



2024:DHC:1092-DE



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

+ W.P.(C) 8548/2017 & CM APPL. 985/2024

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Ashok Agarwal, Advocate,
Amicus Curiae with Ms. Ashna Khan,
Mr. Kumar Utkarsh and Mr. Manoj
Kumar, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondent

Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor, Ms. Shreya V.
Mehra and Ms. Vidhi Jain, Advocates
for UOI.

Mr. Santosh Kr. Tripathi, SC,
GNCTD with Mr. Arun Panwar and
Ms. Prashansa Sharma, Adv.

Mr. Satyakam, ASC.

Mrs. Avnish Ahlawat, Standing
counsel for GNCTD with Mrs. Tania
Ahlawat, Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Advocates.

Mr. Ajjay Aroraa, SC, MCD with Mr.
Kapil Dutta and Mr. Vansh Luthra,
Advocates.

Mr. Ravinder Agarwal, Advocate for
R-6.

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Date of Decision: 13th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA



2024:DHC:1092-DB



JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present proceedings had been initiated *suo moto* by the Court due to certain incidents reported from time to time that reflected an acute lack of medical services in Delhi. By way of various orders, this Court had made attempts to address this issue.

2. However, not much progress seems to have been made as the attention of the Court has been drawn by the learned Amicus Curiae from time to time to the dismal state of affairs that exists. This assertion of the learned Amicus Curiae is confirmed by the tragic incidents that have come to be reported from time to time in the media. The most recent one being the tragic demise of one Mr. Pramod on 2nd /3rd January, 2024 who was denied medical treatment by three Delhi Government hospitals (Jag Pravesh Chandra Hospital, Guru Teg Bahadur Hospital and Lok Nayak Hospital) and a Central Government Hospital (Dr. Ram Manohar Lohia Hospital). The denial of treatment was on account of various reasons ranging from non-availability of ICU/ventilators beds to non-functionality of CT scan machine. This tragic incident has been recorded in our order dated 8th January, 2024 which is reproduced hereinbelow:-

“C.M.No.985/2024

1. *Present application has been filed by the learned Amicus Curiae for bringing on record an incident dated 4th January, 2024 reported in Times of India, Hindustan Times and Indian Express and to further direct the respondents to investigate into the matter and submit a report before this Court.*

2. *Learned Amicus Curiae states that a shocking incident took place between late evening of 2nd January, 2024 and early morning of 3rd January,*



2024:DHC:1092-DE



2024 wherein a man who jumped out of a moving PCR Van died after denial of treatment by four Government Hospitals in Delhi. The incident is reported by the aforesaid newspapers on 4th January, 2024.

3. *Learned Amicus Curiae states that at first Jag Pravesh Chandra (JPC) Hospital simply referred the injured patient to Guru Teg Bahadur (GTB) Hospital. However, GTB Hospital did not admit the injured patient on the ground of non-availability of CT Scan. Thereafter, Lok Nayak Hospital (LNJP) did not admit the injured patient on the ground that it had no ICU/Ventilator bed available. Dr.Ram Manohar Lohia (RML) Hospital refused to admit the patient without any justification. In the end, when injured patient was again brought to JPC Hospital, he was declared dead at 5:45 AM on 3rd January, 2024.*

4. *Issue notice. Mr.Kirtiman Singh CGSC accepts notice on behalf of UOI, Mr.Satyakam, ASC accepts notice on behalf of GNCTD and Mr.Ajjay Aroraa, Advocate accepts notice on behalf of MCD.*

5. *This Court vide order dated 13th December, 2023 has already directed the GNCTD to file a status report as to how it plans to ensure that the medical infrastructure keeps pace with the city's population. GNCTD is also directed to mention in its status report as to what amount it has been spending on the Government hospitals in particular and on augmenting the health sector in general in the last seven years as this Court would like to be satisfied that the percentage of spending of the budget on the hospitals has gone up over the years. GNCTD shall also explore the feasibility of setting up of a Centre Portal in coordination with the UOI hospitals in Delhi, which would indicate on a real time basis the number and nature of beds available in all the hospitals in Delhi.*

6. *Let the status report be filed at least two days prior to the next date of hearing.*

7. *List on the date already fixed.”*

3. On 5th February, 2024, the Health Minister GNCTD had filed a status report in which he admitted that there is acute shortage of doctors especially in specialties like Radiology, Medicine, Anesthesia, Surgical Super specialties, shortage of paramedics like OT/ICU Technicians, OT/ICU Assistants, Nurses, Pharmacists, shortage of medicines, non-availability of



orthopedic implants, non-functional radiological equipments mainly due to difficulty in their maintenance.

4. During the course of hearing, learned counsel for GNCTD had stated that bureaucracy was 'not obeying' order of the Health Minister. Along with the status report, the Minister flagged certain issues as well as suggested some solutions. The issues flagged and the suggestions of the Health Minister, GNCTD, are reproduced hereinbelow:-

*"1. **Issue:** Lack of services in hospitals, longer surgery wait times, and denial of admission.*

***Major Cause:** Large vacancies of doctors, specialists, and paramedics. Permanent staff hiring through UPSC/DSSSB is a time-consuming process.*

***Solution:** As an ad-hoc measure, kindly direct Secretary Health, Principal Secretary Services, and Principal Secretary Finance to expedite hiring on a contractual basis before March 15, 2024.*

*2. **Issue:** Prolonged wait times or denial of radiological tests (MRI, CT Scan) for OPD patients and emergencies.*

***Major Cause:** Complicated maintenance of expensive machines, lack of staff interest, challenging condemnation process for obsolete machines. The department is working on a PPP model for these tests.*

***Solution:** Kindly direct Secretary Health and Principal Secretary Finance to expedite and implement the PPP model for radiological tests before March 15, 2024.*

*3. **Issue:** Non-availability of medicines, free surgeries in private hospitals, free radiological tests under the DAK scheme, and denial of admission to accident victims by private hospital under the Farishtey Scheme.*

***Solution:** Timely payments to private hospitals, private laboratories, and vendors. Kindly direct Secretary Health and Principal Secretary Finance to make payments within 15 days of receiving legitimate bills.*

*4. **Issue:** Non-compliance by Secretary Health to the directions of the Health Minister.*



2024:DHC:1092-DB



Solution: *Kindly direct Secretary Health and Principal Secretary Finance to comply with the Health Minister's directions and submit all Action Taken Reports (ATR) within the next 30 days."*

5. Mr. Ashok Agarwal, learned Amicus Curiae, during the course of hearing stated that there were no ICU beds in nine Delhi Government hospitals and medical equipments were non-functional. He also emphasized that in the Department of Radiology and Imaging of the GNCTD hospitals, the patients are being given appointments between May, 2025 and March, 2027, thereby making the access to medical care illusory. Learned Amicus Curiae has given the following suggestions to improve the situation:-

"A. All the Government hospitals in Delhi i.e. Central Government hospitals, Delhi Government hospitals, NDMC hospitals and MCD hospitals must have State of Art Infrastructure.

B. A High Power Emergency Medical Authority be set up directly under the control of Principal Secretary Health, Department of Health and Family Welfare, Government of NCT of Delhi.

C. The High Power Emergency Medical Authority should be headed by a Director who should be minimum Senior Administrator Critical Care.

D. The Director of the Authority should have a round the clock office which should be manned by person minimum of CMO level officer round the clock. This office should be interlinked with all the Government hospitals in Delhi i.e. Delhi Government hospitals, NDMC hospitals, MCD hospitals, ESIC hospitals, Central Government hospitals and Private hospitals (authorized by High Power Emergency Medical Authority).

E. At level of individual hospital, there should be a Nodal/Controlling Officer who should be managing control room round the clock.

F. Apart from CMO who is Incharge of casualty there should be specialist of (1) Medicine (2) Surgery (3) Allopathy (4) Peditary, who should be physically present round the clock. The emergency should not be left to the Senior Resident Doctor only.



2024:DHC:1092-DB



G. A list of all the Super Specialist Doctors with daily call roster should be with the control room officer and it should be ensured that the arrival time of Doctor is not more than 30 minutes after the call.

H. For implementation of all the above, the Medical Director/Medical Superintendent of the Hospital should be made directly responsible.

I. For rest of infrastructure, a committee should be formed to decide what level of need is required for what kind of place.

J. All the Doctors working in Consultancy/Emergency should have facility of Basic Life Support (BLS)/ Advance Life Support (ALS)/ Life Trauma Support and any other thing recommended by the Committee.

K. The concept of Pre Hospital Care requires further consultation with the above High Power Emergency Medical Authority which should be on pattern of 911 services which is quite elaborate with United States of America (USA). It should be manned by highly trained and qualified Para Medical Worker/Technician and can be discussed with High Power Emergency Medical Authority.

L. Government should have integrated Ambulance system with Basic Life Support (BLS)/Advance Life Support (ALS)/Life Trauma Support.

M. As precautionary measure if in exigency a particular emergency bed is not available in any Government hospital, the Nodal officer of Hospital where patient is, should be authorized to refer the patient to any of the authorized Private panel hospital (By Government) and the entire cost of treatment will be borne by Government as right to life is fundamental right under Article 21 of Constitution of India.

N. In any case of Medical Negligence in future because of the non performing system, the Court may order for imposition of punitive damages on the Government which should be recovered from salary of Government and concerned CMO/EMO.”

6. The Secretary, Health and Family Welfare, GNCTD who had personally appeared before this Court had specifically denied that the bureaucracy is not following the instructions of the Health Minister, GNCTD. He had stated that the Health Minister had filed a Writ Petition (C) No.1352/2023 in the Supreme Court against the office of Lt. Governor



2024:DHC:1092-DE



of NCT of Delhi with regard to implementation of various schemes including “*Farishtey Scheme*” under Delhi Arogya Kosh (DAK) Society. He stated that the matter was last heard on 05th January, 2024 with tentative date of listing on 12th March, 2024.

7. In his reply to the status report dated 9th February, 2024 filed by the Health Minister, the Health Secretary has seriously disputed the contentions and submissions made by the Health Minister, GNCTD and has given the consolidated position about the vacancies in the Hospitals/ Dispensaries of GNCTD as under:-

	Sanctioned	Filled by Regular employees	Filled by contractual /outsourced	Filled through DSHM	Vacant	Present status
Non-teaching Specialist	727	445	20	15	*247	279 posts of Non-Teaching Specialists were submitted to the UPSC, out of which 155 Non-teaching Specialists posts have already been advertised by the UPSC in December 2023 and January, 2024. Further, the Department has prepared a draft Policy for engaging Non-Teaching Specialist /GDMO on contract basis which is presently under



2024:DHC:1092-DE



						examination, and will finalize the same in consultation with concerned stakeholders and after obtaining approval of the Competent Authority.
Teaching Specialist	583	451	79	0	*53	H&FW Department has delegated powers to the HODs of Teaching Hospitals/Colleges to engage Teaching Faculty on contractual basis by conducting walk-in-interview at their own level. The respective Hospitals keep filling up these posts through advertisement issued from time to time as per their requirements.
GDMOs	1364	1119	0	243	*2	234 posts of GDMOs were submitted to the UPSC, and UPSC has conducted written examination for such 234 posts in August, 2023. The posts will be filled up shortly after receipt of



2024:DHC:1092-DE



						dossiers of selected candidates from the UPSC.
Dental Surgeon	56	21	0	0	*35	Delhi Health Services (Dental Surgeon) Rules, 2022 was notified on 06 th May 2022. 18 Contractual Dental Surgeon already working were regularized vide order dated 17 November 23. Now department is processing the case for sending requisition to UPSC for filling up of these posts on regular basis for which NOC from Ministry of Defence & MHA is being sought as per standard procedure of UPSC.
Nurse	6281	4750	1088	95	348	Department sent requisitions for filling up 1,507 posts of Nursing Officers and 897 para-medical posts to DSSSB wherein advt. have already been issued for 2,360 posts out of 2,404 posts (only 44 posts of Lab Technicians are yet to be advertised) in
Para medical except Gr.D	5226	3488	858	420	460	



2024:DHC:1092-DE



						July 2023, November 2023 and January 2024 and are at various stages of recruitment.
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** In addition to the above, about 3400 Doctors as Senior Residents (about 1900 Nos.) and Junior Residents (about 1500 nos.) are also working in the Hospitals under GNCTD.*

11.1.3 It may be observed that the Department has made concerted efforts to fill up the posts lying vacant for years, and now the recruitment process is ongoing.”

8. In the reply dated 9th February, 2024 to the Health Minister’s status report, the Health Secretary has also given his own suggestions, which are reproduced hereinbelow:-

“Accordingly, the suggestions of the undersigned/ Secretary (H & FW) are as under:

(i) Detailed action plan being prepared and to be executed by the H& FW Department for filling up of gaps in the existing Hospitals of GNCTD as identified through the GAP Analysis exercise done along with Key Performance Indicators (KPI indicators) Annexure-III – to Secretary’s Affidavit, for optimum utilization of the existing infrastructure and how the resources are to be augmented in the future;

(ii) Similar GAP Analysis may be conducted by MCD, New Delhi Municipal Council (NDMC) and other Hospitals of Govt. of India in NCT of Delhi, by their respective Heads of the Organizations viz. Commissioner, MCD; Chairman, NDMC; HoDs of other Hospitals, respectively to identify the issues faced by their Hospitals and then rectify the same for optimum utilization of the existing infrastructure and how the resources are to be augmented in the future;

(iii) NABH accreditation of all hospitals by their concerned HODs;



2024:DHC:1092-DE



- (iv) Augmentation of costly medical equipments (like Robotic Surgery, PET Scanner, Linear accelerator, MRI, CT scanner, X-Ray, etc.) through PPP model;
- (v) Framing of robust online referral system, amongst all the Government Hospitals in NCT of Delhi, for which a network of hospitals with clear referral mapping be put in place;
- (vi) A Committee may be constituted to look after the following works/ projects:-
1. Completion of 11 Hospitals under construction, which are running behind from their scheduled date of completion;
 2. Remodelling of 15 existing hospitals;
 3. 3rd Party Audit of such newly constructed hospitals as well as remodelled hospitals to be ensured by the H&FW Department, GNCTD.

9. UPSC in its Brief Note dated 10th February, 2024 has indicated the present status of recruitment *qua* GDMOs Specialists and Non-Teaching Specialist posts as under:-

“Posts of GDMOs

- (i) A requisition for 234 posts of Medical Officer (GDMO Sub-cadre), Department of Health & Family Welfare, Govt. of NCT of Delhi was received in the Commission on 25.04.2023.
- (ii) Advertisement was issued on 13.05.2023 vide Advertisement No.09/2023, Vacancy No.23050909113 with closing date of 01.06.2023.
- (iii) A Recruitment Test was held on 20.08.2023. Recruitment Test Result was declared on 04.10.2023 and 553 candidates were declared shortlisted. Scrutiny of all the candidates is being done and the Recruitment process is likely to be completed by end of June 2024.

Posts of Specialists and Non-Teaching Specialists:

- (i) A requisition for 279 posts of Specialists Grade III and Non-Teaching Specialists Grade III, in respect of 20 different specialties was received from Department of Health & Family Welfare, Govt. of NCT of Delhi between 13.09.2023 and 26.10.2023, as per details given in Annexure 1.



2024:DHC:1092-DB



- (ii) *Advertisements for 179 posts of Specialists Grade III and Non-teaching Specialists Grade III, in 11 different specialties were issued between 23.12.2023 and 27.01.2024, as per details given in Annexure 1.*
- (iii) *Advertisements for 79 posts of Non-Teaching Specialists Grade III, in 8 different specialties are likely to be issued by the end of February 2024.*
- (iv) *With respect to 21 posts of Non-Teaching Specialists Grade III (Radio diagnosis), clarification regarding qualifications is awaited from the Government of NCT of Delhi.*
- (v) *The recruitment process for 258 posts (i.e. posts other than 21 posts qua which the clarification from Govt. of NCT of Delhi is still awaited) is likely to be concluded by end of December 2024.”*

10. We were informed by the Health Secretary, that patients possessing Aadhaar cards with residential address of Delhi can get their scans done free of cost from private hospitals/clinics.

11. We were also informed that the Municipal Corporation of Delhi ('MCD') owns and runs eight hospitals which are Hindu Rao Hospital, Kasturba Hospital, R.B.I. PMT Hospital, Smt. Girdhar Lal Hospital, Balak Ram Hospital, Swami Dayanand Hospital, Mata Gujri Hospital and North DMC Medical College. This Court takes judicial notice¹ of the fact that MCD finds it difficult to pay salaries and pension to its employees. Though the 7th Pay Commission has come into force w.e.f. January, 2016, yet the benefit of the enhanced pay/pension has not been given by the MCD to its employees. Consequently, this Court is of the view that it is very unlikely that MCD has the wherewithal to make huge investment in the infrastructure of eight hospitals under its management.

¹Order dated 09th February, 2024 passed in CONT. CAS. (C) 524/2020 and connected matters.



2024:DHC:1092-DB



12. The Health Minister has filed a further status report dated 12th February, 2024 and made some suggestions with respect to additional points of reference for the Committee.

13. From the aforesaid, it is apparent that the infrastructure, (be it in the form of machines, medicines or manpower) is woefully inadequate at Delhi hospitals. With only six CT Scan machines being available in nineteen Delhi Government hospitals (which cater to a population in excess of three crores), the infrastructure needs to be ramped up manifold. After all in cases of emergencies like serious accident victims or strokes or heart attacks, there is no time to shift the patients to private clinics for scans. Without critical infrastructure being available at Delhi Government hospitals, the '*golden hour*' of saving a life may be lost.

14. It is also apparent that the authorities in whom the power is vested to run and administer and manage the hospitals in Delhi, to put it mildly, are not on the same page.

15. Needless to state, the provision of quality medical services is crucial for the health and well being of any city and to ensure robust public health system is an obligation of the State under Article 47 read with Article 21 of the Constitution of India. This Court is of the view that huge investments along with structural reforms in the functioning of Government hospitals, without entering into a blame game, are the need of the hour to overcome years of neglect and apathy which can only be done if there is a consensus on measures to be adopted both in the short and long term. Since this field is an extremely specialized area that requires subject experience and domain knowledge, this Court deems it expedient to appoint a Committee of experts



2024:DHC:1092-DB



that shall consider the matter in detail and place their recommendation/report on record.

16. Consequently, this Court constitutes a Committee with the following members:

- a. Dr. S.K. Sarin, Chancellor ILBS (Chairman)
- b. Dr. Nikhil Tandon, Professor & Head of the Dept. of Endocrinology and Metabolism, AIIMS
- c. Dr. D.K. Sharma, MS, Dr. R.P. Eye Centre, AIIMS
- d. Dr. Suresh Kumar, Director, LNJP Hospital
- e. Dr. Piyush Gupta, Prof. of Paediatrics & Principal, University College of Medical Sciences
- f. Dr. Deepak K. Tempe, Senior Professor, Anaes./Vice Chancellor, ILBS.

17. The Chairman of the Committee may co-opt experts, as deemed fit. The Secretarial support to the Committee shall be provided by the Secretary, Health and Family Welfare Department of GNCTD. The Committee shall submit monthly reports to this Court.

18. The terms of reference of the Committee are settled with the consent of parties as under:

- a) To suggest ways for the optimization of existing resources in the various Hospitals located in Delhi, which are either owned by the Government of NCT including Delhi Government autonomous hospitals or MCD.
- b) To suggest ways and means to devise a mechanism for the establishment of a control room that will enable the provision of real



2024:DHC:1092-DE



time information concerning the availability of ICU / HDU beds in the various Hospitals and their timely availability for patients in need thereof.

- c) To suggest ways and means to ensure the availability of infrastructure, medicines and adequate manpower in the Hospitals for operating / managing high end medical equipment / critical care units in the various Hospitals.
- d) To suggest ways and means to maintain as functional high-end medical equipment in various Hospitals.
- e) To suggest ways and means to reduce the stress on referral hospitals by strengthening the peripheral hospitals located in the various districts of Delhi.
- f) To suggest an end-to-end mechanism for ensuring uninterrupted supply of medicines, injections and consumables in government hospitals.
- g) To suggest mechanisms to immediately fill the vacant posts of specialists (teaching/non-teaching), medical officers and paramedics on contract basis, till regular incumbents join through UPSC/DSSSB.
- h) To make any other recommendation that the Committee thinks is fit and proper for the purpose of improving the medical services provided by the hospitals in Delhi to the public at large.

19. In making its recommendations, the Committee must give primacy to the aspect of critical health care and should consider the suggestions given by the Health Minister (GNCTD), Health Secretary (GNCTD) and the learned Amicus Curiae. It is requested to prepare its interim report within



2024:DHC:1092-DB



four weeks and place the same on record so that this Court can consider the same and pass appropriate directions thereon. The Committee is further requested to make specific and concrete recommendations on the aforesaid various issues. For instance, one of the issues that constantly seems to arise is the lack of timely availability and accessibility of ICU beds for patients in need of emergent care. Another issue that seems to arise regularly is the non-admission of patients in the hospitals on account of which medical attention is not provided leading to tragic consequences. Similarly, it appears that Hospitals seem to be woefully short-staffed on account of large number of vacancies that have remained unfulfilled.

20. The Court, therefore, requests the Committee to make appropriately specific recommendations so that the same can be suitably considered by the Court while passing appropriate orders. The Committee would also make concrete suggestion on how best to augment manpower and infrastructure even if the same has to be done only on an ad-hoc basis so that the requirements of the hospital are adequately met. However, as the '*Farishtey Scheme*' is sub-judice before the Supreme Court, this Court directs that the Committee shall not examine the same.

21. To await the report of the expert Committee, list the matter on 01st April, 2024.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 13, 2024

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