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

Date of decision: 14th January, 2021.

+ **W.P.(C) 6555/2020**

MS. SUKAITA & ORS. Petitioners

Through: Mr. Sachin Dutta, Senior Advocate
with Mr. Lal Singh and Mr. Sudhir
Tewatia, Advocates.

Mr. Swastik Singh and Mr. Himanshu
Dagar, Advocates.

Mr. Mukesh Sharma, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Anjum Javed, Additional Standing
Counsel, Advocate for R-1.
(M:9999596970)

Ms. Shalini Nair, Ms. Anjana Gosain
&Ms. Aditi Amitabh, Advocates. for
R-2. (M:9711018982)

And

+ **W.P.(C) 7366/2020 & CM APPL. 31473/2020**

ASSOCIATION OF WELLNESS AYURVEDA
AND SPA

.... Petitioner

Through: Mr. Sachin Dutta, Senior Advocate
with Mr. Lal Singh and Mr. Sudhir
Tewatia, Advocates.

Mr. Randhir Kr. Lal, Advocate.
(M:9811116796)

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Anupam Srivastava, ASC for
GNCTD Advocate for R-1.

Ms. Shalini Nair, Ms. Anjana Gosain &
Ms. Aditi Amitabh, Advocates. for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done in physical Court.

CM APPL. 1359/2021 (for impleadment) in W.P.(C) 6555/2020

2. This application for impleadment has been filed by World Men's Hospitality Pvt. Ltd. Since the applicant seeks remedies similar to the Petitioners in W.P.(C) 6555/2020, impleadment is allowed. Application is disposed of.

W.P.(C) 6555/2020

W.P.(C) 7366/2020 & CM APPL. 31473/2020 (for directions)

3. The Petitioner in W.P (C) 7366/2020 is an association of wellness Ayurveda and Spa providers in NCT Delhi. The Petitioner is aggrieved by the delay by GNCTD and the Ministry of Home Affairs in issuing guidelines for re-opening of spas and seeks quashing of order dated 3rd August, 2020 issued by the Ministry of Health and Family Welfare (*hereinafter, "MoHFW"*). In W.P (C) 6555/2020, the Petitioners are technical workers who have been trained under various national bodies and run spas in Delhi. In effect, the grievance of the Petitioners is that, after the lockdown in March 2020, though various other establishments have been permitted to reopen and commence businesses, spas have still been forced to remain closed.

4. The Petitioners rely on the MoHFW's office memorandum dated 18th November, 2020 permitting reopening of spas subject to various conditions. Despite the same, the GNCTD has not permitted the reopening of spas. Mr. Datta, Id. Senior counsel appearing for the Petitioner submits that, on the one hand, salons and other similarly placed centers have already opened, however spas are not being permitted to be opened, which is completely discriminatory. He further submits that the guidelines issued by the GNCTD continue to place an embargo on the re-opening of spas. Reference is made

to the Delhi Disaster Management Authority's order dated 1st June, 2020, which explicitly prohibits the reopening of spas, as well as the affidavits filed on behalf of the GNCTD, including the most recent affidavit dated 15th December, 2020 wherein the GNCTD has refused to permit the reopening of spas.

5. This Court, vide order dated 4th December, 2020, had come to a *prima facie* conclusion that the distinction sought to be made between salons and spas would be discriminatory. The Court observed that the additional affidavit filed by GNCTD gave two reasons for not permitting reopening of spas and observed as under:

“1. The additional affidavit filed on behalf of the respondent no.1 gives two reasons for not permitting the activity of the petitioners;

1) That the final decision from the Ministry of Home Affairs, Government of India, respondent no.2, has not been received with respect to opening of Spas;

2) That the Lieutenant Governor of Delhi has declined to grant permission to modify the status quo as the number of Covid-19 cases are increasing and no physical distancing is possible in the setting of Spas.

2. As far as the first reason is concerned, the learned counsel for the petitioners and the learned counsel for the respondent no.2 have clarified that the Ministry of Health and Family Welfare by its Office Memorandum dated 18.11.2020 has already issued the Standard Operating Procedure for allowing the functioning of Spas. The Ministry of Home Affairs has also issued the Order dated 25.11.2020 detailing the guidelines of surveillance, containment and caution to be enforced up to 31.12.2020. In terms of Para 9 of the guidelines, all activities except the ones mentioned in the said

paragraph have been permitted outside the containment zones. This would necessarily include Spas.

3. The learned counsel for the respondent no.1, however, maintains that it would not be possible to meet the conditions as stipulated in paragraph 3(a) of the Office Memorandum dated 18.11.2020 in respect to Spas.

4. In this regard, the learned counsel for the petitioners has submitted that other businesses, specifically in relation to Salons, having similar issues, have been permitted by the respondent no.1 to operate. They submit that the additional affidavit also does not give any reasons for discriminating between the two activities.

5. I prima facie find merit in the submissions made by the learned counsels for the petitioners.

6. The respondent no.1 shall take a fresh decision on the above submission of the petitioners and file an affidavit in this regard within a week from today.

6. Thus, the Court after finding merit in the stand of the Petitioners, gave an opportunity to the GNCTD to reconsider the matter and file an affidavit. Pursuant to the said order, the GNCTD has now filed an affidavit wherein it states as under:

“2. That, in compliance of the order dated 04.12.2020, the issue was referred to the Health and Family Welfare Department, GNCTD for providing reasons for differential treatment of business of salon and that of spas. It has been opined by the Health Department that in salons there is limited duration of time of contact between the client and the service provider whereas in setting of a spa there is prolonged contact between

the two individuals, that too in a small and closed room, which raises the probability of spread of COVID.

3. That, in the light of expert advice tendered by the Director General of Health Service, (DGHS), GNCTD the matter was placed before the Chairman, Delhi Disaster Management Authority i.e, the Hon'ble Lt. Governor of Delhi and the expert opinion of DGHS was taken into consideration and the competent authority has decided to maintain status quo with respect to opening of spas in GNCT of Delhi till further orders keeping in mind the larger public interest.”

7. A perusal of the above affidavit shows that the only reason given is a longer duration of proximity with the client which is the cause for concern. This Court has heard ld. counsels for the Petitioners as also for the GNCTD and the Union of India. A perusal of the office memorandum dated 18th November, 2020 issued by the MoHFW shows clearly that a decision has been taken to reopen spas, subject to the following conditions:

“The matter has been examined and it is informed that his Ministry may not have any objection to opening up of Spas subject to the following conditions:-

(a)The employees and clients of Spas maintain requisite physical distancing of 6 feet in the premises, avoid overcrowding, use masks, maintain hand hygiene, and sanitize the environment and equipment regularly.

(b)MHA has no objection and/or approves it through their next Unlock order.”

8. Subsequent to November, 2020, as on date, several developments have taken place, including the reduction in the number of Covid-19 cases as also the introduction of a vaccine. Moreover, a large number of

establishments have already reopened and reopening of schools and colleges is also being contemplated. There is however no doubt that the question of reopening any particular class of establishments is a delicate one to be taken after due consideration of the relative merits and demerits. While the spread of Covid-19 is the main factor to be considered, it has to be also balanced with the interest of reopening of businesses and establishments to bring back a semblance of normalcy. These establishments provide direct and indirect employment to a large number of employees and their businesses have come to a standstill since the outbreak of the pandemic. As of June, 2020, i.e., almost six months ago, salons which offer similar services have already been opened in Delhi, subject to such establishments observing the standard operating procedure prescribed by the MoHFW on 3rd August, 2020, which prescribes the following general measures:

- i. Individuals must maintain a minimum distance of 6 feet as far as feasible.
- ii. Use of face covers/masks is mandatory at all times with in the premises. However, during yoga exercise or exercising in gymnasiums, as far as possible only a visor may be used. Use of mask (in particular N-95 masks) during exercise may cause difficulty in breathing.
- iii. Practice frequent hand washing with soap (for at least 40-60 seconds) even when hands are not visibly dirty. Use of alcohol-based hand sanitizers (for at least 20 seconds) can be practiced wherever feasible.
- iv. Respiratory etiquettes to be strictly followed. This involves strict practice of covering one's mouth and nose while coughing/sneezing with a tissue/handkerchief/flexed elbow and disposing off used tissues properly.

- v. Self-monitoring of health by all and reporting any illness at the earliest to state and district helpline.
- vi. Spitting should be strictly prohibited.
- vii. Installation & use of Aarogya Setu App shall be advised to all.

9. This Court is of the opinion that the slight difference in the nature of services and a slightly higher percentage of risk due to the proximity of the client and the service provider can be obviated by prescribing stricter measures and safeguards rather than continuing to keep such establishments closed. It also cannot be lost sight of that several salons also provide services akin to those provided in spas. Thus, the difference between the services provided in Salons and Spas is very minimal. Both these services require service providers and service takers to remain in close proximity for a sufficient duration. Thus, while allowing the opening of salons, continuing the embargo on spas would be violative of the rights of these establishments and their employees.

10. While this Court is conscious of the importance of prescribing strict safeguards that ought to be taken by establishments providing spa services as also the clients who visit these establishments, the continuation of the embargo on reopening of spas is unjustified. Accordingly, this Court permits the reopening of spas, wellness clinics and similar establishments, in the GNCTD, subject to the following conditions:

- i. There shall be strict compliance of the conditions specified in the office memorandum of 18th November, 2020 prescribed by the MoHFW in respect of spas, which is extracted above. The 6 feet distance shall be in general maintained between clients and

employees. Insofar as the service providers i.e., therapists etc., are concerned, they shall maintain all standards of hygiene, masking etc., as set out below;

- ii. In addition, considering the nature of services provided in spas, all employees in such establishments shall undergo fortnightly RTPCR tests, especially the therapists who are likely to come in close contact with the clients.
 - iii. All therapists and other employees, as also the visitors, shall be subjected to thermal temperature checks and if anyone shows any symptoms, they would not be permitted entry in the establishment.
 - iv. All service providers shall wear face shields and masks while providing therapy. For treatments which are longer than thirty minutes, a PPE kit should also be worn in addition.
 - v. Clients should preferably wear masks to the extent possible, considering the nature of services which are availed of.
 - vi. All visitors/clients shall sign a declaration form to the effect that they have not contracted Covid-19 and if they have, they have tested negative. The establishments are permitted to take a written consent form accepting the risks that may be involved for clients/visitors.
 - vii. Tools including clothing, other apparel, towels etc., used for clients, shall be sanitised after each and every treatment.
 - viii. It shall be ensured that hygienic conditions are maintained in the spas and any other safeguards in force for salons shall also be adhered to by the spas.
11. Subject to the above conditions being adhered to by spas, wellness

clinics and similar establishments, the said establishments are permitted to be opened.

12. The petitions are allowed in the above terms and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 14, 2021

dj/T

