

(2020) 07 DEL CK 0150

In the Delhi High Court

Case No : Civil Writ Petition No. 3599 Of 2020

Distress Management Collective

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-07-2020

Acts Referred:

Citation : (2020) 07 DEL CK 0150

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : Manoj V. George, Shilpa Liza George, Anil Soni, Devesh Dubey, Anupam Srivastava, Divya Joshi

Final Decision : Disposed Of

Judgement

D. N. Patel, CJ

Proceedings of the matter have been conducted through video conferencing.

1. This Public Interest Litigation has been preferred with the following prayers:

â??a) Direct Respondents to make available all medical safety protections provide under Order dated 20.04.2020 of the respondent No.2

to nurses who private hospitals/ nursing homes who are called upon to undertake all types of medical care during COVID 19 pandemic;

b) Direct the Respondent No. 3 to form a High Powered Committee comprising of Retired District Judge or Senior Advocate, Representative

of INC, Medical professional, Public health care expert and a Social worker so as to audit/ inspect the available stock of medical safety

equipments (including PPE kits, gloves, masks, etc; and) in private nursing homes/private hospitals in Delhi & NCR;

c) Direct Respondent no.1 to collect data of all private hospitals and nursing

homes and to come out with details of the nurses and doctors

infected and being treated;

d) To ensure proper safety and precautions are being followed for the health care workers and their families; direct that all the private

sector nurses are covered under the Pradhan Mantri Garib Kalyan Package of insurance protection.

e) To ensure that proper psycho- social support for health care workers is created and health professionals are provided counseling facility

by the Respondent; AND

f) To ensure that proper training is being done of resources for medical and non medical personnel on infection, prevention and control,

clinical management including ventilation, logistics, etc;

g) Pass any other order or direction as this Honâ??ble Court may deem fit and proper.â??

2. In pursuance of our earlier orders dated 2nd July and 6th July, 2020, counter affidavits have been filed by respondent Nos. 1 & 2.

3. Having heard learned counsel for both the sides and looking into the facts and circumstances of the case, it appears that several grievances have

been ventilated by the petitioner about the safety protections to be provided to the nurses and other healthcare professionals working at private

hospitals/nursing homes, i.e. Personal Protection Equipment (â??PPEâ?) kit, gloves, masks etc. as well as insurance protection under the Pradhan

Mantri Garib Kalyan Yojana and facility of ex-gratia payment posthumously. The principal contention raised by learned counsel for the petitioner is

that nurses and other healthcare professionals working in private hospitals/ nursing homes treating Covid-19 patients are not being provided protective

equipment and other facilities. He also submits that persons who are working in healthcare facilities, even if they are not assigned to Covid duties,

should also be granted the same facilities and protection, as they also run a significant risk of exposure to the coronavirus. He submits that such

persons would come in contact with Covid-infected but asymptomatic patients approaching healthcare facilities for treatment unrelated to Covid 19, or

come in contact with other healthcare workers in the same facility who are taking care of Covid patients.

4. It may be stated at the outset that, in the present pandemic situation, utmost

effort must be made by all concerned to ensure the safety and protection of all healthcare workers. The contribution and commitment of healthcare workers to meeting the needs of society at such a time, often at considerable personal risk, is indeed noteworthy and deserves wholehearted appreciation.

5. During the course of hearing of the present petition, several suggestions were made regarding the measures which may be taken towards the goal

of safety and protection of healthcare workers. The respondents have also addressed the suggestions in their affidavits/ status reports.

6. One of the suggestions given by the petitioner is about the provision of a dedicated helpline number (with Whatsapp facility) for nurses and

healthcare workers of private hospitals and nursing homes to approach the respondent authorities in the event of any grievance. In paragraph 3 of the

affidavit filed by respondent No.2, they have stated about the helpline number 1031 alongwith other helplines operating through the office of DGHS

(Headquarter) i.e. 22300012, 22300036, 22302441, 22391014 & 22304568. For ready reference paragraphs 3 & 4 of the affidavit filed by respondent

No. 2 reads as under:

â??3. As regards the first suggestion of dedicated 24x7 helpline number with whatsapp facility being set up especially for nurses and other

health workers of private hospitals and nursing homes, I say that the answering respondent is already operating 24 X7 helpline at 1031 for

the public along with following help lines operating in the Office of DGHS (HQ) - 22300012, 22300036, 22302441, 22391014, 22304568.

4. I say that a Public Grievance Management System is also in place whereby the complaints can be lodged through PGMS Portal of Delhi

Government by the public. The Portal can be utilized for nurses and health workers of private hospitals and nursing homes to ventilate their

grievances. The complaints submitted on the portal are duly attended by the concerned officers.â??

7. In view of the aforesaid affidavit, it appears that the respondents have already tried to extend the facility of the helpline numbers to private nurses

and a public grievance management system has also been created. Nonetheless, looking at the aggravated situation as narrated by the petitioner

regarding approximately 20 deaths of the nurses and approximately 3,000

nurses having been infected, we are of the view that if a special dedicated helpline can be provided for the grievance to be ventilated by the nurses and other healthcare workers, it will render great assistance at this time. The nature of the grievances which they might have (e.g., regarding non-availability of PPE kits at their places of work) would be quite different from the grievances which may be ventilated by the general public, and requires a different response. The respondent no. 2 is directed to consider this aspect in the light of these observations and take appropriate action.

8. So far as appointment of nodal officers is concerned, Directorate General of Health Services (DGHS) shall appoint such nodal officer to deal with the complaints of the health workers received by DGHS. The names and contact numbers of such nodal officer(s) must be circulated to all healthcare facilities, with the direction that the healthcare workers deployed in the facility be suitably informed. The information should also be duly publicised on the official website of GNCTD and/or DGHS, so that the availability of such redressal mechanism is known to the affected persons.

9. With regard to provision of masks, PPE kits etc. to healthcare workers in private facilities, it was also suggested that undertakings be called for from the nursing homes and hospitals in this regard. Looking to averments in the affidavit filed by respondent No.2, it appears that an office order dated 14th July, 2020 has already been issued by the respondent No.2, which is annexed as Annexure-A to the counter affidavit filed by respondent

No.2. Paragraph 6 of the said affidavit states as follows:

6. As regards the third suggestion that all registered hospitals in Delhi irrespective of whether it is a designated COVID facility or not, should file an undertaking to the effect that necessary PPE Kits, N-95 masks and other protective equipment is being made available to their staff including nurses, paramedic and house keeping staff, I say that vide Office order dated 14.07.2020 bearing F. No. 295/PF-

1/DGHS/PHW-IV/COVID-19/WPC3599/Distress Mgt Coll/2020/5474-5478 issued by DGHS has implemented the said suggestion and directed all registered hospitals both government and private to file requisite undertaking in this regard to Medical Superintendent (Nursing Homes), in Directorate of Health Services, DGHS within a period of seven days. A copy of the said Office Order dated 14.07.2020

has been annexed herewith as Annexure A. I say that the concerned branch of the answering respondent shall be monitoring the issue of

provision of PPE equipment to all registered hospital's staff and necessary action shall be taken in case of breach.â??

In the said office order dated 14th July, 2020, it has been directed that necessary PPE kits and N-95 Masks be made available to all the Government

and private nursing homes, doctors, nurses, para-medical staff, house-keeping staff, irrespective of whether they are working in a Covid hospital or

not, and in a Covid ward or normal ward, so as to ensure their safety and security. An undertaking has also been called for from the establishments

concerned. This would also ensure accountability for compliance with the safeguards mandated by the respondents, and enable the respondent

authorities to affix responsibility for the same, if so required.

10. Coming to the next aspect of the matter, it appears, looking to paragraph 5 of the affidavit filed by respondent No.2, there is a provision for ex-

gratia payment in the event of the unfortunate demise of any nurse or other healthcare professional who is deployed for COVID duties. For ready

reference, paragraph 5 of the counter affidavit filed by respondent No.2 reads as under:

â??5. As regards the second suggestion that ex gratia amount facility under Circular No.F.11113/H&FWIHR-

Medical/2020ICD/1126000847/881-90 dated 7th April, 2020 be extended for all the nurses and health professionals, irrespective of the

fact whether they were specifically assigned COVID duties or not, I say that the answering respondent intends to continue to abide by its

existing policy as approved by Council of Ministers of Govt. of Delhi as per which only those persons (including doctors, nurse, paramedic

staff, security sanitation staff, police officials, any other government official) whether belonging to private or government sector who are

deployed for COVID duties by the answering respondent are only eligible for ex-gratia payment posthumously.â??

11. The petitionerâ??s submission is that this facility should be extended also to those healthcare professionals who are not especially assigned to Covid

duties but acquire the infection in the course of performing other duties in healthcare facilities. In our view, this is a matter for the respondents to

consider as a policy decision. It is not possible to hold that all healthcare professionals, whether on Covid duty or not, are equally at risk and must therefore be entitled to identical beneficial measures. However, the respondents may consider the cases of other affected individuals also, and it would be open to them to extend the benefit, if they are satisfied that the individual was similarly placed as those assigned to Covid duties.

12. The next suggestion for consideration concerns quarantine facilities for nurses and other healthcare professionals after completion of their period of duty. Looking to paragraph 9 of the affidavit filed by respondent No.2, it is stated that quarantine facility is required for only those persons who are regularly working at high risk exposure. Paragraph 9 of the counter affidavit reads as under:

“9. As regards the fifth suggestion that nurses must also be provided quarantine facilities for 14 days, I say that as per Clause 5.3 of the

latest MoHFW guidelines dated 18.05.2020 for managing healthcare workers in COVID as well as Non-COVID areas of hospital, regular

quarantine of healthcare workers after duty in COVID areas is not warranted. Clause 5.1 of the said order states that an initial period of

one week quarantine (with further extension of one week as per discretion of Nodal officer) is warranted only in High Risk/Low Risk

exposure, due to breach of PPE or non-use of recommended PPE. A copy of notification dated 18.05.2020 is Annexure C.”

In view of the aforesaid submission, it appears that for each and every healthcare professional, quarantine facility is not at all required. It also appears

from the guidelines dated 18th May, 2020 issued by the Ministry of Health and Family Welfare especially as per clause 5.1, initially period of one

week quarantine (with further extension of one week as per discretion of nodal officer) is warranted only in the classes of cases mentioned therein.

The notification dated 18th May, 2020, issued by the Ministry of Health and Family Welfare is annexed as Annexure-C.

13. The next suggestion concerns extension of the insurance scheme provided under the Pradhan Mantri Garib Kalyan Yojana (”the Yojana”) to

other categories of health workers. Looking into the affidavit filed by the respondent No.1, it appears that the benefit of has been extended to only

those those categories of healthcare workers, who may be in direct contact with Covid patients. Such persons are covered by the said scheme. The

details about the Yojana have been narrated in the affidavit filed by respondent No. 1, wherein a comprehensive personal accident cover of

□ 50,00,000/- (Rupees fifty lakhs) has been extended to approximately 22.12 lakh healthcare providers including the community health workers who

may have been in direct contact and care of Covid-19 patients and may be at a risk of being infected. For ready reference, paragraph 3 to 7 of the

affidavit filed by respondent No.1 reads as under:

â??3. That the Government of India is implementing Pradhan Mantri Garib Kalyan Package: Insurance Scheme for Health Workers

fighting COVID-19 w.e.f. 30.03.2020, which provides comprehensive personal accident cover of Rs.50 lakh to around 22.12 lakh

healthcare providers, including community health workers, who may have to be in direct contact and care of COVID-19 patients and who

may be at risk of being impacted by this.

4. That on account of the unprecedented situation, private hospital staff/retired/ volunteer/ local urban bodies/contract/daily wage/ adhoc

outsourced staff requisitioned by States/ Central hospitals/autonomous hospitals of Central/States IUTs, AIIMS & INIs/ hospitals of Central

Ministries can also be drafted for COVID-19 related responsibilities. These cases are also covered under the insurance scheme subject to

numbers indicated by this Ministry.

5. That the nurses/health workers working in private nursing homes, who have been requisitioned by States/ Central hospitals/autonomous

hospitals of Central/States/UTs, AIIMS & INIs hospitals of Central Ministries are as such, drafted for COVID-19 related responsibilities,

and are already covered under the scheme for personal accident cover of Rs. 50 lakh.

6. That the scheme was borne out of a contract between UoI and the Service Provider, which has no scope for inclusion of any other

categories other than those brought out above. It is further humbly submitted that the scheme is an ongoing one.

7. That the scheme is valid for a specific period only. Initially, it was to be implemented for a period of ninety day from the date of its

commencement and the same has further been extended for another ninety days on existing terms and conditions.â??

14. Several contentions have been advanced on behalf of the petitioner to the effect that all the nurses and other healthcare professionals should be

covered by the Yojana and there should not be any discrimination between two types of persons i.e. those who are working with Covid-19 patients

and those who are not working with Covid-19 patients. This contention appears to be very attractive but we are not accepting the said contention

mainly for the following reasons:â?

a. The decision as to who will be covered under the Yojana is a policy decision to be taken by the respondents.

b. Nurses and healthcare professionals working directly with Covid-19 patients are at a high risk and there are higher chances that these persons may

get infected, and hence the insurance benefit has been extended for them. Persons who are not working with Covid-19 patients e.g. those who are

working with orthopaedic patients who are not suffering from Covid-19, are not in the same position. The State authority can always create such

classification and give extra benefit to those who are working directly with high risk Covid-19 patients. Such categorisation cannot be held to be

irrational or lacking any nexus with the object of the benefit being provided.

c. If we include other persons under the Yojana, and if we change the policy decision and the applicability of this Yojana, it may affect the very

budget of this Yojana. Therefore, it is a policy decision to be taken by the respondents as to whether to include other healthcare workers or not.

15. In view of the aforesaid facts and circumstances of the case, we see no reason to give any further directions in this regard. Nonetheless, it would

be open to the respondent authorities to extend the coverage of the Yojana to other categories of healthcare workers also, as and when the policy is

being extended or amended.

16. In view of all these facts and circumstances of the case we see no reason to further monitor this case, or pass further directions. Much has been

argued out by counsel for the petitioner that if there is any violation of the undertaking given in terms of the office order dated 14th July, 2020, then

steps should be taken by the concerned respondent authorities. It ought to be kept in mind by the concerned authorities that they are duty-bound to

ensure the due compliance of the measures they have put in place for the safety and protection of the healthcare workers, whose contribution in the

present pandemic situation has been, and continues to be, invaluable. In particular, it is directed that the authority which has issued the office order dated 14th July, 2020 (Annexure-A to the counter affidavit filed by respondent No.2) shall see that this office order is properly executed and implemented by the private nursing homes. Additionally, as and when any type of breach is pointed out to this Court, in an individual writ petition against any nursing homes, after hearing such nursing home, individual orders can be passed.

17. With these observations, this writ petition is disposed of.