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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 7291/2018 & CM APPLs. 27848/2018, 31375/2018

ASSOCIATION OF HEALTHCARE PROVIDERS (INDIA)

..... Petitioner

Through: Mr. Rajiv Nayar, Sr. Adv. and
Mr. Sandeep Sethi, Sr. Adv.
with Mr. Mohit Rohtagi and
Mr. Saurabh Seth, Advs.

versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjoy Ghose, ASC for
GNCTD with Mr. Rhishabh
Jetly and Ms. Urvi Mohan,
Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

24.07.2019

अद्वेष्टासर्वभूतानामैत्रः करुण एव च ।
निर्ममो निरहङ्कारः समदुःखसुखः क्षमी ॥

सन्तुष्टः सततं योगीयतात्मा दृढनिश्चयः ।
मय्यर्पितमनो बुद्धिर्यो मद्भक्तः स मे प्रियः ॥

“One who is not envious but is a kind friend to all living entities, who does not think himself a proprietor and is free from false ego, who is equal in both happiness and distress, who is tolerant, always satisfied, self-controlled, and engaged in devotional service with determination, his mind and intelligence fixed on Me – such a devotee of Mine is very dear to Me.”

(Bhagavad Gita, Chapter 12 Verses 13-14)

1. Care, and compassion, for all living beings – not just those who are near and dear to one – is the essence of godliness, and he who possesses this quality, partakes of divinity.

2. In this phantasmagoria which we call life, it is given, to each woman, and man, to play several parts. Each of us is inextricably inter-linked with several others, who become part of our daily lives, as mother, father, brother, sister, husband, wife ... the list is endless. We love, and serve, those who are near, and *therefore* dear, to us, because this is ingrained in the very DNA, as it were, of each one of us. One, however, who loves and serves, not as an impulse borne of this DNA, but, selflessly, regardless of whether the object of one's care, and compassion, is personally known to one, or is bound to one by ties of family and friendship; such a one, alone, can aspire to the divinity to which Lord Krishna alludes, in the above verses of the Bhagavad-Gita.

3. From the time of Florence Nightingale, nurses, the world over, have attained, ever so often, this near-unattainable apotheosis. There is, probably, no vocation, or avocation, known to man, as self-effacing, and as proximate to the ideal set out in the Bhagavad-Gita, than that of nursing. A devoted nurse knows not night or day, and often has to spend hours tending to, and in the company of, persons who may otherwise repulse those who are more fortunate than them. The smiling face of the nurse who comes every morning, to administer the prescribed tonic, to the patient, lying helpless in the hospital, is, often, as therapeutic as the tonic itself.

4. And yet, in this country, on the soil of which the above words of enlightenment were spoken, by Lord Krishna to his friend and devotee Arjuna, the condition in which nurses, in private hospitals and nursing homes, work, and the emoluments to which they are entitled, for rendering such service are, admittedly, “pathetic”. Seeking amelioration thereof, the Trained Nurses Association of India petitioned the Supreme Court, by way of W.P. (C) No. 527/2011, invoking Article 32 of the Constitution of India. Compliance, with the directions issued by the Supreme Court, in its order dated 29th January, 2016, disposing of the said writ petition, has resulted in the issuance, by the Director General Health Services (DGHS), Government of National Capital Territory of Delhi (GNCTD), of an Order, dated 25th June, 2018. Claiming to be aggrieved by the said Order, the Association of Healthcare Providers, a society registered under the Societies Registration Act, 1860, and claiming to represent a majority of “healthcare providers” in India, has sought to invoke the extraordinary jurisdiction of this Court, vested in it by Article 226 of the Constitution of India, seeking quashing, and setting aside, thereof.

5. With these prefatory observations, and in order to appreciate the merits of the challenge, the genesis of the dispute is required to be set out.

6. W.P.(C) No. 527 of 2011 was filed by the Trained Nurses Association of India, invoking the jurisdiction of the Supreme Court under Article 32 of the Constitution of India, expressing grievance with regard to the working conditions of nurses in private hospitals

and nursing homes. The said writ petition was disposed of, by the Supreme Court, *vide* order dated 29th January, 2016 (***Trained Nurses Association of India v. Union of India, 2016 SCC Online SC 95***). Paragraphs 2 to 5 of the said order, which speak for themselves, may be reproduced thus:

“2. The petitioner-Association has ventilated its grievance with regard to the working conditions of nurses in private hospitals and nursing homes. The prayers made in this petition read as under:

“a) issue guidelines for improving the working condition of nurses in hospitals/nursing homes;

b) direct all the respondents to adhere to the guidelines/rules framed by this Hon'ble Court till necessary legislation is made by the Parliament/State Legislative Assemblies;

c) issue necessary directions to ensure that nurses working in the private sector are paid salary equivalent to those working in Government hospitals;

d) issue necessary directions to the respondents to take appropriate action against hospitals/nursing homes insisting on bond from nurses working in their establishments;

e) issue a declaration that the bond system practiced by hospitals/nursing homes is unconstitutional and illegal;

f) issue appropriate directions to 1st respondent to frame necessary guidelines to improve working conditions of nurses in India;

g) pass any other/further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case to meet the ends of justice.”

3. Upon hearing the learned counsel and going through the petition, we feel that the nurses who are working in private hospitals and nursing homes are not being treated fairly in the matter of their service conditions and pay.

4. We expect that the Central government will look into the grievances ventilated in this petition, by forming a Committee within four months from today. We are sure that after examining the factual situation, if the Committee is of the view that the grievances ventilated in the petition are correct, the Committee will make its recommendations, so as to do the needful for improvement of working conditions and pay of the nurses working in private hospitals and nursing homes within six months from its constitution, which can ultimately be given a form of legislation by the respondent-States or by the Central Government itself.

5. We are sure that the recommendations of the Committee shall be duly considered by the Central Government and it shall do the needful.”

7. In compliance with the afore-extracted directions of the Supreme Court, as contained in its order dated 29th January, 2016 in W.P.(C) No. 527/2011, the Ministry of Health and Family Welfare (hereinafter referred to as “the MoHFW”) constituted a committee, chaired by the Director General of Health Services and having, as its other members, (i) the Joint Secretary, MoHFW (Clinical Establishments (R & R) Act, 2010), (ii) the President, Indian Nursing Council (INC), (iii) the Nursing Adviser, MoHFW, (iv) the Secretary, Trained Nurses Association of India (TNAI), (v) the Secretary, All India Government Nurses Federation, (vi) two members from private hospitals (Fortis, N Delhi & Narayana Health, Bangalore), (vii) the

Directors of Medical Education of the States of Rajasthan, Tamil Nadu, Gujarat, Madhya Pradesh and Arunachal Pradesh, and (viii) the Director (Nursing), MoHFW. The Terms of reference of the Committee were formulated as under:

- “a) To look into the grievances raised by TNAI in their W.P.(C) No. 527/2011 and to examine the factual situation;
- b) To see whether the enactment of new legislation/chalk out guidelines for regulating pay, perquisites and services conditions of nurses working in private hospitals/nursing homes is required, considering the fact that there are already many Acts such as Wages Act, Labour Act and Clinical Establishment (Registration and Regulation) Act, 2010 etc. to regulate wages and service conditions;
- c) To make recommendations/guidelines on the basis of which States may formulate legislation/guidelines to regulate pay and service conditions of nurses working in private hospitals, nursing homes etc.;
- d) To examine any other issues as referred to it by the Chairman of the Committee.”

8. The aforesaid Expert Committee forwarded, to all States and Union Territories, its recommendations, *vide* letter dated 20th September, 2016. The recommendations may be reproduced, *in extenso*, thus:

“Committee examined all the information collected from various states, AIGNF and TNAI and felt that adequate salary and basic facilities are not provided to nurses employed in private hospitals/nursing homes. Their pay and working condition is really pathetic and some steps are required to be taken to uplift the standard of working conditions in respect of nurses. After deliberations and

discussions, the committee has made following recommendations:

1. Salary:

- In case of > 200 bedded hospitals, salary given to private nurses should be at par with the salary of State Govt. nurses given in the concerned State/UT for the similar corresponding grade.
- In case of > 100 bedded hospitals, salary given to private nurses should not be more than 10% less in comparison of the salary of State Government nurses given in the concerned State/UT for the similar corresponding grade.
- In case of 15-100 bedded hospitals, salary given to private nurses should not be more than 25% less in comparison of the salary of State Govt. nurses given in the concerned State/UT for the similar corresponding grade.
- Salary given to private nurses should not be less than ₹ 20,000/- pm in any case even for < 50 bedded hospitals.

2. Working conditions:

- Working conditions viz. leaves, working hours, medical facilities, transportation, accommodation etc. given to nurses should be at par the benefits granted to State Govt. nurses working in the concerned State/UTs.

3. Steps should be taken by all States/UTs for formulating legislation/guidelines to be adopted for implementation of the above recommendations in

case of Nurses working in private hospitals/institutions.”

9. According to the petitioner, in permitting States and Union Territories to implement the recommendations given by it, by way of legislation/guidelines, the recommendations of the Expert Committee transgressed the directions of the Supreme Court, which permitted such implementation only by way of legislation. The writ petition also faults the recommendations as being unreasoned, and submits that there was no “examination of the factual situation”, by the Expert Committee, before issuing its recommendations, as was required by the order passed by the Supreme Court. The writ petition also seeks to point out that no reasons were forthcoming, in the recommendations of the Expert Committee, for directing/permitting formulation of new legislation/guidelines when various related legislations, covering the field, were already in force, and applied to private hospitals and nursing homes. Emphasis is laid on the brief of the Expert Committee, as contained in the Order, dated 24th February, 2016 *supra*, constituting the said Committee, which included, *inter alia*, taking of a decision “whether the enactment of new legislation/ chalk out guidelines for regulating pay, perquisites and service conditions of nurses working in private hospitals/nursing homes is required, considering the fact that there are already many Acts such as Wages Act, Labour Act and Clinical Establishment (Registration and Regulation) Act, 2010 etc. to regulate wages and service conditions”

10. Some of the member-hospitals of the petitioner-Association received, on 7th July, 2017, an email, from the MoHFW, calling on

them to submit their opinion, regarding the aforesaid recommendations. The following objections were raised, by the Member-hospitals:

(i) While arriving at the recommendations, private hospitals were not consulted, and the recommendations of the Expert Committee did not incorporate their perspectives.

(ii) Nurses in the organised private Sector were, in fact, provided a much better and more conducive working environment and better working conditions, even in the absence of any statutory mandate.

(iii) Implementation of the recommendations would result in massive economic impact on private hospitals, which could render their very functioning unviable. The wage bills of nurses would stand inflated, at least two or three-fold, and other clinical cadres would also demand increasing their pay, as a logical cascading effect. This would result in long term pricing implication on the healthcare system.

11. Apparently, on 4th July, 2017, a State level Committee, at the level of the GNCTD, was constituted, to examine the aforesaid recommendations of the Expert Committee, regarding amelioration of service conditions of nurses in private hospitals. The writ petition complains that the members of the petitioner-Association were never informed about the constitution of the said State level Committee.

12. Reference has also repeatedly been made, in the writ petition, to the pendency, before this Court (at that point of time) of notifications, dated 15th September, 2016, 3rd March, 2017 and 31st May, 2017, issued by the GNCTD, revising the rates of minimum wages under the Minimum Wages Act, 1948 (hereinafter referred to as “the Minimum Wages Act”), taking exception to the unprecedented rise of nearly 40% in the minimum wages for all scheduled employments in the GNCTD. The said writ petition, it may be noted even at this juncture, has, since, being decided. Greater reference, thereto, would follow hereinafter.

13. On 25th June, 2018, the impugned Order came to be issued by the DGHS, GNCTD, enclosing, therewith, the afore-extracted recommendations of the Expert Committee. The impugned Order may, for ready reference, be reproduced, *in extenso*, thus:

**“GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI
DIRECTORATE GENERAL OF HEALTH
SERVICE
F-17, KARKARDOOMA, DELHI-110032
(NURSING HOME CELL)
(nursinghomes.1@gmail.com)**

F. No. 23/(413)/GEN/Circular/DHS/HQ/14/643-45

Dated 25/6/18

ORDER

**Subject: Guidelines in respect of implementation of
the recommendations by Expert committee**

**of MOHFW, GOI in the matter of Trained
Nurses Association of India vs. Union of
India & Ors. In writ petition No. W.P.(C)
527/2011 and further in High Courts W.P.
(C) No. 5103/2017**

With reference to the direction of Hon'ble Supreme Court of India an expert committee was constituted by MOHFW, GOI which submitted a report along with recommendations on salary and working conditions of nurses in private nursing homes/Hospitals. These recommendations were forwarded to all the states to formulate a legislation/guidelines thereafter, another writ petition, namely, WP (C) no. 5103/17 was filed in the Hon'ble Delhi High Court seeking directions regarding compliance of apex Court Judgment. The committee was constituted by an order issued by DGHS (Supervising Authority of Nursing Homes), Govt. of NCT of Delhi, dated 04/07/2017 to look into the issues related to implementation of the recommendation of the expert committee and submit its report.

In view of above, all hospitals / nursing homes are hereby directed to comply the recommendation of expert committee constituted in compliance of Hon'ble Apex Court judgment dated 29/01/2016 in W.P.(C).527/2011 vide Ministry's order No. Z-29011/15/2013-N dated 24/02/2016 and submit the compliance report to the undersigned within three months from issue of this order. Failure of compliance of the above-mentioned order shall be viewed seriously and strict action including cancellation of registration in R/o of defaulter private hospital/nursing home shall be initiated by the undersigned.

Encl:- Copy of Ministry's order no Z-29011/15/2013-N dated 24/02/2016.

Sd/-

(Dr. KIRTI BHUSHAN)
Director General Health Services, GNCTD"

14. Claiming to be aggrieved by the afore-extracted order, dated 25th June, 2018, issued by the DGHS, GNCTD, the petitioner has, *vide* the present writ petition, sought the quashing and setting aside thereof.

Rival Submissions

15. Arguments were led, on behalf of the petitioner and the respondent, by Mr. Rajiv Nayyar and Mr. Sandeep Sethi, learned Senior Counsel, and Mr. Sanjoy Ghose, learned Additional Central Government Standing Counsel, respectively.

16. Between the averments contained in the writ petition, and arguments advanced by learned Senior Counsel, the following grounds have been urged, by the petitioner, to justify its prayer for quashing of the impugned Order, dated 25th June, 2018:

(i) The petitioner was never intimated regarding the constitution of the State Committee.

(ii) The impugned Order bound all private hospitals and nursing homes to pay wages, to nurses, as recommended by the Expert Committee. The recommendations of the Expert Committee, however, indicated that the wages were linked to the number of beds in the hospitals/nursing home, with the minimum recommended wage being ₹ 20,000/-. Effectively, therefore, in the garb of directing compliance with the

recommendations of the Expert Committee, the DGHS had revised the minimum rates of wages for nurses, as fixed in respect of the scheduled employment of hospitals and nursing homes under the Minimum Wages Act. In support of this submission, the petitioner relied on certain Status Reports, filed by the GNCTD in W.P.(C) No. 5103/2017 (***Indian Professional Nurses Association v. Government of NCT of Delhi***, which was a public interest litigation seeking enforcement of the recommendations of the Expert Committee, and which stands disposed of, by this Court, *vide* order dated 22nd July, 2019), in which reference has been made, in the context of implementation of the directives of the Supreme Court, to fixation of minimum wages. Reliance was also placed, in this context, on several passages from the judgment of the division bench of this Court in ***Federation of Okhla Industrial Association (Regd.) v. Lt. Governor of Delhi, (2018) 3 LLJ 622***.

(iii) Such a revision necessarily had to abide by the procedure prescribed in Section 5 of the Minimum Wages Act. Section 5 permitted such revision, moreover, only by way of legislative action and not by way of an executive order. The power to revise minimum wages was vested, by Section 5 of the Minimum Wages Act, in the State Government, and not in any subordinate official thereof.

(iv) Section 3(3) of the Minimum Wages Act proscribes differentiation in the minimum wages payable to different sub-classes in the same scheduled employment. The impugned order revised the minimum wages only of the sub-class of nurses, within the class of skilled employees in hospitals and nursing homes and, therefore, contravened the Minimum Wages Act.

(v) The stipulation, that all private hospitals and nursing homes would have to provide working conditions, such as leave, working hours, medical facilities, transportation, accommodation, etc., to nurses, at par with the benefits granted to nurses working with the State Government, again, could be carried out only by legislative amendment, and not by way of an executive order.

(vi) While directing the setting up of the Expert Committee, *vide* its order dated 29th January, 2016 in W.P.(C) No. 527/2011, the Supreme Court had specifically provided that any recommendations of the Expert Committee could be “ultimately given a form of legislation by the respondent-States or by the Central Government itself”. The Order, dated 24th February, 2016, issued by the MoHFW, setting up the Expert Committee, also specifically mentioned that the mandate of the said Committee would include making “recommendations/guidelines on the basis of which State may formulate legislation/guidelines to regulate pay and service conditions of nurses working in private hospitals, nursing homes etc.” The

recommendations of the Expert Committee, too, provided that they were intended for the purpose of the States/Union Territories to formulate legislation/guidelines, to be adopted in respect of nurses working in private hospitals and institutions. Adoption of the recommendations of the Expert Committee, by the State Governments could, therefore, only be by way of legislation, and not by way of an executive order, such as the impugned order dated 25th June, 2018.

(vii) Assuming that the respondent had the authority to revise the minimum wages under the Minimum Wages Act, this could only be effected by following the procedure laid down in the said Act, specifically in Section 5 thereof, which would involve, at the first instance, appointment of committees/sub-committees, by publishing proposals in the Official Gazette under Section 5(1)(b). Section 9 of the Minimum Wages Act required the State Government, moreover, to provide equal representation to employers and employees, and to ensure representation by independent persons as well, in any State committee set up under Section 5(1)(a). This procedure, too, was not followed, before the impugned Order dated 25th June, 2018 came to be issued.

(viii) The impugned Order, dated 25th June, 2018, was also violative of the Delhi Nursing Homes Registration Act, 1953, which did not clothe the respondent with any authority to fix and/or amend the wages of nursing staff.

(ix) The caveat, in the impugned Order, dated 25th June, 2018, to the effect that non-compliance with the directives contained therein would entail, in its wake, cancellation of the registration of the defaulting hospitals/nursing home, was also without jurisdiction, as the DGHS, GNCTD had no authority to cancel the registration of any hospital or nursing home solely for non-compliance with such an executive order. The power to cancel the registration of a private hospital, or nursing home, was governed by Section 5, read with Section 7, of the Delhi Nursing Homes Registration Act, 1953.

(x) Enhancement of the wages of nursing staff, employed by them, to the levels recommended by the Expert Committee, would render functioning of private hospitals financially unviable.

(xi) There was no justifiable basis for equating the pay scale of nurses working in the private, with the public, healthcare sectors, overlooking, in the process, the various fundamental differences, which existed between the two categories of nurses.

17. Mr. Sanjoy Ghose submitted, by way of response, that the impugned Order, dated 25th June, 2018, had nothing to do with the Minimum Wages Act, or the fixation of minimum wage thereunder. Apropos the objection, of learned Senior Counsel appearing for the petitioners, that the private hospitals had not been heard, before the

impugned Order came to be issued, Mr. Ghose drew my attention to the Order, dated 24th February, 2016 *supra*, constituting the Expert Committee, which specifically included two members from private hospitals, namely Fortis, New Delhi and Narayana Health, Bangalore. Mr. Ghosh submitted, however, that he was not averse to grant of a post-decisional hearing to the members of the petitioner-Association. In fine, Mr. Ghosh submitted that no ground, whatsoever, existed, for this Court to interfere with the impugned Notification.

18. Additionally, the counter-affidavit filed by the GNCTD draws attention to the fact that, consequent to the recommendations of the Expert Committee, e-mail communications were sent to private hospitals and nursing homes, seeking their comments/opinion thereon and that, in response thereto, replies had been received from certain hospitals. It is also pointed out that the Minimum Wages Act only sets out the minimum amount payable to employees covered thereunder, and did not prohibit fixation of wages at a level higher than the minimum wage.

Analysis

19. The submissions of the petitioner are predicated on the premise – which, in the opinion of this Court, is fundamentally fallacious – that the impugned Order, dated 25th June, 2018, amounted to re-fixing of minimum wages of nurses, working in private hospitals and nursing homes, under the Minimum Wages Act. It is clear, on a plain reading, and on a holistic appreciation of the circumstances attending its

issuance, that the impugned Order does not purport to be, and is not, issued under the Minimum Wages Act. Neither does it revise the minimum wages payable to nurses working in private institutions.

20. The Minimum Wages Act is a legislation *sui generis*. Preambularly, it is “an Act to provide for fixing minimum rates of wages in certain employments”. It has a specific purpose to fulfill. The Statement of Objects and Reasons to the Minimum Wages Act reads as under:

“The justification for statutory fixation of minimum wage is obvious. Such provisions which exist in more advanced countries are even necessary in India, where workers’ organizations are yet poorly developed and the workers’ bargaining power is consequently poor.

2. The Bill provides for fixation by the Provincial Governments of minimum wages for employments covered by Schedule to the Bill. The items in the Schedule are those where sweated labour is more prevalent or where there is a big chance of exploitation of labour. After sometime, when some experience gained, more categories of employment can be added and the Bill provides for addition to the Schedule. A higher period is allowed for fixation of minimum wages for agricultural labour as administrative difficulties in this case will be more than in other employments covered by the Schedule. The Bill provides for periodical revision of wages fixed.

3. Provisions had been made for appointment of Advisory Committees and Advisory Boards, the latter for co-ordination work of the Advisory Committees. The Committees on the Boards will have equal representation of employers and workmen. Except on initial fixation of minimum wages, consultation with the Advisory

Committee will be obligatory on all occasions of revision.

4. In cases where an employer pays less than the minimum wages fixed by the Provincial Government a summary procedure has been provided for recovery of the balance with penalty and subsequent prosecution of the offending party.

5. It is not ordinarily proposed to make any exemptions in regard to employees of undertakings belonging to the Central Government except that difficulties might arise when the sphere of duty of such an employer covers more than one province and where the rates of minimum wages fixed by the different provinces may be different. For this purpose a provision has been included that the minimum wages fixed by a Provincial Government will not apply to employees in any undertaking owned by the Central Government or employees of a Federal Railway, except with the consent of the Central Government.”

21. Section 3 of the Minimum Wages Act requires the “appropriate Government” to fix “the minimum rates of wages payable to employees employed in an employment” specified in the Schedule thereto, Section 4 deals with the minimum rate of such wages and Section 5 provides for the procedure to be followed for fixing or revising minimum wages. Where such rates are fixed, Section 12 requires every employer, providing scheduled employment, to pay, to every employee engaged therein, wages at a rate not less than the minimum rate of wages fixed, by notification, for that class of employees in that employment. Section 18 deals with maintenance of registers and records, Section 19 provides for inspections, in order to ascertain whether the provisions of the Act are being complied with,

and Sections 22 to 22C deal with offences committed by Companies and other entities, who fail to comply with the provisions of the Minimum Wages Act.

22. The Minimum Wages Act provides for a self-contained regime, and the recommendations of the Expert Committee in the present case, fructifying in the issuance of the impugned Order dated 25th June, 2018, in the opinion of this Court, occupy a space entirely outside the said regime. The genesis of the impugned Order, dated 25th June, 2018 lies, indisputably, in the order, dated 29th January, 2016, of the Supreme Court in *Trained Nurses Association of India (supra)*. The said order, which is reproduced *in extenso* hereinabove, makes no reference to minimum wages, or to any exercise relatable to the Minimum Wages Act. The Supreme Court was dealing with a grievance, by the petitioner-Association before it, with regard to the working conditions of nurses in private hospitals and nursing homes. The prayers in the petition, which stand reproduced in para 2 of the order of the Supreme Court, too, make no reference to fixation of minimum wages, but seek, instead, that salary be paid, to such nurses, equivalent to that paid to nurses working in Government hospitals. Para 3 of the order indicates that the Supreme Court found *prima facie* substance in the grievance, of the petitioner-Association before it, that nurses, employed in private hospitals and nursing homes, were not being treated fairly in the matter of service conditions and pay. It was in this scenario that, in para 4 of the order, the Supreme Court directed the Central government to examine the grievances ventilated in the petition and to constitute a Committee which, if it found the

grievances to be merited, would make its recommendations for improvement and amelioration of the working conditions and pay of nurses working in private hospitals and nursing homes. There is nothing, in the said order, to indicate that the Supreme Court was contemplating any exercise, by the Committee, relatable to the Minimum Wages Act. Neither, quite clearly, was the Committee bound by the rigour of the said Act, or the contours and inflexions thereof. In the opinion of this Court, the Supreme Court, in issuing the directions contained in the order dated 29th January, 2016, was acting, *inter alia*, in exercise of the extraordinary powers vested in it by Article 142 of the Constitution of India, and it would be doing complete disservice to the said order, as well as to the intent and purpose thereof, to seek to imprison it within the confines of the Minimum Wages Act. In fact, any such attempt would amount to rewriting the order of the Supreme Court.

23. The Order, dated 24th February, 2016 *supra*, issued by the MoHFW, constituting the Committee, in compliance with the directions of the Supreme Court, too, makes no reference to the Minimum Wages Act, or to any exercise of fixation of wages under the said Act. The Committee, as per the said Order was required “to examine the factual situation and make recommendations for improvement of working conditions and pay of nurses”. The terms of reference of the Committee, too, refer to regulation of pay, and not to fixation of minimum wages.

24. The recommendations of the Expert Committee, constituted by the MoHFW, too, made no reference to fixation of minimum wages. The recommendations state, clearly and unambiguously, that the Committee felt that adequate salary and basic facilities were not provided to nurses employed in private hospitals/nursing homes, and that the pay and working conditions of the said nurses was pathetic, requiring, urgently, steps to be taken to uplift the standard of their working conditions. It was in this scenario that recommendations were made, regarding the salary to be paid to such nurses. The very requirement, postulated in para 3 of the recommendations, that steps were to be taken by all States/Union Territories, for formulating legislation/guidelines, for implementing the recommendations, itself indicates that the exercise conducted by the Committee was not within the confines of the Minimum Wages Act, or even guided by the considerations thereof.

25. All submissions advanced on behalf of the petitioner, and predicated on the Minimum Wages Act, the provisions thereof, and the alleged non-compliance, therewith, by the Expert Committee, while arriving at its recommendations or, for that matter, by the GNCTD, before issuing the impugned Order dated 25th June, 2018 are, therefore, in the opinion of this Court, completely misconceived. The increase in salary of nurses employed in private hospitals and nursing homes, as recommended by the Expert Committee, and as sought to be enforced by the impugned Order dated 25th June, 2018, of the GNCTD, does not, therefore, amount, as learned Senior Counsel for the petitioner would seek to contend, to a revision of the minimum

wages payable to nurses under the Minimum Wages Act. There was no requirement, far less any occasion, therefore, for the Expert Committee to proceed in accordance with the procedure postulated in the said Act.

26. No constraints, regarding the manner in which the Expert Committee was to proceed in the matter, find any place in the order, dated 29th January, 2016, of the Supreme Court in *Trained Nurses Association of India (supra)*. Confining, within any narrow straits, the manner in which the Expert Committee was to proceed in the matter would, therefore, clearly amount to adding caveats to the order of the Supreme Court which, needless to say, is impermissible.

27. The submission, advanced on behalf of the petitioner, that, as the recommendations of the Expert Committee linked the wages to be paid to the nurses to the number of beds in the hospitals/nursing homes, with the minimum recommended wage being ₹ 20,000/—, indicated that, effectively, the minimum wages payable to the nurses were being revised, also fails, entirely, to impress. The manner in which the Expert Committee arrived at its recommendations, and the factors which it chose, and thought appropriate, to take into consideration, while doing so, cannot metamorphose the said exercise into one of revision of minimum wages, under the Minimum Wages Act.

28. It is of prime importance, in this context, to note that the Supreme Court, in its order dated 29th January, 2016 in *Trained*

Nurses Association of India (supra), did not use the word “minimum wage”. Instead, the word used, in the said order, is “pay”. There is a fundamental difference between “pay”, and “minimum wage” though, undeniably, minimum wages are also “pay”. *R. S. Nayak v. A. R. Antulay, (1984) 2 SCC 183* defines “pay” as meaning “salary, compensation, wages or any amount of money paid to the person who is described as in the pay of the payer”. In *State Bank of India v. K. P. Subbaiah, (2003) 11 SCC 646*, the Supreme Court held that the word ‘pay’, in its ordinary significance in relation to service, meant “to give what is due for services done”. Needless to say, the expression “what is due” would encompass, in almost every case, more than the minimum wage applicable to the post in question.

29. The Supreme Court, too, in its order in *Trained Nurses Association of India (supra)* has parenthesized, together, “service conditions and pay”. These two expressions, therefore, would merit interpretation *noscitur a sociis*. “Service conditions” refers to the conditions attending the service performed by the employee concerned. These “conditions”, again obviously, would include an entitlement to the salary applicable to the post, and not merely to minimum wages under the Minimum Wages Act. When, therefore, the Supreme Court contemplated, in its order, “improvement of working conditions and pay of the nurses”, it is quite obvious, to this Court, that the Supreme Court was not contemplating merely revision of minimum wages. If, therefore, the Expert Committee had limited the exercise, conducted by it, to revising of the minimum wages payable to nurses as a scheduled employment under the Minimum Wages Act,

it would, in fact, be infracting the directions issued by the Supreme Court. Advisedly, the Expert Committee has not done so. It has recommended enhancement of the salary drawn by nurses, employed in private hospitals and nursing homes, to be on par with nurses employed by State Government hospitals. This has nothing to do with revision of minimum wage. Had, therefore, the Expert Committee proceeded within the constricted confines of the Minimum Wages Act, the mandamus issued by the Supreme Court would remain un-complied with. As it is, the Expert Committee correctly interpreted the order of the Supreme Court, and, after due consideration, recommended enhancement of the salary drawn by nurses employed in hospitals and private nursing homes, to be at par with the salary drawn by nurses employed by the State Government.

30. The judgment of this Court in *Federation of Okhla Industrial Association (Regd.) (supra)*, which dealt with the challenge to notifications revising minimum wages, as issued by the GNCTD has, therefore, no applicability, whatsoever, to the present case, and the reliance, on the said decision, by the petitioner has necessarily to be characterised as completely misconceived.

31. Inasmuch as it was not functioning under the Minimum Wages Act, the Expert Committee could not be said to have been constrained to act within the parameters contemplated by the said Act. Neither was it obligated to follow the procedure, prescribed in the said Act, for revision of minimum wages. All that was required, of the Expert Committee, was to act fairly. In this regard, in the opinion of this

Court, the Expert Committee can certainly not be found wanting. The grievance, of the petitioner, that private hospitals were not associated with the deliberations of the Expert Committee is, on facts, incorrect, as the constitution of the Committee included representation by Fortis, Delhi and Narayana Health, Bangalore. The recommendations of the Expert Committee were reached with the concurrence of representatives of the private hospitals, therefore, and cannot be said to have been arrived at, either behind their back or without their participation. The requirements of fair play and due procedure were again followed, by circulating the recommendations of the Expert Committee amongst the private hospitals and nursing homes, and seeking their comments. These comments were also taken into consideration before finalising the recommendations and issuing the impugned Order on 25th June, 2018. No more, in the opinion of this Court, was required, or even expected, to be done, by the Expert Committee, or by the DGHS, GNCTD, in order to ensure full and complete compliance with the directives issued by the Supreme Court.

32. This Court is also unimpressed with the submission, advanced on behalf of the petitioner, that the order of the Supreme Court, in *Trained Nurses Association of India (supra)* necessarily required legislation, by the Central Government or by the States, before the recommendations of the Expert Committee could be implemented, and that such implementation, by virtue of an executive order, such as the impugned Order dated 25th June, 2018, was violative of the directions issued by the Supreme Court. The Supreme Court has merely observed, in para 4 of its order, that the recommendations of the

Expert Committee “*can* ultimately be given a form of legislation by the respondent-States or by the Central Government itself”. This observation, in the opinion of this Court, is empowering, and not disabling, in nature. It empowers the States or the Central Government to legislate, in order to ensure enforcement of the recommendations of the Expert Committee. This observation could not, however, be read to mean that, till such legislation takes place, the recommendations of the Expert Committee would remain unenforceable at law. In fact, having found, positively, that nurses, working in private hospitals and nursing homes, were not being treated fairly in the matter of the service conditions and pay, the order of the Supreme Court can hardly be interpreted as postponing the amelioration of the condition of such nurses till the stage of enactment of appropriate remedial legislation by the State or Central Government. A Division Bench of this Court (of which I was a member) has already, in its order dated 22nd July, 2019 in W.P. (C.) No. 5103/2017, directed implementation of the recommendations of the Expert Committee subject, however, to the outcome of the present writ petition. The said caveat was entered only so that the objection, raised by the present petitioner, founded on the premise that the Expert Committee was required to follow the procedure prescribed in the Minimum Wages Act, and act in accordance with the said statute, would not go undecided.

33. There is, equally, no legal embargo on directing payment of salary, to any employee or category of employees, at a rate above the minimum wages, for that category of employment, as fixed under the Minimum Wages Act.

34. Having examined the matter in all its aspects and contours, this Court is convinced that the Expert Committee cannot be faulted, in any manner, for not having proceeded in accordance with the Minimum Wages Act, or the provisions thereof. Inasmuch as the Supreme Court has already found that nurses, in private hospitals and nursing homes, were not being treated fairly in the matter of their service conditions and pay, the recommendations of the Expert Committee, constituted by the Supreme Court in order to examine the issue, have necessarily to be treated as binding in nature. This Court, therefore, sees no infirmity, whatsoever, in the impugned Order, dated 25th June, 2018, whereby the DGHS, GNCTD has mandated compliance with recommendations of the Expert Committee.

35. Compliance with the impugned Order, based as it is on the recommendations of the Expert Committee constituted by the Supreme Court to remedy the pay and service conditions of nurses employed in private hospitals / nursing homes, cannot be avoided on the ground of financial hardship. Empirically, therefore, this Court finds itself unable to subscribe to this contention, of the petitioner, either. Not one iota of material has been produced, to bear out the contention that compliance, with the recommendation of the Expert Committee, would render it unviable for hospitals to continue functioning.

36. Besides, a reading of the recommendation of the Expert Committee discloses that care has been taken, therein, not to direct

uniform enhancement of the salary of nurses for all categories of hospitals. Depending on the number of beds in the hospital, the extent, to which enhancement of the salary of nurses is recommended, has been staggered. For hospitals having less than 50 beds, the recommendations only require that nurses, employed by the hospital, should not be paid less than ₹ 20,000/- per month. In the case of hospitals having between 50 and 100 beds and between 100 and 200 beds, the Expert Committee has not recommended absolute parity, in pay, between nurses employed in such employment and nurses employed in State Government hospitals, but has only recommended that the difference should not exceed 25% in the first case and 10% in the second case.

37. Parity in pay, between nurses employed in private hospitals/nursing homes, and nurses employed by State Government hospitals, has been directed only in cases of hospitals having more than 200 beds.

38. The size of the hospital has, therefore, been factored in, by the Expert Committee, while examining the extent to which nurses, working therein, could be placed at par with nurses in state government hospitals.

39. *Ex facie*, therefore, the manner in which the Expert Committee has proceeded, and the recommendations that have resulted as a consequence thereof, cannot be characterized, to any extent, as either

arbitrary or irrational, so as to justify any interference, by this Court, exercising writ jurisdiction.

40. Significantly, no serious contention has been advanced by the petitioner, either in its writ petition or during the course of arguments in court, regarding the merits, on facts, of the recommendations of the Expert Committee, or questioning the correctness thereof. In any event, the Supreme Court, in its order in *Trained Nurses Association of India (supra)*, has already opined that it was not issuing any guidelines, as the grievances of the petitioner, before it, were to be examined by a Committee consisting of experts, to be constituted as directed in the said order. This Court is also, therefore, loath to sit in appeal over the findings of the said Committee, or the recommendations which follow as a sequitur thereto.

41. A harmonious balancing of the interests of the hospital and the nurses appears to have informed the consideration, by the Expert Committee, of the issue before it, and the recommendations that have followed as a consequence thereof, and this Court is convinced that no occasion arises for any interference, by it, with the said recommendations.

42. The Committee, which constitutes extremely high-ranking officials, and also includes representatives of private hospitals, has positively found that the “pay and working condition” of nurses employed in private hospitals/nursing homes “is really pathetic”. It is sacrilegious, therefore, to require nurses, who discharge selfless

service night after night, to work in conditions which are pathetic. No compromise can, therefore, be made, so far as ensuring optimum working conditions, for nurses, is concerned. The Expert Committee merely equated the salary, to be paid to nurses in private hospitals and nursing homes, with the salary paid to nurses in government hospitals. It cannot be said, by any stretch of imagination, that the recommendation is expropriatory in nature.

43. Exception has also been taken, by the petitioner, to the stipulation, in the impugned Order, dated 25th June, 2018 of the DGHS, GNCT of Delhi, that failure to comply with the recommendations of the Expert Committee would invite strict action, including cancellation of registration of the defaulter private hospital/nursing homes. It is sought to be contended that cancellation of registration of hospitals and nursing homes is governed by Section 7 of the Delhi Nursing Homes Registration Act, 1953 (hereinafter referred to as “the DNHR Act”, which reads thus:

“7. Cancellation of registration- Subject to the Provision of this Act, the supervising authority may at any time cancel the registration of a person respect of any nursing home on any ground which would entitle it to refuse an application for the registration of a person in respect of that home, or on the ground that the person has been convicted of an offence, under this Act or that any other person has been convicted of such an offence in respect of that home. ”

44. Section 7, therefore, permits cancellation of the registration of any nursing home, on any ground which would entitle the supervising

authority to refuse an application for registration of a person in respect of such nursing home. The circumstances in which an application for registration of a nursing home could be refused are, in turn, to be found in the proviso to Section 5(1) of the aforesaid Act. Section 5(1) is, for ready reference, reproduced thus:

“5. Registration

(1) subject to the provisions of this Act and the rules, the supervising authority shall on the receipt of an application for registration, register the applicant in respect of the nursing home named in the application and issue to him a certificate of registration in the prescribed form:

Provided that the supervising authority may refuse to register in the applicant if it is satisfied:-

- (a) That the applicant, or any person employed by him at the nursing home, is not a fit person to carry in or to be employed at a nursing home of such a description as the nursing home named in the application; or
- (b) That the nursing home is not under the supervision of a person who is a qualified medical practitioner and he or a qualified nurse is not resident in the home, or that there is not a proper proportion of qualified nurses among the persons having the superintendence of or employed in the nursing of the patients in the home; or
- (c) That in the case of a maternity home it has not got its staff a qualified midwife and a qualified medical practitioner; or
- (d) That for reasons connected with the situation, construction, accommodation, staff of equipment, the nursing home or any premises used

in connection therewith is or are not fit to be used for a nursing home of such a description as the nursing home mentioned in the application or that the nursing home or premises is or are used or to be used for purposes which are in any way improper or undesirable in the case of such nursing home.”

45. There can be no gainsaying that Section 7, read with the proviso to Section 5(1) of the DNHR Act (*supra*), constitutes a self-contained code, governing cancellation of the registration of nursing homes.

46. The expression ‘nursing home’ is defined in clause (4) of Section 2 of the said Act as meaning “any premises used or intended to be used for the reception of persons suffering from any sickness, injury or infirmity and the providing of treatment and nursing for them.....” Hospitals, therefore, would also qualify as “nursing homes”, for the purposes of applicability of the DNHR Act.

47. Conjointly read, therefore, cancellation of the registration of a hospital, or a nursing home, could only be justified on the ground of existence of one, or more, of the circumstances in which a request for registration of such nursing home could be refused, as contemplated by the proviso to Section 5 of the said Act.

48. Cancellation of the registration of a hospital or a nursing home is an extreme step, fraught with serious and debilitating consequences. It affects, not only the hospital, but also all its employees and the patients who may be admitted, therein. This is a step which is required

to be taken with extreme care, caution and circumspection. It is obviously for this reason that the legislator had thought it appropriate to limit the circumstances in which registration of an existing nursing home or hospital could be cancelled, to one of those contemplated by clauses (a) to (d) of the proviso to Section 5 (1) of the DNHR Act.

49. There is substance, therefore, in the contention, advanced on behalf of the petitioner, that the impugned Order dated 25th June, 2018, issued by the DGHS, cannot sustain, to the extent it threatens cancellation, forthwith, of the registration of any hospital or nursing home, which fails to comply with the recommendations of the Expert Committee.

50. While this Court reiterates that such recommendations are required, necessarily, to be complied with, and observed, by the hospitals and nursing homes, and also clarifies, therefore, that non-compliance with such directions could invite adverse action against such hospitals or nursing homes, it may be arguable as to whether the registration of defaulting hospitals/nursing homes could be cancelled on that ground, given the provision to Section 7 and the proviso to Section 5(1) of the DNHR Act (*supra*).

51. This Court deems it appropriate, therefore, even while upholding the remainder of the impugned Order dated 25th June, 2018 issued by DGHS, GNCTD, to direct that the operation and implementation of the concluding portion of the said order, which threatens cancellation of the registration of any defaulting

hospital/nursing home, should be kept in abeyance, till the defaulting hospital/nursing home is given an opportunity of personal hearing in that regard. It would be open to the hospital/nursing home, to take all available defences, against any proposal to cancel its registration, including the defence of whether such cancellation could be effected, given the provision of DNHR Act, on the sole ground of failure, on the part of the hospital/nursing home, to comply with the recommendations of the Expert Committee, in respect of nurses working in its establishment.

Conclusion

52. In view of the above, this writ petition is disposed of in the following terms:

- (i) The impugned Order, dated 25th June, 2018, issued by the DGHS, GNCTD, to the extent it directs mandatory compliance with the recommendations of the Expert Committee, by all private hospitals/nursing homes, in the matter of pay and service conditions of nurses, employed by such hospitals/nursing homes, is upheld, and the challenge, thereto, by the petitioner is rejected.
- (ii) Before proceeding to cancel the registration of any nursing home/hospital, on the ground of failure, on the part of such nursing home/hospital, to comply with the recommendations of the Expert Committee, the DGHS would grant an opportunity to the allegedly defaulting nursing home/hospital to represent against such proposed cancellation of

its registration. The nursing home/hospital would also be extended an opportunity of personal hearing, before any such decision is taken. All defences, against the proposed cancellation of its registration, would be open to such allegedly defaulting nursing home/hospital, including the question of whether such cancellation could be effected, in view of Section 7 read with proviso to Section 5 (1) of the DNHR Act (*supra*). The DGHS would, on the conclusion of such representation/hearing by the affected hospital/nursing home, pass a speaking order, dealing with all the defences raised by the hospital/nursing homes concerned, before proceeding to take any such proposed action for cancellation of the registration of the hospital/nursing home.

(iii) In order to avoid any confusion, it is clarified that the limited protection against cancellation of any defaulting hospital/nursing home, as provided in (ii) (*supra*), would not detract from the enforceability of the recommendations of the Expert Committee, and the impugned Order, dated 25th June, 2018, insofar as it mandates compliance, by all hospitals/nursing homes, with the said recommendations, would stand upheld in its entirety.

(iv) The period of three months, provided in the impugned Order dated 25th June, 2018, for the hospitals/nursing homes to report compliance with the recommendations of the Expert Committee, would stand extended, and would now commence from the date of pronouncement of this judgment, i.e. 24th July, 2019.

53. There shall be no order as to costs.

C. HARI SHANKAR, J

JULY24, 2019
HJ

