<i>Rajiv Gandhi Super Speciality Hospital</i>
<i>Mr. Awinash Kumar, IAS</i>	<i>Deep Chand Bandu Hospital</i>

A Copy of the orders passed to appoint the aforesaid officials as Nodal Officers is attached herewith as **ANNEXURE-R9(colly)**. Furthermore, 114 Senior Nursing Officers (SNO's) were appointed as previously submitted before this Hon'ble Court for all private hospitals to manage admission of patients and ensure proper communication with the government. Moreover, a Special Secretary, Mr. Udit Prakash IAS, has been appointed for overall supervision of the aforesaid SNOs in case there is a need to escalate the matter.

*n) It is submitted that Convalescent Plasma (COPLA) Therapy is a treatment that is being used as treatment for people with severe COVID cases. It has been observed that people who have recovered from COVID- 19 have antibodies to fight the disease to some extent. The liquid portion of the blood is known as the convalescent plasma. The Answering Respondent has set up a "Delhi Plasma Bank" at the Institute of Liver and Biliary Sciences (ILBS), Vasant Kunj, New Delhi to ensure the availability of COPLA for the patients. Furthermore, all medical critically ill Superintendents have been instructed to appoint Nodal Officers from their respective hospitals to communicate and coordinate with Delhi Plasma Bank. It is pertinent to mention that COPLA is being made available free of cost. A copy of the order dated 08.07.2020 setting up the Delhi Plasma Bank is attached herewith as **ANNEXURE – R10.***

*o) It is submitted that the Answering Respondent has instructed all the medical superintendents of all public/private hospitals to obtain feedback of patients and their willingness to donate plasma at the time of their discharge to ensure that the Plasma bank is sufficiently stocked to meet the future demands. Based on the information provided in the feedback form, the patients who have recovered, can also be contacted in case there is dire need of plasma. A copy of the directing the Medical dated 07.07.2020 order Superintendents to collect feedback of patients who have recovered from COVID- 19 is attached herewith as **ANNEXURE - R11.** Furthermore, another Plasma Bank has been recently opened at Lok Nayak Hospital, New Delhi."*

6. In view of the aforesaid facts stated by GNCTD, it appears that now several of the facilities and resources available to the public have been augmented by the respondents, to meet the requirements in the face of the Covid-19 pandemic. For example, 50 hunting lines have been added to extend the capacity of already existing centralised helpline No.1031. As many as 37,289 calls have been received and attended in a period from 01.07.2020 to 09.07.020, details whereof have been given in Annexure R-1.

7. Similarly, the number of ambulances available was initially 334 as on 05.06.2020, which has now been increased upto 602 as on 09.07.2020. Moreover, 273 ambulances have been dedicated for Covid-19 patients and additional 294 for non-covid patients.

8. The quantum of Covid-19 testing has also seen a sharp increase after the introduction of rapid antigen testing. Even thereafter, the daily number of tests conducted has increased from the initial count of 18,000 tests to approximately 22,000 per day. So far as buffer stocks of the Rapid Antigen Testing Kits is concerned, it appears that the respondents have a sufficient buffer of 8.27 lakh testing kits as on 14.07.2020. Learned counsel for the GNCTD states that the quantity of these testing kits acquired by the GNCTD is sufficient to meet demand of testing for atleast two months.

10. It further appears that Rapid Antigen Testing is available in Government hospitals and government dispensaries free of charge. Similarly looking at the further steps initiated by the GNCTD, for high risk groups/persons, reverse transcription polymerase chain reaction (RT-PCR) test is capped at Rs.2,400/-.

11. Various office orders, notifications and directions have been issued, including an email dated 29.06.2020 to all private sector labs to ensure that home collection of blood samples is not refused on any ground.

12. It further appears from the facts of the case that Nodal officers have been appointed to mitigate any difficulty faced by the public at large. These facts we have highlighted in our previous orders, including the order dated 25.06.2020. Nonetheless, we have reproduced above the table which has been supplied in paragraph 3(m) of the aforesaid affidavit, and reflected at Annexure R-9 to the memo of the counter affidavit.

13. Similarly, as we have already pointed out in our earlier orders that Central Government has also appointed specific nodal officers by name for real time updation of beds availability data in the Central Government hospitals i.e. Safdarjung Hospital, Ram Manohar Lohia Hospital, Lady Hardinge Hospital and All India Institute of Medical Sciences (AIIMS). After nomination of said specific nodal officers, there ought not to be any difficulty in updation of beds availability data as well as any communication gap between the Government and the hospitals, and no specific grievance in this regard has been raised by any of the counsel.

13. One more significant initiative has been taken by the GNCTD, i.e. setting up of “**Delhi Plasma Bank**”, to assist in the treatment of Covid-19 patients. Two "Delhi Plasma Banks" have been opened by GNCTD which is an important step taken by GNCTD. One such plasma bank is available at Institute of Liver and Biliary Sciences (ILBS), Vasant Kunj and another at Lok Nayak Jai Parkash Hospital, Delhi Gate. More than 300 plasmas are available as submitted by counsel for GNCTD.

14. Learned Amicus Curiae has also filed an additional report dated 15.07.2020. In the said report, he has submitted at length about the failure of certain hospitals regarding real-time updation of data and difficulties being faced by persons in getting admission in hospitals etc. Nonetheless, looking to the aforesaid aspects of the matter, we are of the view that the updation of the real time data is being taken care of by the GNCTD. Moreover, mobile application has also been developed by the GNCTD for real time data updation, from both Government hospitals as well as private hospitals. In this regard, various office orders/ directions/notifications have also been issued. Nodal officers have also been appointed to take care of such real

time updation of data and the telephonic lines have also been made available to get the information or to make a complaint. In the event there are any hospitals which are still in breach of the directions given from time to time, the GNCTD will coordinate with the said hospitals to remedy the situation and may take such further action as required in the public interest.

15. The learned Amicus Curiae has also drawn the attention of the Court to a newspaper report published in the *Times of India* edition of 25.06.2020 regarding the problems faced by an Advocate, Mr. Surjendu Das in accessing treatment at Indraprastha Apollo Hospital. In particular, it is submitted that Mr. Das was denied admission in the hospital despite the published data showing availability of beds. As far as this aspect is concerned, it is submitted by learned counsel appearing for Indraprastha Apollo Hospital that general ward beds were available and offered to Mr. Das. However, private rooms and ICU beds were not available on that particular date. At the relevant time, approximately 30 beds were available in the general ward. Moreover, Mr. Das's Covid-19 test result was given on the same day and hence, the Indraprastha Apollo Hospital authority denies the allegations levelled against it. We therefore do not consider it necessary to pass any further directions in this regard in the present proceedings, leaving it open to the concerned person to agitate his grievances in accordance with law, if he is so inclined. Nonetheless, it is assured by counsel for Indraprastha Apollo Hospital that they shall upload real time data accurately and if any patient comes they will immediately be tested and if beds are available, the same will be provided to the patients.

16. So far as W.P.(C) 3376/2020 is concerned, looking to the aforesaid steps taken by GNCTD, we see no reason to entertain this case further.

Nonetheless, liberty is reserved with the petitioners in this case that, if at all they are aggrieved in a particular case, they may initiate legal proceedings in accordance with law before appropriate forum for an individual case so that the concerned hospital or concerned authority can be given the opportunity to answer the allegations levelled against it.

17. In view of the aforesaid aspects of the matter, we do not consider it necessary to monitor these litigations further at this stage. The concerns noted by this Court in the order dated 26.05.2020, while taking *suo moto* cognisance, have been addressed by the respondents in the manner noted above. Nonetheless, we hereby direct the respondents to ensure that the directions/ notifications/ office orders which are issued by them are being followed by the hospitals scrupulously. The real time updation of data must also be done accurately so that the public at large can look into the availability of the ventilators, beds etc. Ambulances which have been made available with necessary facilities, the same will be continued. The helplines must be kept in working condition. It must not happen that these helpline numbers are not responsive to the persons in search of details. Learned counsel appearing for the GNCTD assures the Court that the necessary steps will continue to be taken by the GNCTD for facing the challenge of the Covid-19 pandemic, as required from time to time.

18. We appreciate the painstaking assistance given by Mr. Om Prakash, the learned Amicus Curiae appointed by this Court. We are thankful to the learned Amicus Curiae who has assisted us and has narrated us in detail the factual aspects of the matter and the steps taken by the respondents which we have also noted in our earlier orders.

19. With these observations, these writ petitions are disposed of.

CM APPL.11769/2020 (for Intervention) in W.P.(C) 3250/2020

In view of the order on the writ petition, no orders are required on this application.

The same stands disposed of accordingly.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 27, 2020/kks