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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 12th June, 2020

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W.P.(C) 3506/2020

DR. KAUSHAL KANT MISHRA

..... Petitioner

Through: Ms.Haripriya Padmanabhan,
Adv. with Ms. Pooja Dhar, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Sanjay Jain, ASG with
Mr.Gautam Narayan, ASC with Ms. Shivani
Vij, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

:

D. N. PATEL, Chief Justice (Oral)

Proceedings of the matter have been conducted through video conferencing.

CM APPL.12445/2020 (exemption)

Allowed, subject to just exceptions.

W.P.(C) 3506/2020 & CM APPL.12444/2020 (Stay)

1. This Public Interest Litigation has been preferred with the following prayers:

“A) Issue a Writ of Certiorari and quash the impugned order F-23/(413)/GEN/Circular/NHC/DGHS/HQ/5366-77 dated 24.05.2020 issued by the Respondent No. 2 Directorate General of Health Services;

B) Pass such other further order(s) as this Hon'ble Court may deem fit in the interest of justice."

2. Learned Counsel appearing for the petitioner has taken this Court to various circulars annexed with this writ petition such as circular dated 24th May, 2020 (page no.31), circular dated 28th March, 2020 (page no.32), and circular dated 9th June, 2020 (page No.45) and also a circular dated 7th April, 2020 issued by the Government of NCT of Delhi and Ministry of Health and Family Welfare, Union of India and submitted that these circulars issued by the respondents are conflicting in nature. It is further submitted by learned counsel for the petitioner that the respondents should increase the number of dedicated Covid-19 hospitals instead of reserving 20% bed capacity for the Covid patients along with 80% non Covid patients. This needs to be done to ensure that there should not be any intermingling of Covid and non Covid patients in the same hospital. It is also submitted by the learned counsel for the petitioner that more and more dedicated Covid hospitals should be declared and made operational near the containment zones where there is rapid increase of Covid patients. Several examples have been given by the learned counsel for the petitioner that in a non-Covid hospital several complicated surgeries such as surgery for kidney, heart etc. are to be performed by the doctors in a regular intervals, and if Covid patients are also allowed to be admitted as per the Government circulars annexed with this writ petition, there will be a high risk of Covid infection to the non-Covid patients who have been admitted in a non Covid hospital for treatment and operations like kidney, heart, etc. It has to be kept in mind that these patients are already utmost vulnerable to several infections after surgery and

that is why they are being kept in a ICU post operation as a precautionary measure to prevent them from catching any infection. In this backdrop of the matter, imagine a situation if non Covid patients are being allowed to be treated along with the Covid patients in a hospital in which total bed capacity is 50 or more and where there is a common entry/exit gate, common lift, common diagnostic centre, common X-ray machine room, common ultra sound room etc. Learned counsel for the petitioner submits that the consequences would be disastrous if treatment of non Covid patients is allowed to be given along with the Covid patients admitted in such type of hospitals. It would also be very dangerous and potentially fatal to the non Covid patient with comorbidity condition if he/she catches Covid infection as the chances of catching such infection in such hospital is very high. It is, therefore, submitted by the learned counsel for the petitioner that these facts have to be appreciated by the respondents and therefore separate or dedicated Covid-19 hospitals should be increased instead of giving direction to the private hospitals to reserve/earmark beds, whether it be 20%, 25%, 30% or 40%, in a given hospital where non-Covid patients are taking treatment or undergoing surgeries for different ailments.

3. We have heard Mr. Sanjay Jain, learned ASG appearing for the respondents at length. It is submitted by the learned ASG that the directions given by the respondents through the various orders/circulars are not at all conflicting to each other but in fact are in consonance with each other. However, it is submitted by the learned ASG that let this writ petition be treated as representation as similar issue as raised in this petition is pending consideration before the Government authorities by virtue of directions

passed by this Court passed in WP(C) 3333/2020 vide order dated 3rd June, 2020.

4. In view of the above submissions made by the learned counsel appearing for the parties and also taking into account that the learned counsel for petitioner agrees that this petition be treated as representation before the respondent authorities so that the committee of experts, constituted by the respondents for considering and deciding similar issue as referred hereinabove, can also appreciate the submissions and pleadings narrated in detail in this writ petition.

5. We, therefore, direct the concerned respondent authority to treat this writ petition as a representation and consider the grievances ventilated in this petition in light of the fact that if non-Covid patient who has been admitted in a hospital for treatment/ operation such like heart or kidney etc. and if such hospital under compulsion by virtue of several directions/circulars issued by the respondent authorities which are annexed with this writ petition, admit Covid patients, there is every likelihood of catching infections by the non Covid patients from the Covid patients in such hospitals. The chances of getting infections by the non-Covid patients from the Covid patients in such hospitals shall therefore be appropriately appreciated by the committee of experts of the respondents while deciding the representation of the present petitioner and if need arises, the respondent may give personal hearing to the petitioner. We are not compelling and binding the concerned respondent authority to definitely give a personal hearing to the petitioner. We leave it to the discretion of the concerned respondent authority to decide as to whether give a personal hearing to the

petitioner or not, keeping in mind the fact that petitioner is a well known doctor practicing in Delhi and may be in a position to assist the committee in its deliberations.

6. While concluding the matter, we make it explicitly clear that we are not expressing any opinion upon the merit of the case. In case, there is any need of amendment in the existing circular(s) or issuance of a fresh circular, the decision shall be taken by the respondent authority after taking appropriate advice/opinion from the experts in the field.

7. With these observations, this writ petition is disposed of. The pending application also stands disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

JUNE 12, 2020

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