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

Date of decision: 30th October, 2019

+ W.P.(C) 509/2017

DIVYA KUMRA

..... Petitioner

Through: Ms. Harini Raghupathy and
Mr.Aman Khan, Advs.

versus

GOVT OF NCT OF DELHI AND ORS

... Respondents

Through: Mr. D. Sushill Dutt, SO, DFW of
GNCTD

Mr. Vivek Goyal, CGSC with Mr.
Ram Krishan Kumar, Adv. for
respondent nos. 5 and 6

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

30.10.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This so-called Public Interest Litigation (PIL) has been preferred with the following prayers:-

“Wherefore in the light of issues raised, arguments presented and authorities cited, it is humbly prayed that this Hon'ble Court may be pleased to decree a writ of mandamus or any other writ, order or direction declaring that:

(a) For a writ of mandamus or any other writ, order or direction in the nature of mandamus holding the respondents accountable for all violations of legislative and constitutional

guarantees which resulted in denying the poor women of the slums of Chilla Khadar Jhuggi Camps and Baljeet Nagar Post Partum health care services.

(b) For a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent No. 1 to ensure effective implementation of the guarantees in NHM and procedure to be followed before and after PPIUCD insertion according to the PPIUCD Manual and other social schemes available to all the pregnant and post partum women in the Chilla Khadar Jhuggi Camp, Yamuna Khadar, Kalyanpuri and Baljeet Nagar;

(c) For a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondents to set up an investigation committee to look into the incidents of coercive insertion of Copper-T in government hospitals and refusal to remove the same despite serious health issues.

(d) For a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondents to compensate the women who were forcefully inserted PPIUCD'S, as they had to suffer a lot of health problems and in the process incurred a lot of medical and travel expense;

(e) For a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondents to furnish details of money/budget allocated by the State under NHM for Post Partum Intra Uterine Contraceptive Devices (PPIUCD) and the appointment of ASHA'S for imparting knowledge and counselling regarding the same ;

(f) For notice to the respondents to show cause as to why the provisions of deploying ASHA's as per NHRM i.e. "an ASHA in all village" and their obligations under the NHM scheme for distributing contraceptives from door to door and other obligations like counselling regarding Contraceptives and other maternal issues is still inoperative in the State even after it has been adopted by the government under the National Health Mission.

(g) For any such other and suitable orders as this Hon'ble Court may deem fit and necessary in light of the facts and circumstances of the case and in the interest of justice.

(h) For the cost of the present petition be also allowed in favour of the petitioner against the respondent."

2. Learned counsel appearing for the petitioner submits that the women, who are staying at Chilla Khadar Jhuggi Camp, Yamuna Khadar, Kalyanpuri and Baljeet Nagar, have been inserted Post Partum Intra Uterine Contraceptive Devices (PPIUCD), which are contraceptive

devices, by the respondent without their consent. Counsel appearing for the petitioner further submits that the petitioner has carried out general survey and found out that several women have suffered health problems because of forceful insertion of PPIUCD without consent of the concerned women.

3. Learned counsel appearing for the respondents submits that a detailed counter affidavit has been filed by the respondent nos. 1 and 2 dated 28th August, 2017 and it has been mentioned in para 1 thereof reads as under:-

“1. In reply to the Para 1 Answering Respondent most humbly submits, that the three Hospitals named in the Petition i.e. Lal Bahadur Shastri Hospital, Deen Dayal Upadhyay Hospital & Sardar Vallabh Bhai Patel Hospital are implementing various Govt. Schemes including Post-Partum Intra Uterine Contraceptive Device (PPIUCD) as per norms & guidelines formulated by Ministry of Health and Family Welfare (MoHFW), Govt. of India (GOI), and the State Government.

It is further submitted, that proper guidance & counselling is provided to all pregnant and post-partum women regarding various Family Planning Methods, their advantages & disadvantages, possible side effects/complications/ rare failures, suitability, selection of the best method, what to do/ to watch for/ when to report in case of any problem etc. The approach is a cafeteria choice (with a basket of choices) wherein beneficiaries are given all the information & are guided to make best

possible choice of their own with free & voluntary mind, free from any coercion from any person. No person or any woman is forced to consider or adopt any particular method of Family Planning. Various expected paper works are completed after fully informing and obtaining prior consent before any Intra Uterine Contraceptive Device (IUCD)/ Post-Partum Intra Uterine Contraceptive Device (PPIUCD) insertion/Sterilization operation in all the cases. Women are encouraged for follow up and those seeking removal are catered to in a friendly manner and are dealt with in the possible way considering all the facts and circumstances. It is further submitted, that the claims in the preceding part of the reply to Para 1 can be substantiated by the documents annexed herewith as Annexure-I which among other things include report from In-charge Post-Partum Unit, & check list in r/o Deen Dayal Upadhyay Hospital, PPIUCD visit report/format, check list for client friendly PPIUCD Services, Client exit interview in r/o Sardar Vallabh Bhai Patel Hospital, etc.”

4. Thus, it is submitted by the counsel for the respondent nos. 1 and 2 that allegation of the petitioner that respondents have inserted PPIUCD without consent, forcibly, is false. Consent Forms have also been attached along with counter affidavit filed by respondent nos. 1 and 2 at pages 14 and 17 of the counter-affidavit. It is further submitted by the counsel for respondent nos. 1 and 2 as and when any petition is filed by

the aggrieved party, the detailed counter affidavit will be filed; otherwise, respondents have clearly explained that the contraceptive devices were inserted upon the consent of the respective party.

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner has carried out a survey of few women, who were staying in the aforementioned areas. There are allegations of the petitioner that contraceptive devices were inserted without consent of women; whereas looking to the counter affidavit filed by respondents no. 1 and 2, a detailed explanation has been tendered about the contraceptive devices being inserted upon consent by the respective party. Few consent forms are also annexed with the counter affidavit filed by respondent nos. 1 and 2 as stated hereinabove. Thus, it appears that there is a highly disputed question of fact involved in this writ petition and hence, we see no reason to entertain this writ petition. However, liberty is reserved with the aggrieved party to appear before the competent forum so that a reply can be filed by the respondents looking to the facts of the case and only thereafter it can be decided by the competent court whether consent was given by the women/applicant/petitioner. The consent forms, which are annexed with the counter affidavit filed by respondents no. 1 and 2 are only a sample consent forms given by the parties, and may not match with the persons whose names have been given in this writ petition. Hence, we see no reason to entertain this writ petition and the same is hereby disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

OCTOBER 30, 2019/r.bararia