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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 808/2018

BHAWANA SHARMA & ANR

..... Petitioners

Through : Ms.Vibha Mahajan Seth, Advocate
with petitioners in person.

versus

SHYAM SUNDER SHARMA & ANR

..... Respondents

Through : Mr.M.M.Sharma, Advocate for
respondent No.1 with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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24.01.2019

1. Petitioners have filed this writ petition for setting aside an impugned order dated 24.04.2018 passed by learned Family Judge in HMA No.133/2016 and further to give directions to the Director of Welfare, New Delhi Municipal Council (NDMC) for issuance of medical health cards to both the petitioners along with all requisite formalities and information etc.

2. The brief facts which led to the filing of this petition as detailed in petition are as follows :-

a) on 20.04.1996 petitioner no.1/wife got married to the respondent/ husband according to Hindu rites/custom at New Delhi;

b) on 06.02.1998 Vani Sharma, petitioner No.2 was born, who is presently in the care and custody of her mother-the petitioner

no.1/wife for the last 17 years;'

c) there are allegations of cruelty *interse*;

d) on 01.05.2001 the petitioner no.1/wife filed a police complaint with Crime against Woman Cell, Ashok Vihar, Delhi;

e) on 05.06.2001 FIR No.230/2001 was registered by Prashant Vihar Police station U/s 498A/406/34 IPC against respondent and his family members;

f) a divorce petition filed by the respondent is pending adjudication before the Judge of Family Court Sh.Dinesh Bhatt, ADJ, Tis Hazari Court Delhi;

g) on 11.07.2014 an application dated 11.7.14 was moved to the Director of Welfare Department, NDMC, New Delhi by both the petitioners with a request for issuance of Medical Health Cards to them;

h) on 08.08.2014 the Director of Welfare Department, NDMC, New Delhi refused to accede to their request at the instance of the respondent on the pretext it could only be issued on the directions of Court;

i) on 17.12.2015, an application u/s 151 of CPC was filed by petitioner - wife before the learned Trial Court seeking appropriate directions to Director of Welfare Department of Authority NDMC, for issuance of Medical Health Cards to both the petitioners; and

j) on 24.04.2018, impugned order was passed by the learned Trial Court dismissing such application of the petitioners.

3. On the other hand, the learned counsel for the respondent No.1/

husband objected the issuance of medical cards citing reasons of cruelty etc upon his petitioner/ wife and referred to his reply dated 14.01.2016 to an application dated 15.12.2015 under Section 151 CPC filed by his wife for directions to the NDMC to issue medical cards.

4. Heard.

5. On 20.07.2018 this Court has noted :-

“4. Vide the impugned order, the application was dismissed for the reason of an order of maintenance under Section 125 of the Cr.P.C. having been made and for the reason of the NDMC in response to a letter written by the petitioner No.1/wife having taken a stand that cards only in the name of the employees showing dependent are issued and such cards cannot be issued to family members.

5. Prima facie, it appears that the order under Section 125 Cr.P.C. should not come in the way of the petitioner No.1/ wife getting the benefit which she is entitled to from the employer of the respondent / husband.”

and on 25.09.2018, this Court has again noted:

“5. It is prima facie felt that the petitioners, as wife and daughter of the respondent, irrespective of estrangement with the respondent, shall continue to be entitled to the benefits.

6. Since the respondent is employed with NDMC, it is deemed appropriate that the affidavit dealing with all aforesaid issues is filed by the Secretary, NDMC himself to avoid any influence from the respondent.”

6. Accordingly, an affidavit dated 12.10.2018 was filed by the Secretary of NDMC and it read as under :-

4. That the medical card are issued in the name of employees along with dependents eligible member of his/her family, no medical card, to other family members is issued if the employee is alive. There is no Provision or Rules and policy "under which separate card" can be issued to the family members of the employee. Health card are being issued to NDMC employee and retired employee under Medical Health Scheme.

5. That in contingencies the family members (dependants) would be provided color photograph of the medical card

which has the validity as original and the petitioners can avail the medical benefits."

7. Relying upon the affidavit dated 12.10.2018, this Court passed the following order on 23.10.2018 :-

"Before proceeding further, in view of averments in para-5 of the said affidavit, it is considered appropriate that a copy of the colour photograph of the medical card of the respondent in relation to which it has been submitted vide para-5 of the said affidavit that the said colour photograph of the medical card has a validity as an original i.e. the original medical card and in terms thereof, the petitioners i.e. the wife and daughter of the respondent can avail the medical benefits, be placed on record by the NDMC with an affidavit of the Secretary, NDMC as being the relevant document pursuant to which it is submitted that the petitioner can avail medical benefits, which be placed within a period of two weeks."

8. Yet another affidavit dated November 2018 was filed by the Director, Welfare Department, NDMC filed, which notes:-

"2. Sh.Syand Sunder Sharma (Husband) responded the aforementioned letter on 05.11.2018 stating that the estranged wife (petitioner) is not depended on him and has been living separate since 03.04.2001. A copy of reply of Shyam Sunder Sharma (Husband) dtd.05.11.2018 is annexed hereto as AnnexureR-1.

3. That Sh.Shyam Sunder Sharma (husband) has submitted the Form for Medical Card. A copy of Form for Medical Card is annexed hereto as AnnexureR-2."

9. A bare perusal of above orders and the contents of affidavits filed on behalf of NDMC do show the respondent – NDMC has no issue qua giving medical cards to the petitioners herein. The learned counsel for the respondent No.1 though alleges such medical cards may be misused by the petitioners by making fake claims/medical bills and in such an event departmental action may be initiated against him, but this is an hypothetical situation. Even otherwise, the department is well aware the petitioner No.1 has an estranged wife.

10. The NDMC being a statutory authority, admittedly, issues

medical card to its employees which serves the medical need of their spouses and dependent children, hence the only question is *can an estranged spouse make use of such medical facility which is available to the employee spouse*. The answer is provided in *Madhu and Another vs Northern Railway and Others* 247 (2018) DLT 198 (DB) wherein this Court has noted:-

“13. This court is of the opinion that the structure of Para 603 is such that the status of spouse, is recognized as long as the relationship of matrimony subsists. In the case of an unmarried and dependent daughter, there is no question of changing the status; by its very nature it is unalterable. Thus, the mere circumstance that one or the other party to a matrimonial bond, is disgruntled or involved in litigation against the other, would not alter the factum of relationship, which is per se a matter of status.

31. In light of these facts and the observations made above, we are of the conclusion that the speaking order passed by the Northern Railways on 23.11.2015 is arbitrary, discriminatory and made without application of mind. This court hereby quashes the order dated 23.11.2015 and directs the Northern Railways to include both the appellants' names on the medical card of the second respondent and issue a separate medical card and privilege pass to the Appellants. These directions shall be complied with, within four weeks. The appeal, and consequently, the writ petition is allowed in the above terms; there shall be no order on costs.”

11. Hence, for reasons aforesaid, the impugned order dated 24.04.2018, so far as it relates to issuance of medical cards to petitioners herein, is set aside and the NDMC is directed to issue separate medical cards to the petitioners herein in terms of para No.5 of its affidavit dated 12.10.2018, within a period of four weeks from today.

12. Needless to state both the petitioners shall complete the requisite formalities. The respondent No.1 shall extend all possible cooperation in such exercise.

13. The Registry will communicate the copy of this order to the Director, Welfare Department, NDMC, New Delhi for compliance.

14. *Dasti.*

YOGESH KHANNA, J.

JANUARY 24, 2019

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