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

+ LPA 267/2020, C.M. Nos. 23878/2020 and 23881/2020

**GOVERNMENT OF NCT OF DELHI THROUGH DIRECTOR
GENERAL HEALTH SERVICES** Appellant

Through: Mr. Sanjay Jain, ASG with Mr. Sanjoy Ghose, ASC, Ms. Urvi Mohan and Mr. Padmesh Mishra, Advocates for appellant/GNCTD with Mr. Udit Rai, Special Secretary Health, GNCTD
versus

**ASSOCIATION OF HEALTHCARE PROVIDERS (INDIA) &
ANR.** Respondents

Through: Mr. Maninder Singh, Sr. Advocate with Mr. Sanyam Khetarpal, Mr. Nitesh Goyal, Ms. Narita Yadav and Mr. Prabhas Bajaj, Advocate for R-1/Association.
Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant, Advocate for R-2/UOI

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **12.11.2020**

HEARD THROUGH VIDEO CONFERENCING

1. The present appeal is directed against an order dated 22.9.2020, passed in W.P.(C) No. 6756/2020 filed by the respondent No.1/Association laying a challenge to the order dated 12.9.2020, issued by the appellant/respondent No.1, Govt. of NCT of Delhi whereunder, a direction has been issued to 33 private hospitals in Delhi to reserve 80% of the total ICU and HDU beds for patients suffering from COVID-19 infection with

immediate effect, with a further direction that in case, some non-COVID-19 patients are already admitted in more than 20% of the ICU/HDU strength of beds, then on their being discharged, the vacant ICU/HDU beds shall be kept reserved for COVID-19 patients only. The said hospitals have also been permitted to temporarily increase their total bed capacity (non-ICU) upto 30%.

2. By the impugned order, the learned Single Judge had stayed the operation of the order dated 12.9.2020, issued by the appellant/GNCTD till the next date of hearing, i.e., 16.10.2020. The said petition is now listed on 18.11.2020. In the meantime, the appellant/GNCTD filed the present appeal on 23.9.2020, on which notice was issued by DB-I on 28.9.2020, returnable for 09.10.2020. On 09.10.2020, at the request of learned counsel for the appellant/GNCTD, the appeal was adjourned to 27.11.2020. During the pendency of the present appeal, the appellant/GNCTD approached the Supreme Court by filing SLP (C) No. 13530/2020, to assail the order dated 22.9.2020, passed by the learned Single Judge in the writ petition and the order dated 09.10.2020, passed in the present appeal. Vide order dated 10.11.2020, the Supreme Court has permitted learned counsel for the parties to make a request to the Division Bench to take up this appeal on 12.11.2020.

3. In terms of the aforesaid order, the present appeal has been assigned to this Bench as DB-I has not assembled today.

4. Mr. Sanjay Jain, learned ASG appearing for the appellant/GNCTD states that the situation of COVID-19 infection in Delhi has become critical in the recent days, though it may not have been so bad when the order dated 12.9.2020 was issued. He submits that having regard to the spiralling cases

of COVID-19 infection in Delhi that have touched 8,573 as on yesterday, it is imperative that 80% of the total ICU/HDU beds for patients suffering with COVID-19 infection be reserved in respect of the 33 private hospitals, listed in Annexure-A to the order dated 12.9.2020.

5. Mr. Maninder Singh, Senior Advocate submits that out of 1,742 ICU beds actually available, the 33 private hospitals have on their own, dedicated 1,238 ICU beds for COVID-19 patients. He draws the attention of this court to Annexure A-10 filed by the appellant/GNCTD with the present appeal which is a tabulated statement of the number of COVID-19 ICU/HDU beds in the 33 private hospitals in question and states that the said statement shows that as per the appellant/GNCTD itself, only 1,841 ICU beds are collectively available in the 33 hospitals and 80% strength of the said beds comes to 1,515 beds and if worked out on a percentage basis. Going by the total number of 1,238 ICU beds that have been directed to be reserved for the COVID-19 patients, the 33 hospitals have collectively dedicated 67% of the ICU beds exclusively for COVID-19 patients.

6. We are of the opinion that the situation in Delhi is fairly dynamic as regards spread of COVID-19 infection and hospitalisation of patients critically suffering from COVID-19 infection. The appellant/Government must keep a finger on the pulse of the city to be able to deal with the situation effectively. Given the fact that there has been a sea change in the ground reality when the impugned order dated 12.09.2020, was issued by the Delhi Government, a time when the number of COVID-19 infection case in Delhi was hovering around 3,000 to 4,000 patients per day, the said figure

has more than doubled as on date and it was expected of Delhi Government to have kept abreast of the situation and monitor the same closely.

7. We have specifically enquired from Mr. Sanjay Jain, learned ASG as to whether the Delhi Government has appointed Nodal Officers, in each District where these 33 hospitals identified by them are situated for them to be in constant touch with the Hospital managements to assess the availability of ICU beds for admission of COVID-19 patients as against beds required for Non-COVID-19 patients, who are also required to be admitted in the ICU on emergency and/or on account of other unforeseen circumstances. If a complete network would have been created, then the Nodal Officers could have co-ordinated between the Delhi Government and the concerned Hospital managements to monitor the required ICU beds, depending on the situation arising on a day-to-day basis. In the above context, the blanket order passed by the appellant/Delhi Government three months ago, directing reservation of 80% of the ICU/HDU beds for COVID-19 patients may not have been in the best interest of Non-COVID-19 patients seeking critical care and emergent attention.

8. In the above context, we have also enquired from Mr. Sanjay Jain, learned ASG as to whether Delhi Government's think-tank has applied its mind on the above aspect to come up with a practical solution without the intervention of the court. Learned ASG states on instructions from Mr. Udit Rai, Special Secretary (Health), Delhi Government that 33 Nodal Officers have been appointed by the appellant/Delhi Government to co-ordinate with each of the 33 hospitals and one Nodal Officer has been appointed in each District of Delhi, who collectively report to the Special Secretary (Health), Delhi Govt. on a daily basis.

9. If there is such a team of officers available, then the Nodal Officers ought to have been empowered to relax the norm of 80% blocking of ICU beds in the case of each hospital so as to deal with any emergent situation in relation to a Non-COVID patient needing an ICU bed, without strictly adhering to norms declared in the impugned order dated 12.09.2020. There should have been some play in the joints left to the discretion of the Hospitals in consultation with the Nodal Officers. We have expressed this view in the light of the fact that at the end of the day, no person suffering from a health emergency should be made to run from pillar to post if there is an ICU bed available in a particular hospital.

10. Mr. Jain, learned ASG states that the data collated by the Delhi Government show that the occupancy strength of even 20% ICU beds segregated for Non-COVID-19 patients is only to the extent of 75% and therefore, the anxiety of the respondent No.1/Association is completely misplaced. The aforesaid submission is vehemently disputed by Mr. Maninder Singh, learned Senior Advocate appearing for the respondent No.1/Association, who submits that the figures quoted by the appellants go against the submission made.

11. We are of the opinion that in view of the present situation in Delhi where cases of COVID-19 infection are spiralling daily and the ground reality that had weighed with the learned Single Judge for passing the order 22.09.2020, has undergone a radical change, the interim order dated 22.09.2020 ought to be vacated. Ordered accordingly. The appeal is therefore allowed and disposed of with the following directions: -

- (i) Though a counter-affidavit is stated to have been filed by the Delhi Government in the writ petition, it shall file an additional affidavit

placing on record material information/documents that has been placed before this court, for the perusal of the learned Single Judge. Needful shall be done on or before 18.11.2020 with a copy to learned counsel for the respondents.

- (ii) The respondent no.1 shall respond to the said additional affidavit by filing a reply on or before 24.11.2020.
 - (iii) To give a reasonable time for learned counsel for the parties to make compliances, the date fixed before the learned Single Judge i.e. 18.11.2020, is cancelled.
 - (iv) W.P.(C) 6756/2020 shall be listed before the learned Single Judge on 26.11.2020. Both the parties are directed not to seek an adjournment on the date fixed so that arguments can be addressed in the writ petition itself. The learned Single Judge is requested to consider the arguments addressed by learned counsel for the parties and take a decision uninfluenced by the observations made hereinabove, that are prima facie in nature, limited to testing the interim order dated 22.09.2020.
12. The appeal is disposed of along with the pending applications.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

NOVEMBER 12, 2020

ap/nn/rkb