

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

Reserved on: 08th October, 2018
Pronounced on: 12th October, 2018

+ W.P.(C) 10585/2018 & CM APPL. 41279/2018

SOCIAL JURIST, A CIVIL RIGHTS GROUP Petitioner
Through: Mr.Ashok Agarwal with Mr.Kumar
Utkarsh, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ANR Respondents
Through: Mr.Rahul Mehra, Senior Standing
Counsel, Mr.Ramesh Singh, SC,
Mr.Gautam Narayan, ASC with
Mr.Chaitanya Gosain, Ms.Mahamaya
Chatterjee, Ms. Shivani, Mr. C. Jain
and Ms. Nikita Goyal, Advs. for
GNCTD.
Mr. Ripu Daman Bhardwaj, CGSC
for R-2/UOI.
Mr. Parvinder Chauhan, Adv. for
DUSIB.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

RAJENDRA MENON, CHIEF JUSTICE

1. Petitioner, claiming to be a public spirited organization, has filed this writ petition seeking quashing of an order dated 01.10.2018 issued by the Medical Director, Guru Teg Bahadur Hospital, Government of NCT of Delhi whereby patients who do not hold a valid Voter ID Card of Delhi are

being categorised as non-Delhi patients, and thereby denied certain facilities for treatment in a Government hospital, namely, Guru Teg Bahadur Hospital, Dilshad Garden, Delhi. It is the case of the petitioners that excluding non-Delhi patients from availing the benefit of free treatment or certain medical facilities in the hospital in question by the aforesaid circular is an act violative of the fundamental rights of a citizen, infringes the right available to a citizen under Article 21 of the Constitution of India and it should be declared as *ultra vires* and quashed.

2. Before proceeding to examine the legality, validity or constitutionality of the aforesaid circular, it would be appropriate to take note of the circular, its contents and the curtailment of facilities as alleged in the writ petition, analyse the constitutional provision applicable, the duties imposed upon the respondent – Government of NCT of Delhi under the Constitution and then evaluate the grievance of the petitioner.

3. The order/circular in question has been issued by the Additional Medical Superintendent of the hospital and the same goes to show that a pilot project to decongest the hospital is being implemented w.e.f. 01.10.2018, the circular provides that all hospital services shall be provided to patients having Delhi Voter ID Card whereas others, i.e., non-Delhi residents shall be provided with certain limited facilities only. Thereafter, the standard operating procedure of the pilot project has been categorised into five categories, namely, (a) OPD; (b) Pharmacy and Investigations; (c) Indoor Services; (d) Categories of Patients excluded from the Pilot Project; and (e) Protection of appointment for treatment/investigations and surgeries granted prior to 01.10.2018. For the purpose of evaluating the grievance of the petitioner, it is necessary to take note of the operating procedure

contemplated under Clause (a) to (d) which reads as under:

A. OPD:

- i) Patients not having Voter I.D. Card shall be considered as Non-Delhi Patients.
- ii) *For Delhi Patients, who are below the age of 18 years of age, Voter I.D. Card of either parent shall be accepted.*
- iii) *Four OPD registration counters (Two counters for males – counter No.15 & 16 and two counters for females – counter no.17&18) shall be earmarked for patients not having valid Voter I.D. Card of Delhi. Senior Citizens patients and physically challenged patients shall get OPD registration in the existing counters for this purpose. Existing Registration counters in DEM Block & Obs & Gynae OPD shall continue to cater to all patients irrespective their place of residence.*
- iv) Light blue colour OPD Card shall be issued for easy identification of patients from outside Delhi.
- v) *After OPD Registration, consultation shall be provided to all registered patients at par.*
- vi) *After discharge of emergency patients, for follow up treatment, the non-resident Delhi patients shall be treated in OPD as per OPD protocol of Pilot Project.*

B. Pharmacy and Investigations:

- i) Patients bearing light blue colour OPD Card (Outside Delhi) shall not be dispensed any medicine from Pharmacy counters.
- ii) Patients having light blue colour OPD card shall not be provided the facility of any investigations (Laboratory/Radiology) from hospital.

C. Indoor Services:

i) 20% of beds earmarked for patients who are non-residents of Delhi. If these 20% beds get filled by Emergency Admissions, no further admission of non-Delhi residents shall be done from OPD.

ii) *All Patients admitted through emergency shall be treated at par in terms of investigations and treatment facilities.*

D. Following category of patients are excluded from the above Pilot Project:-

i) *All patients with any medical/surgical/other emergency/distress/injury.*

ii) *All MLC cases.*

iii) *Patients covered under any specific Court Orders.*

iv) *Patients reporting at ART clinic.*

v) *All patients covered under JSSY and any other National Government Scheme.*

All these patients shall be treated/investigated at par with residents of Delhi.”

(emphasis supplied)

4. From the aforesaid, it is clear that for availing the OPD facility, a patient not having valid Delhi Voter ID Card is treated as a non-Delhi patient. The OPD registration counters have been classified into various categories and patients from outside Delhi for the purpose of treatment in the OPD are issued with a blue coloured OPD Card. In the matter of providing facilities of Pharmacy and Investigation, a patient who is a non-Delhi resident patient will not be dispensed any medicine from the pharmacy, meaning thereby that dispensation of medicines free of cost to patients from outside Delhi is being done away with. That apart, patients having light blue coloured card i.e. non-resident Delhi patients will not be

provided any facility of investigation, be it laboratory or radiology. In the matter of Indoor Services also, certain classification has been done with regard to facilities granted to non-residents of Delhi and the residents of Delhi, same is the position with respect to reservation of beds for treatment. However, patients with surgical emergency or distress injury, MLC cases, etc. and availing of benefit under the National Government Scheme have been exempted. According to the petitioner, this process of classifying patients on the basis of holding of a Delhi Voter ID Card or otherwise is discriminatory and violates the right available to a citizen under Articles 14, 19, 21 and 47 of the Constitution of India. In support thereof, reliance is placed upon a judgment of the Supreme Court in the case of *Paschim Banga Khet Mazdoor Samity & Ors. v. State of West Bengal & Ors.*, (1996) 4 SCC 37 and *Bir Singh v. Delhi Jal Board*, (2018) SCC Online SC 1241 to canvass the contention that the classification is impermissible and therefore it should be done away with.

5. Per contra, the respondents, particularly, respondent No.1 – Government of NCT of Delhi has filed a detailed counter affidavit and give justification for the aforesaid action being undertaken and say that the action is reasonable, is in the interest of the public at large and is unavoidable. The Government of NCT of Delhi tries to justify the action by referring to the population increase in Delhi, the capacity of the hospital i.e. 1515 beds, the footfall per day in the OPD being 6,000-9,500 persons, visitors like patients and attendants being more than 20,000-25,000 per day, statistics of laboratory tests conducted from January to July. Para 6 of the counter affidavit analyses the optimum time required by a doctor to adequately attend to a patient and finally, it is said that due to overcrowding and

incidence of violence by patients, doctors, attendants and staff are raising a hue and cry, complaints and FIRs have been lodged and it is stated that to evaluate all these factors a Committee was constituted consisting of experts, vide Annexure 'R-1/3' on 24.07.2018, the nine member Committee went into various aspects of the matter and submitted its report which is available at Page 44 of the counter affidavit and it is alleged that based on the measures indicated by the Committee, the services have been curtailed. That apart, the contention of the respondents is that there is no discrimination. In the hospital, ninety three (93) types of routine tests and ten (10) types of special tests are being conducted. The impugned action is to prioritise patients who are residents of Delhi in the matter of certain diagnostic tests like Ultrasound and CT Scan and providing medicines. Apart from curtailing certain facilities only, all other facilities are being provided. Existence of alternate modes of treatment through Mohalla Clinics, cash less treatment to victims of road accidents, Delhi AarogyaKosh and remodelling of Government dispensaries into Polyclinics are indicated as facilities available to all patients without classification. In sum and substance, the reasons given by the respondents for the aforesaid impugned action is that it is a project to decongest the hospital, make it more efficient, protect the interest of doctors and other staff who are facing hardship because of the number of patients, visitors, attendants, etc. visiting the hospital and a situation pertaining to maintenance of law and order being created.

6. Shri Rahul Mehra, learned Senior Standing Counsel representing the Government of NCT of Delhi vehemently argued before us that if the act of the Government is not upheld, it would lead to serious consequences and the

Government taking note of all these drastic consequences that may occur has only taken certain meagre steps which does not amount to discrimination or curtailing the constitutional right of any citizen. He rebutted the contention of the petitioners that persons are being classified on the basis of certain impermissible and arbitrary method or process and indicated that in many other hospitals and institutions throughout the country such systems or procedure *akin* to this are being followed.

7. We have heard learned counsel for the parties at length, before analysing the submissions made we may take note of certain provisions of the Constitution including the Preamble. The Preamble of the Constitution speaks about India being a sovereign, socialist, secular, democratic, republic and the mandate of the Constitution is to secure to all citizens justice, liberty, equality of status and opportunity and to promote fraternity. A complete reading of the Preamble and various provisions of the Constitution indicates that if a provision or a statute is read in the backdrop of the requirement of Article 14 of the Constitution, anything done which fails to achieve the socialistic goal to its fullest extent or which adopts a classification which is not in tune with the establishment of a welfare society is unsustainable and unconstitutional. In this regard, the observations made by the Hon'ble Supreme Court in the case of *Atam Prakash v. State of Haryana*, AIR 1986 SC 859 may be taken note of. Further, a combined reading of the Preamble along with Articles 14, 15, 16 and 21 of the Constitution of India indicates that they seem to reduce inequalities in the matter of income, status and provide equality of opportunities and facilities available to a citizen. When we speak of removing inequalities in the matter of providing facilities to citizens, the mandate of the Constitution would be

to provide equal facilities to identically or similarly situated citizens without any discrimination or reservation. In this regard, the principles laid down by the Hon'ble Supreme Court in the case of ***Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191***, particularly, Para 79 thereof which reads as under may be taken note of:

“Meaning of Socialist Democratic Republic

79. It is necessary to consider at this juncture the meaning of the word “socialism” envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word “socialist” used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold the Government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interests of the weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of person and equality of status to all.”

8. It is the duty of a writ court to advance the mandate of the Constitution and the concept of social justice envisaged in the Constitution. The constitutional concept of social justice is to ensure and accord justice to all sections of the society by providing to them facilities and opportunities equal in nature and to remove handicaps and disability with which a poor citizen is unable to secure and lead a life of dignity. In fact, social justice is nothing but a comprehensive form to remove social imbalance and to

maintain equality in the matter of providing equal opportunities and facilities to citizens of this country. Equal protection as envisaged in Article 14 of the Constitution means a right for equal treatment in similar circumstances as laid down by the Supreme Court in a catena of judgments like *Soma Chakravarty v. State (2007) 5 SCC 403*. Equal treatment under similar circumstances would mean grant of privileges confirmed and like liabilities imposed and ensuring that equals are not treated as unequals. Article 15(2) prohibits discrimination on the basis of religion, race, sex or place of birth and it is a well settled principle of law that right to health and medical aid so also medical care is a fundamental right envisaged under Article 21 of the Constitution read with Articles 39(e) and 41 of the Constitution. Living a life with meaningful and purposeful reasons and dignity is the mandate of the Constitution.

9. These in brief are the requirements of the Constitution and now we are required to analyse as to whether the present impugned action meets these requirements of the Constitution. If we go through the impugned circular, we find that in the matter of treating patients in a Government hospital, patients are being classified into two categories. Certain patients who have a Voter ID Card issued from Delhi are put in one compartment and patients who do not have such Voter ID Card are classified as non-Delhi patients and for both these categories of patients there are different standards and processes for obtaining facilities for treatment in the OPD. The non-resident Delhi patients are given a light blue coloured OPD card and the facilities of free medicines, pharmacy facilities and facilities of investigation both pathological and radiological are denied. The circular therefore clearly creates two categories of patients with two different procedures and systems

for treatment and consequently the medical facilities available in the hospital to these two categories of patients differ. There is nothing to indicate as to what is the difference between these two categories of patients. The only differentiation indicated in the counter affidavit filed by the respondents and what is made out from the circular is that one category of persons have a Voter ID Card issued by a particular authority classifying them to be voters of a particular constituency or area within the territory of Delhi and others do not have such a Voter ID Card. The question is – Is this a reasonable basis for classifying identically situated citizens for the purpose of extending medical facility in a hospital? Providing medical facilities to each and every citizen is a constitutional responsibility, and the State may in the matter of providing medical facilities classify citizens into different categories by adopting a principle of permissible classification which has nexus to the purpose to be achieved. In the present case, the classification is based not on the basis of any scientific or intelligential classification or system but it is based on availability of a Voter ID Card and the purpose to be achieved by this classification is to decongest the hospital and to bring in a system of discipline in the functioning of the hospital and running it in a smooth manner. In our considered view, neither is the classification reasonable, is not based on any justifiable reason nor is the nexus said to be achieved a reasonable one.

10. Health care facility and its access to a citizen is a right available under the Constitution and Article 21 of the Constitution imposes a duty on the Government to take whatever steps are necessary to ensure that every citizen has free and fair access to health facilities and treatment in a Government hospital. In fact, Article 21 of the Constitution not only imposes upon the

State a constitutional obligation but also a legal obligation to ensure access to treatment, medicine and other facilities in a hospital. In the case of ***State of Maharashtra v. Chandrabhan Tale***; AIR 1983 SC 803, the Hon'ble Supreme Court has held that right to life enshrined in Article 21 of the Constitution means something more than a mere survival or an animal like existence. It includes all other aspects of life which go to make a man's life meaningful, complete and worth living and all such requirements which are required to make a living life meaningful are the integral components of the right to life. There are catena of judgments which reiterate the fact that right to medical aid is a fundamental right of all citizens guaranteed under Article 21 of the Constitution and the Constitution Bench of the Hon'ble Supreme Court in the case of ***Confederation of Ex-Servicemen Assns. v. Union of India***, (2006) 8 SCC 399 has evaluated the aforesaid principle. It is also a well settled principle of law that non-availability of finance infrastructure facilities cannot be a ground to be put forth by a State to say that medical facilities cannot be made available.

11. In the case of ***Paschim Banga Khet Mazdoor Samity & Ors. v. State of West Bengal & Ors.*** (supra), denial of emergency medical aid in a Government hospital was classified as violating the mandate of Article 21 of the Constitution and while considering the same in Para 16 the Hon'ble Supreme Court has laid down the principles that financial resources cannot be a constraint in the matter of providing medical facilities to a citizen. The Hon'ble Supreme Court goes on to say that the Constitution envisages the establishment of a welfare State and the primary duty of the welfare State is to secure welfare of the people. Providing adequate medical facility to the people is not only an essential part but is also an obligation

undertaken by the Government in a welfare State and for discharging this obligation running of hospitals and health centres and providing medical care to the people seeking the same is a requirement of Article 21 of the Constitution. The Hon'ble Supreme Court says that it is the constitutional obligation of the State to provide adequate medical service to a person to preserve human life.

12. In the case of ***S. Seshachalam and Ors. v. Chairman, Bar Council of Tamil Nadu & Ors., (2014) 16 SCC 72***, the concept of equality enshrined under Article 14 of the Constitution is analysed in Paras 21, 22, 23 and 24 in the following manner:

“21. Article 14 of the Constitution of India states that:

“14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 14 forbids class legislation but it does not forbid reasonable classification. The classification, however, must not be “arbitrary, artificial or evasive” but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions

by the legislature for the purpose of achieving specific ends. But classification must not be “arbitrary, artificial or evasive”. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions: firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

23. *In Special Courts Bill, 1978, In re [(1979) 1 SCC 380] this Court referred to large number of decisions involving interpretation of Article 14 of the Constitution of India and summarised the principles. In NCTE v. Shri Shyam Shiksha Prashikshan Sansthan [(2011) 3 SCC 238, Singhvi, J. has elaborated the concept of “Right to Equality” by referring to a chain of judgments delivered by this Court and established principles viz. Union of India v. Parameswaran Match Works [(1975) 1 SCC 305] , Sushma Sharma v. State of Rajasthan [1985 Supp SCC 45] , UGC v. Sadhana Chaudhary [(1996) 10 SCC 536], Ramrao v. All India Backward Class Bank Employees Welfare Assn. [(2004) 2 SCC 76] and State of Punjab v. Amar Nath Goyal [(2005) 6 SCC 754] .*

24. *Recently, in Subramanian Swamy v. CBI [(2014) 8 SCC 682], this Court considered the process of classification and what should be regarded as a class for purposes of legislation held in paras 58 and 70 as under: (SCC pp. 725 & 730)*

“58. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be

some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

* * *

70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14.”

13. The State cannot avoid or shirk away from this constitutional obligation on account of financial constraint or non-availability of facilities etc. If we analyse the justification given by the State Government in the present

case, it would be seen that the State is shirking away from discharging its constitutional obligation and liability by contending lack of facilities like infrastructure, manpower and law and order situation created by outburst of population, the number of patients coming to the hospital for treatment. In our considered view, this is not permissible. A State is obliged and mandated to provide all such facilities as are to be provided to a citizen, particularly, the requirement envisaged under Article 21 of the Constitution and the reasons given before us cannot be substantial or reasonable reasons for shirking away from discharging this constitutional liability.

14. As far as classification of patients into two categories are concerned, except for the fact that the patients are classified on the basis of a Voter ID Card, nothing has been brought to our notice to say as to what is the rationale or justification for such a classification. During the course of hearing, it was tried to be indicated that many people from nearby villages and areas come to Delhi for treatment and therefore this should be prevented. Article 14 of the Constitution guarantees equality before law and confers equal protection of law to every citizen. Article 15 mandates that no citizen shall be discriminated against on the basis of place of birth and while dealing with the question of equal protection of laws and prohibiting the State from denying persons or classes of persons equal treatment as provided under the Constitution, the Constitution Bench of the Supreme Court in the case of *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75 deals with the mandate of Article 14 in the following manner:

“In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must

have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained.”

15. Thereafter, in the case of ***Confederation of Ex-Servicemen Assns. v. Union of India*** (supra), this principle has been reiterated and classification based on discriminatory criteria was set aside, as it is a settled principle of law that Article 14 forbids class legislation, does not forbid reasonable classification but contravention of Article 14 and the validity of action which is said to be violative of Article 14 has to be decided on two well settled principles i.e. the classification should be based on *intelligible differentia* which distinguishes persons or things, grouped together from others who are left out of the group and; the second, that the *differentia* in question should be reasonable, have some rationale nexus for the purpose to be achieved. In the present case, the classification is based on no reasonable justification except on the basis of the residence of a person or the availability of a particular identification card and the nexus to be achieved is decongestion of the hospital. In our considered view, both these justifications given do not meet the twin tests for upholding a classification as has been detailed hereinabove.

16. In the case of ***Kailash Chand Sharma v. State of Rajasthan & Ors.***;

(2002) 6 SCC 562, it has been held by the Supreme Court that residence by itself - be it within a State, region, district or a lesser area cannot be a ground to accord preferential treatment or reservation. During the course of hearing, it is tried to be indicated to us that congestion and problems consequent to which the impugned action was taken was a result of large number of people from the outskirts of Delhi coming into Delhi and utilizing the services here.

17. The special status available to Delhi as the capital city known as the National Capital Territory of Delhi has been discussed in detail by the Hon'ble Supreme Court in the case of **Dr. Jagdish Saran v. Union of India (1980) 2 SCC 768** and recently in the case of **Bir Singh v. Delhi Jal Board** (supra), a Constitution Bench has again reconsidered the matter while examining the validity of reservation of seats in Medical College for local candidates in Delhi and in Para 67 the concept of special status available to Delhi has been discussed in the following manner:

“67. While examining the validity of reservation of seats in medical colleges for local candidates in Delhi, this Court in Dr. Jagdish Saran v. Union of India [(1980) 2 SCC 768] had made certain observations with regard to the special status that the capital city enjoys, which today, has come to be known as the National Capital Territory of Delhi. The observations of this Court in paragraphs 10 and 56 may be usefully recapitulated and, therefore, is set out below:

“10. The capital city is not just a part of India. It is miniaturised India, a fact often forgotten by the administration in the field of culture and education, especially vis-a-vis regional, minorities. It is megapolitan (sic) and people from all parts flock to this outsized city. But we cannot exaggerate this factor, for the presence of the farther regions like the South and the North-east, population-wise, is minimal and precarious. Shri

Balakrishnan insisted that the University was sustained by Central Government finances, collected from the whole country, and the benefits must likewise belong to all qualified students from everywhere. These are valuable aspects to shape policy but the court must test constitutionality and no more. To that extent alone we will weigh these factors in moulding our verdict.

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56. We may wind-up by articulating the core thought that vitalises our approach. Anyone who lives inside India can never be considered an 'outsider' in Delhi. The people in the States are caught in a happy network of mutuality, woven into a lovely garment of humanity, whose warp and woof is India. This is the underlying fundamental of the preambular resolve registered in our National Parchment. So we insist that blind and bigoted local patriotism in xenophobic exclusivism is destructive of our Freedom and only if compelling considerations of gross injustice, desperate backwardness and glaring inequality desiderate such a purposeful course can protective discrimination gain entrance into the portals of college campuses. The Administration has a constitutional responsibility not to be a mere thermometer where mercury rises with populist pressure but to be a thermostat that transforms the mores of groups to stay in the conscience of the nation viz. the Constitution.

(Emphasis supplied)

18. If we analyse the justification given by the State for giving certain special benefit to voters with identity card of Delhi and if we evaluate the same in the backdrop of the aforesaid legal principle, we are of the considered view that the same cannot be upheld.

19. If we analyse the case in hand in the backdrop of various principles as are detailed hereinabove, we have no hesitation in holding that the impugned

circular suffers from various vices which are not permissible under the Constitution, the circular classifies identically situated persons differently for the purpose of granting them medical facility without any rational basis and therefore we cannot uphold such a classification. The circular proposes to achieve the goal of decongestion of the hospital and rationalise the method of treatment to avoid certain situation that may arise in the hospital but in doing so a classification which is prohibited under law is being practised by the State and if the classification undertaken for classifying the citizens coming for treatment into two groups in a manner which is not permissible in law, we have no hesitation in holding that we cannot uphold such a classification. In the case of ***J. Pandurangarao etc. v. Andhra Pradesh Public Service Commission, Hyderabad & Anr., AIR 1963 SC 268***, in Para 7 the mandate of Article 14 of the Constitution and the principle forbidding class legislation has been dealt with by the Supreme Court in the following manner:

“It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. As the decisions of this Court show, the classification on which the statutory provision may be founded may be referable to different consideration. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case, there must be some nexus between the basis of the classification

and the object intended to be achieved by the statute, vide Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar ([1959] S.C.R. 279).”

20. If we analyse the impugned action in the backdrop of various legal principles as detailed hereinabove, we have no hesitation in holding that the act of the respondent – Government of NCT of Delhi in creating a class within a class i.e. within citizens identically situated is impermissible and thereby further act of conferring benefit of medical facility to citizens on such classification is impermissible.

21. Accordingly, we allow the petition and quash the impugned circular and direct the respondents to provide facilities of medical treatment in the hospital in question to all citizens entitled to the same as was being done before enforcing the aforesaid circular. The pending application also stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 12, 2018

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