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

Date of Decision: 17.09.2019

+ W.P.(C) 7079/2019

ABHIJIT MISHRA

..... Petitioner

Through: Petitioner in person

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through: Ms. Urvi Mohan, Adv. for Mr. Sanjoy
Ghose, ASC (GNCTD)

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This writ petition has been preferred as a public interest litigation with the following prayers:

“a) Writ, order or direction in nature of Mandamus or any other appropriate writ, order or directions to the respondents particularly the Hon’ble Lt. Governor, to take appropriate action against the Chief Minister and Council of Minister and corrupt officials of the Government of NCT of Delhi for acting with malicious intention to defraud the National Capital Territory of Delhi’s state funds under CCS Rules and Constitutional Acts.

b) To direct the Auditor and Comptroller General of India to audit the accounts, functions and role of the "Delhi Healthcare Corporation Limited" and to submit the report to the Hon’ble Lt. Governor, Government of NCT of Delhi such

that he can present the report to His Excellency "The President of India" to initiate appropriate action against the Government of NCT of Delhi under the provisions of Article 239AB of the Constitution of India.

c) To direct the Auditor and Comptroller General of India to audit accounts of the Delhi Healthcare Corporation Limited, Delhi Arogya Kosh, Health and Family Welfare Department and Directorate of Health Services for misappropriation of funds.

d) To direct the Lt. Governor to form a committee to investigate on how the "Delhi Healthcare Corporation Limited" was operational in contravention of the provisions of the Article 299 of the Constitution of India read with Rule 3 of the Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993 that states "All contracts in connection with the administration of Capital shall be expressed to be made by the President and shall be executed on behalf of the President by such person and in such manner as he may direct or authorize under Article 299 of the Constitution."

e) To direct Delhi Police - Economic Offence Wing to initiate criminal investigation proceeding for criminal breach of trust and misappropriation of state funds against the Chief Minister and Cabinet of the Government of National Capital Territory of Delhi, Officials who have signed the Memorandum of Association and appointed Directors of the "Delhi Healthcare Corporation Limited" who aided in incorporation and misappropriation of funds without the approval and authorization of the Hon'ble Lt Governor, Government of NCT of Delhi.

f) To award appropriate penalty on the PIO of the Directorate of Health Services for providing false information under the provision of the Public Records Act, 1993.

g) To order corruption proceedings against the Chief Minister and Cabinet of the Government of National Capital Territory of Delhi, Officials who have signed the Memorandum of Association and appointed Directors of the "Delhi Healthcare Corporation Limited".

h) To order suspension of the Officials who have signed the Memorandum of Association and appointed Directors of the "Delhi Healthcare Corporation Limited" and termination of service and benefits after completion of the investigation by the competent authority for their role in criminal conspiracy against the great state of National Capital Territory of Delhi and Hon'ble Lt. Governor.

i) To order the Serious Fraud Investigation Office under Section 212 of the Companies Act 2013 to investigate the fraud under the unconstitutional incorporation "Delhi Healthcare Corporation Limited".

2. Having heard the petitioner and looking into the facts and circumstances of the case, it appears that several grievances have been ventilated by this petitioner about the working style of the respondent – Department of Health and Family Welfare, Government of NCT of Delhi and Directorate General Health Services, Government of NCT of Delhi. Counsel appearing for the petitioner submitted that ₹5.00 crore have been transferred from the Delhi Arogya Kosh fund by the respondent, Government of NCT of Delhi to the Delhi Healthcare Corporation Limited, and further submits that in the last five years, no audit of the same has taken place. Moreover, before incorporation of the “Delhi Healthcare Corporation Limited” no details were presented before the Legislative Assembly of Delhi nor was any permission was obtained from Hon'ble Lieutenant Governor for the same and thus the Incorporation of the ‘Delhi Health Corporation Limited’ is illegal and unconstitutional. Counsel for the petitioner has taken this Court through various annexures and interlocutory applications of this writ petition.

3. Having heard the petitioner and looking into the facts and

circumstances of the case, we see no reason for entertaining this writ petition for issuance of any writ or direction as prayed for in the memo of this writ petition. Though the Hon'ble Lt. Governor and the Hon'ble Chief Minister are also joined as parties but the directions which this petitioner is seeking to be issued is to the Comptroller and Auditor General of India, who is not joined as a party respondent. Thus, it is more for publicity interest litigation than for public interest litigation.

4. The Delhi Healthcare Corporation Limited has been incorporated by the respondent Government and there is alleged transfer of money from Delhi Arogya Kosh Fund to Delhi Healthcare Corporation Limited as well as there are grievances about the working of the Department of Health and Family Welfare and the Directorate General of Health Services, Government of NCT of Delhi.

5. The respondents have an inbuilt mechanism for the audit of the accounts through Comptroller and Auditor General of India. In prayer '(c)' this petitioner is seeking direction upon the Comptroller and Auditor General of India but is not joined as party respondent. Thus, we see no reason to give any direction to the Comptroller and Auditor General of India. Even otherwise also, the counsel for petitioner submitted that in the Memorandum of Association of Delhi Healthcare Corporation Limited provides for audit through the Comptroller and Auditor General of India. Thus, the Comptroller and Auditor General of India is required to audit the accounts of Delhi Health Corporation Limited, Delhi Arogya Kosh, Delhi Healthcare and Family Welfare Department and the Directorate General of Health Services in the due course of time. It happens in Government that every year such type of audit is not possible. For the Comptroller and

Auditor General of India, to complete one round of audit, it takes 4-5 years. Thus, even in the Government institutions, the audit takes place after 4 or 5 years.

6. Moreover, looking into the general nature of allegations, we see no reason to entertain this writ petition. Nevertheless, the Comptroller and Auditor General of India will take all care to audit the use of the Government fund by the aforesaid four institutions. Nothing more is required to be monitored by this Court, especially in respect of the incorporation of the Delhi Healthcare Corporation Limited.

7. With the aforesaid observations, this writ petition is dismissed.

8. Registry is directed to send a copy of this order to the Comptroller and Auditor General of India.

CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 17, 2019

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