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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 20th December, 2022
+ **W.P.(C) 17096/2022 & CM APPL. 54252/2022**
GULAM MAHABUB Petitioner
Through: Mr. Ashok Agarwal, Mr. Kumar
Utkarsh & Mr. Manoj Kumar,
Advocates.
versus
GOVERNMENT OF NCT OF DELHI & ORS. Respondents
Through: Mr. Satyakam, ASC with Ms. Pallavi
Singh, Advocate.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner - Mr. Gulam Mahabub seeking the following prayers:

- i) *issue any appropriate writ, order or direction, directing the respondent Lok Nayak Hospital to forthwith provide MRI (L) Knee test and further treatment to petitioner, namely, Mr. Gulam Mahabub without any discrimination;*
- ii) *issue any appropriate writ, order or direction, directing the respondents to stop discriminating in providing treatment to patients who are possessing Voter ID Card of Delhi and patients who are outsider (not possessing Voter ID Card of Delhi);*
- iii) *pass any other order or direction or such further orders as may be deemed just and appropriate, in the facts and circumstances of the case and also in the interest of justice, in favour of the petitioner; and*
- iv) *allow the present writ petition with costs, in favour of the petitioner.*

3. The Petitioner is a resident of Bihar. He was suffering from pain in his left knee due to which he got registered *vide* OPD Reg. No. 114982201 with the Respondent No.3 - Lok Nayak Hospital in September, 2022. He was attended by a doctor in the OPD of the Ortho Clinic department of the Respondent No.3 and his X-Ray was taken. In November and December, 2022, the Petitioner once again went to the said OPD, where he was advised to get an MRI (L) knee test.
4. The case of the Petitioner at this stage is that the doctor attending him informed him that the free of cost MRI test facility at the Respondent No. 3 hospital is available only to residents of Delhi who possess a voter ID card. When the Petitioner wanted to avail of the MRI (L) knee test, he was given a date of 15th July, 2024. Hence, the present writ petition.
5. Upon advance copy being served, Mr. Satyakam, Id. ASC has appeared for the Respondents. He has placed on record an email dated 20th December, 2022 which was received from the Respondent No.3 – Lok Nayak hospital. The said email reads as under:

“Sir,

This is with reference to a case filed by Mr. Gulam Mahboob regarding MRI date, it is to inform that the hospital telephonically informed on 17/12/2022 to Mr. Utkarsh counsel for Mr. Gulam Mahboob that the hospital is ready to conduct MRI of Mr. Gulam Mahboob immediately and advised the patient to report to Radiology department on any working day in the morning. It is pertinent to mention that the patient has not reported so far to the Hospital for MRI. This is for your kind information.

With regards”

6. In view of the above, it is submitted by the Mr. Satyakam, Id. ASC that the writ petition stands satisfied.

7. Mr. Agarwal, Id. Counsel for the Petitioner, submits that in the hospitals run by the Respondent No. 2 - GNCTD in Delhi, patients who are residents of Delhi are given preference and non-resident patients are given CT Scan and MRI test dates in 2024. He has handed over the case of another patient hailing from UP who has received a date of 2024 for a CT Scan. He places reliance on the judgment passed by the division bench of this Court in ***W.P. (C) 10585/2018*** titled ***Social Jurist vs. Government of NCT of Delhi***.

8. Heard. The grievance of the Petitioner is that though he is a resident of Bihar, he cannot be discriminated against in the Delhi based Lok Nayak hospital which is a government hospital, when it comes to healthcare. A perusal of the judgment in ***Social Jurist (supra)*** passed by the Division Bench of this Court on 12th October, 2018 makes it clear that insofar as the health/medical treatment is concerned, it has to be provided to all citizens without any discrimination being made, on the basis of their place of residence. The relevant portions of the judgment are set out below:

“10. Health care facility and its access to a citizen is a right available under the Constitution and Article 21 of the Constitution imposes a duty on the Government to take whatever steps are necessary to ensure that every citizen has free and fair access to health facilities and treatment in a Government hospital. In fact, Article 21 of the Constitution not only imposes upon the State a constitutional obligation but also a legal obligation to ensure access to treatment, medicine and other facilities in a hospital. In the case of State of Maharashtra v. Chandrabhan Tale; (1983) 3 SCC 387 AIR 1983 SC 803, the Hon'ble Supreme Court has held that right to life enshrined in Article 21 of the

Constitution means something more than a mere survival or an animal like existence. It includes all other aspects of life which go to make a man's life meaningful, complete and worth living and all such requirements which are required to make a living life meaningful are the integral components of the right to life. There are catena of judgments which reiterate the fact that right to medical aid is a fundamental right of all citizens guaranteed under Article 21 of the Constitution and the Constitution Bench of the Hon'ble Supreme Court in the case of Confederation of Ex-Servicemen Assns. v. Union of India, (2006) 8 SCC 399 has evaluated the aforesaid principle. It is also a well settled principle of law that non-availability of finance infrastructure facilities cannot be a ground to be put forth by a State to say that medical facilities cannot be made available.

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18. If we analyse the justification given by the State for giving certain special benefit to voters with identity card of Delhi and if we evaluate the same in the backdrop of the aforesaid legal principle, we are of the considered view that the same cannot be upheld.

19. If we analyse the case in hand in the backdrop of various principles as are detailed hereinabove, we have no hesitation in holding that the impugned circular suffers from various vices which are not permissible under the Constitution, the circular classifies identically situated persons differently for the purpose of granting them medical facility without any rational basis and therefore we cannot uphold such a classification. The circular proposes to achieve the goal of decongestion of the hospital and rationalise the method of treatment to avoid certain situation that may arise in the hospital but in doing so a classification which is prohibited under law is being practised by the State and if the classification undertaken for

classifying the citizens coming for treatment into two groups in a manner which is not permissible in law, we have no hesitation in holding that we cannot uphold such a classification. In the case of J. Pandurangarao v. Andhra Pradesh Public Service Commission, Hyderabad, AIR 1963 SC 268, in Para 7 the mandate of Article 14 of the Constitution and the principle forbidding class legislation has been dealt with by the Supreme Court in the following manner:

“It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. As the decisions of this Court show, the classification on which the statutory provision may be founded may be referable to different consideration. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case, there must be some nexus between the basis of the classification and the object intended to be achieved by the statute, vide Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar ([1959] S.C.R. 279).”

20. If we analyse the impugned action in the backdrop of various legal principles as detailed hereinabove, we have no hesitation in holding that the act of the respondent - Government of NCT of Delhi in creating a class within a class i.e. within citizens identically situated is impermissible and thereby further act of conferring benefit of medical facility to citizens on such classification is impermissible.

21. Accordingly, we allow the petition and quash the impugned circular and direct the respondents to provide facilities of medical treatment in the hospital in question to all citizens entitled to the same as was being done before enforcing the aforesaid circular. The pending application also stands disposed of.”

9. At this stage, Mr. Satyakam, Id. ASC submits that there is no discrimination being practised by the Lok Nayak hospital and due to the heavy load of patients, dates are being given based on the availability. He further submits that the hospitals run by the GNCTD do not discriminate on the basis of the residence of the patients.

10. There is no doubt that the decision of the Id. Division Bench in ***Social Jurist (supra)*** is unequivocal and categorical to the effect that discrimination on the basis of residence, in healthcare, would be impermissible. Accordingly, the statement of Id. Counsel for the GNCTD is taken on record and it is expected that the same would be scrupulously adhered to in all the hospitals of the GNCTD. In view of the hospital's email extracted above, it is directed that the Petitioner's MRI (L) knee test shall be conducted on 26th December, 2022 at 11:00 a.m at the Respondent no.3 – Lok Nayak hospital.

11. With these observations, the present petition, with all pending applications, is disposed of.

12. Order *Dasti*.

PRATHIBA M. SINGH
JUDGE

DECEMBER 20, 2022
dj/kt