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

Date of Decision: 06th May, 2021

+ **W.P.(C) 5179/2021**

MAX BUPA HEALTH INSURANCE CO LIMITED Petitioner
Through Ms. Gurmeet Bindra, Advocate.
versus

GOVERNMENT OF NCT DELHI & ANR. Respondents
Through Mr. Santosh Kumar Tripathi,
Standing Counsel, GNCTD with Mr.
Aditya P Khanna, Advocate.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

CM APPL. 15898/2021 (for exemption from filing duly affirmed affidavits)

2. This is an application seeking exemption from filing duly attested affidavits. Binding the deponent of the affidavits to the contents of the application, the exemption is granted. However, the physical copy of the attested affidavits be filed in the Registry within two weeks after the physical court functioning resumes. Application is disposed of.

WP(C) 5179/2021 & CM APPL. 15897/2021 (for interim relief)

3. The Petitioner, in the present petition, is a leading insurance company which is engaged in the business of health insurance plans and mediclaim policies. As part of its everyday operations, the employees of the Petitioner deal with issuance of medical/healthcare policies, cashless claims requests and claims from policy-holders. These claims are filed through online

platforms as also through courier, post, by hand and are stated to be submitted by policy holders, their family members or their agents even at hospitals & like establishments as also at the Petitioner's branch offices. It is pleaded that in Delhi, the Petitioner has various branch offices from where the receipt, processing and approval of claims is carried out after collating the documents.

4. The case of the Petitioner is that the company has approximately 35 personnel for the purposes of clearance of claims, and processing of cashless claims etc., relating to health insurance and mediclaim policies, for various patients who are primarily suffering from COVID-19 and are admitted in various hospitals. The Petitioner has branches all over Delhi, with approximately 256 employees, however only around 30 to 35 officials are required to attend offices, in order to process the claim documents of these patients.

5. It is the case of the Petitioner that the outbreak of the COVID-19 pandemic has seen an upsurge in claims being filed which are being handled at its various branch offices. Lockdown was declared by the GNCTD on 19th April 2021 and only some essential services have been exempted from the lockdown in terms of the order issued. The present petition has been necessitated due to the rejection of *e-pass* by the Delhi Government, to the employees of the Petitioner, who are required to move from place to place for clearance of the insurance claims etc.

6. Reference is also made to the order dated 28th April, 2021 in **WP(C) 5026/2021** titled ***Vinay Jaidka v. Chief Secretary***, wherein this Court had directed that all insurance companies ought to process the insurance claims within a period of 30 to 60 minutes, so that the discharge of patients is not

delayed and hospitals beds are not blocked due to the said delay in processing the claims.

7. It is stated that the IRDAI has also issued directions vide circular dated 29th April, 2021, which reads as under:-

“1. Reference is invited to Order dated 28.4.2021 passed by Hon’ble High Court of New Delhi in WP(C) No. 5026/2021 wherein IRDAI was directed to advise Insurers to communicate their cashless approvals to the concerned hospitals/establishments within a maximum time period of 30 to 60 minutes so that there shall not be any delay in discharge of patients and hospital beds do not remain unoccupied.

2. In this regard, attention is invited to circular ref.no. IRDAI/HLT/MISC/CIR/95/04/2020 dated 18.4.2020 wherein a fixed turnaround time (TAT) of two hours for granting both cashless pre-authorization and for final discharge of the insured patient was specified.

3. In the wake of prevailing conditions of COVID-19 cases in the form of second wave and in line with aforesaid directions of the Hon’ble High Court, the following directions are issued to all insurers:

a. Decision on authorization for cashless treatment for COVID-19 claims shall be communicated to the network provider (hospital) within a period of 60 minutes from the time of receipt of authorization request along with all necessary requirements from the hospital.

b. Decision on final discharge of patients covered in COVID-19 claims shall be communicated to the network provider within a period of ONE hour from the time of receipt of final bill along with all necessary requirements from the hospital.

4. Notwithstanding the above outer limits of timelines specified, the insurers are advised to

process such requests promptly so that both authorization for cashless treatment and discharge of the patient can be hastened to the maximum extent. (Sy no. 115/1, Financial District, Nanakramguda, Hyderabad 500 032 www.irdai.gov.in)”

8. Ms. Bindra, Id. counsel, appearing for the Petitioner, submits that the Govt. of NCT of Delhi through the Delhi Disaster Management Authority (‘DDMA’) in its order dated 19th April, 2021 has classified insurance companies under category 4 (l) and persons in the said categories require an *e-pass* in order to be able to move freely during the lockdown. The employees of the company, pursuant to the said requirement, applied to the GNCTD for an *e-pass*. However, all their applications have been ‘rejected’ without any reasons.

9. Mr. Tripathi, Id. Counsel, appearing for GNCTD, submits that there are various discrepancies in the documents which have been submitted by these employees. For example, the employee is residing in one district, and he has applied for an *e-pass* in a different district, and such other discrepancies, due to which the issuance of e-passes is still pending. As per his submission the same have not been rejected.

10. Heard Id. Counsels for the parties and perused the record.

11. A perusal of the notification/order dated 19th April, 2021, imposing curfew, as extended vide order dated 1st May, 2021, issued by the DDMA-GNCTD, there are two classes of individuals who are granted exemption from the curfew restrictions. The first category of individuals are those who are rendering services as specified in categories 4(a) to 4(k). Persons falling in these categories are exempted from the movement restrictions upon producing a valid Identity card/ photo entry pass/permission letters. The

second category of individuals are those who fall under categories 4(l) and 4(m) for whom movement is permitted only after applying and obtaining an e-pass. Insofar as the present case is concerned, category nos. 4(d) and 4(l)(ii) are relevant and are set out below:

*“4. Now therefore in exercise of powers conferred under section 22 of the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive Committee, DDMA, GNCTD, hereby directs that there shall be **curfew on movement of individuals (except for exemptions given below in this order) in the territory of NCT of Delhi with effect from 10:00 pm on 19.04.2021 (Monday) to 5:00 am on 26.04.2021 (Monday)**. Following categories of individuals are however exempted from the above restriction of movement during curfew:*

....

*(d): All private medical personnel such as Doctors, nursing staff, paramedical, etc and other hospital services (such as hospitals, diagnostic centers, testing laboratories, clinics, pharmacies, pharmaceutical companies, medical oxygen suppliers **and other medical & health services including incidental services/activities** such as supply of medical instruments & consumables, sanitation, security, etc.) on production of valid I card.”*

(l) Movement of persons related to commercial and private establishments/ offices providing the following services/ commodities shall only be allowed:

*ii. Banks, **Insurance offices** and ATMs, SEBI/Stock related offices.”*

12. The Respondent- GNCTD, is treating all the employees of the Petitioner under clause 4(l)(ii).

13. However, this Court is of the opinion that, to the extent that the

employees of the Petitioner are dealing with processing and clearing of claims relating to health insurance policies or Mediclaim policies and like policies, the said services would be incidental to the other services as mentioned in clause 4(d), and ought not to be treated as equivalent to general insurance services which are being given.

14. Medical insurance and health insurance services are essential services during the COVID-19 pandemic situation. Thus, the employees of the Petitioner company, who are dealing with medical and health insurance services, ought to be permitted to move freely between hospitals and their own offices, in order to expedite the processing of medical insurance claims.

15. Moreover, a perusal of the screenshot of the Respondent's website, which has been placed on record, shows that the information with respect to the Petitioner's application for *e-pass* has been rejected. The message in the said screenshot of the Respondent's website states as under:

*“ePass for NGLS7BW NOT Generated/Approved yet
Current Status: Rejected”*

16. The above message is extremely ambiguous as it does not reflect the stand taken before the court today i.e., that there were deficiencies in the documents. During the pandemic, if issuance of e-pass can be made a complex process for persons dealing with health insurance policies and claims thereunder, it would result in enormous delays. Employees of insurance companies cannot be restrained in this manner from free movement, as their movement is essential during the situation of a pandemic where many are dependent on the clearance of health insurance claims for discharge from the hospitals. Accordingly, the following directions are

issued:

- (i) The employees of the Petitioner, who are dealing with health insurance claims, as also mediclaims etc., and are processing the claims of patients, who are admitted in hospitals or otherwise, shall be considered as rendering essential services, and shall be deemed to be covered under Entry No. 4(d) of the order passed by the DDMA, GNCTD dated 19th April, 2021.
- (ii) However, in order to ensure that there is a proper record of the said employees, the Petitioner shall, today itself, give a complete list of the employees along with their Aadhar Card/ID numbers, and one common certificate, certifying that all the said employees would be dealing with processing and clearance of claims relating to health insurance or mediclaim policies. The said letter and certificate along with the Aadhar card of the concerned employees shall be emailed to dcse.rev.delhi@nic.in.
- (iii) By return email, the official concerned of the GNCTD shall acknowledge the receipt of the said documents.

17. In accordance with this order, the said employees, after the documents having been submitted to the official concerned, shall be exempted from the curfew restrictions, as they would be deemed to be covered under entry no.4(d) of the order dated 19th April, 2021, passed by the GNCTD.

18. With these observations, the present petition and all pending application are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 6, 2021

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