

(2020) 04 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Petition No. 2969 Of 2020, Civil Miscellaneous Application No. 10305, 10306 Of 2020

Yash Aggarwal & Another

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 17-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 04 DEL CK 0037

Hon'ble Judges : J.R. Midha, J;Jyoti Singh, J

Bench : Division Bench

Advocate : Sumedh Rishi, Anurag Ahluwalia, Satyakam, T. Singhdev, Tarun Verma

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

CM APPLs. 10305/2020 & 10306/2020

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 2969/2020

1. Issue notice.

2. Mr. Anurag Ahluwalia, Standing Counsel accepts notice for respondent No.1, Mr. Satyakam, Advocate accepts notice for respondent No.2 and

Mr. T. Singhdev, Standing Counsel accepts notice for respondent No.3.

3. Present petition has been filed under Articles 226 and 227 of the Constitution of India as a Public Interest Litigation seeking a direction to the

respondents to provide medical aid and treatment to patients suffering from

varied illnesses and diseases, other than COVID-19. Learned counsel for the petitioners submits that most of the hospitals are providing treatment to patients suffering from the effects of the deadly virus while there are other persons who are suffering from serious illnesses such as cancer, kidney problems, etc. and need chemotherapy or dialysis on an urgent basis and, therefore, are also in need of medical treatment. He further submits that women who are pregnant also need treatment, both during pregnancy and at the time of delivery, as well as at the postnatal stage.

4. The grievance of the petitioners is that the hospitals are not attending to many cases of medical emergencies and many a times are refusing to entertain patients wanting to undergo dialysis or chemotherapy. Learned counsel submits that from the newspaper reports, it has come to notice that a patient staying in the waiting room of one of the Government hospitals, had a kidney failure and a spinal problem and required dialysis twice a week, but he was asked to get himself treated at another hospital. He also points out that another patient, 61 years of age, who had been advised dialysis thrice a week, was refused treatment at a particular hospital and had to run from pillar to post, till he was finally treated at a hospital, 20 kms from his house. He further points out that even persons with emergency condition are not permitted entry into a hospital, in case at the entrance itself they are found to be suffering from high fever. Sum and substance of the grievance is that the hospitals should entertain and render medical aid to all the medical emergency cases other than those of COVID-19 as also treat patients with cancer or other ailments concerning nephrology, cardiology, etc. as they too are life threatening.

5. The other grievance raised in the petition is that in a situation where a patient is refused treatment, he is unable to contact the right person/authority to put forth the grievance and, therefore, some helpline numbers should be put in place and given publicity so that in case of distress or grievance, the patient or his/ her relative is able to seek redress, on an urgent basis.

6. The Central Government as well as the Delhi Government have entered appearance through their respective counsels on service of an advance copy of the petition. The matter was argued at length by the respective counsels and they have also tendered written notes, along with relevant

Circulars and Office Orders through email, issued on the subject which have been

taken on record.

7. The stand of respondent no. 1/Central Government is that the Government is fully sensitive to the requirements of medical aid and treatment to

patients suffering from non-COVID-19 illnesses, especially those that are life-threatening or cause prolonged suffering. In this direction, the Ministry

of Home affairs vide its Order dated 15.04.2020 has issued detailed Guidelines to ensure that all health services (including AYUSH) will remain

functional. Attention of the Court is drawn to paragraph 5, in particular, of the said order which reads as under:

5. All health services (including AYUSH) to remain functional, such as:

i. Hospitals, nursing homes, clinics, telemedicine facilities.

ii. Dispensaries, chemists, pharmacies, all kinds of medicine shops including Jan Aushadhi Kendras and medical equipment shops.

iii. Medical laboratories and collection centres. iv. Pharmaceutical and medical research labs, Institutions carrying out COVID-19 related research.

v. Veterinary Hospitals, dispensaries, clinics, pathology labs, sale and supply of vaccine and medicine.

vi. Authorised private establishments, which support the

provisioning of essential services, or efforts for containment of COVID-19, including home care providers, diagnostics, supply chain arms serving

hospitals.

vii. Manufacturing units of drugs, pharmaceuticals, medical devices, medical oxygen, their packaging material, raw material and intermediates.

viii. Construction of medical/ health Infrastructure including manufacture of ambulances.

ix. Movement (inter and intra State, including by air) of all medical and veterinary personnel, scientists, nurses, paramedical staff, lab technicians, mid-wives and other hospital support services, including ambulances.â??

8. Mr. Ahluwalia, Central Government Standing Counsel, further submits that the Central Government has issued a detailed Guidance Note for

enabling delivery of essential medical services during the COVID-19 outbreak. These Guidelines provide for prioritization of maintenance of continuity

of services for maternal and child health, communicable diseases, non-communicable diseases and emergency and critical care services. Some of the

features of these Guidelines, which have been filed along with the brief note, have been highlighted by the learned counsel and include measures for providing Reproductive, Maternal, New Born, Child and Adolescent Health services including Antenatal services, routine Antenatal care services, Intrapartum services, i.e. ensuring safe institutional delivery. A list of all pregnant women with expected date of delivery up to last trimester is required to be maintained at the SHC level for active follow-up, ensuring availability of Misoprostol and disposable delivery kits. Availability of dedicated Ambulances separately for COVID and non-COVID patients as well as blood banks remaining functional is being ensured. Similarly, Postpartum and New Born care measures have also been incorporated in these detailed guidelines, with directions to the concerned Authorities to contact the family, telephonically, to assess the health status of the child for any medical complications.

9. Learned counsel submits that likewise Guidelines have been issued to take care of patients suffering from communicable or non-communicable diseases. Directions have been issued to the concerned Authorities to ensure uninterrupted drug supply for people suffering from diseases like Tuberculosis, Leprosy, Viral Hepatitis, etc. For illnesses like Hypertension, Diabetes and other NCDs in known/diagnosed patients, regular supply of medicines for upto 3 months through various agencies would be ensured, on prescription. States have been directed to ensure uninterrupted availability of dialysis and cancer treatment services. Health Department has been directed to issue directives to the District Administration to allow easy movement of these patients to access care. In case of patients who cannot afford private vehicles, RBSK vehicles can be used for facilitating transport of patients. Further, for the care of elderly/disabled and palliative care patients, list of those who need extended support is to be maintained at the SHC level for regular follow-ups. Designated Authorities are to maintain telephonic contact with these patients and their families. As far as possible, efforts are being made to designate Government health facilities for blood disorder patients, at non-COVID-19 dedicated hospitals, given the immune suppressed status of these patients.

10. It is further submitted that every effort has been made in the direction of laying down Guidelines to ensure emergency and critical care services

being available to those in medical emergency. States have been directed to dedicate ambulances in every District for managing the emergencies

pertaining to cardiac/trauma/burn/medical and other surgical emergencies, etc. Similarly directions have been issued to ensure emergency and critical

care services including ICU/HDU; burn wards and blood transfusion services to be maintained with adequate HR and equipment, as per protocol.

Services to victims of sexual and physical violence are also being ensured, as far as possible, as per protocols.

11. It is pointed out that not only have the above Guidelines been issued, but every effort is being made to ensure full implementation of these

Guidelines and in this regard, the Central Government has written a DO letter to the Chief Secretaries of all the State Governments to maintain non-

COVID Essential Services as aforesaid. Mr. Ahluwalia has drawn the attention of the Court to the letter dated 14.04.2020. In addition, it is submitted

that the Union Health Minister through Video Conference, along with the Lieutenant Governor, Delhi and the Health Minister, Delhi has reviewed the

arrangements for treatment of non-COVID patients with AIIMS and all other hospitals of Delhi to emphasise on the need to administer medical

treatment as and where required. A four member Committee has been constituted by the Directorate General of Health Services to monitor the

implementation of the Guidelines in letter and spirit. Regional Directors of Health Services are being directed to make surprise visits in other States.

Government of India is writing to all the States for creating a special WhatsApp number for grievance redressal in respect of complaints, if any,

regarding treatment of non-COVID patients.

12. Mr. Ahluwalia further points out that Telemedicine Guidelines have also been issued. A citizen- friendly web based teleconsultation â??e-

Sanjeevani OPDâ?? that aims to provide healthcare services to patients through safe and structured video-based clinical consultations between a doctor

in a hospital and a patient in the confines of his home, has been developed.

13. It is thus submitted that the Central Government is taking all necessary measures to ensure that non-COVID illnesses and diseases are attended to

and all possible medical aid and treatment is rendered, besides taking care of all medical emergencies. It is argued that the petition is based merely on

presumptions and incorrect premise. It is not correct for the petitioners to argue

that the Government is not treating non-COVID patients or is unmindful of their medical issues.

14. Mr. Satyakam, learned counsel for the Government of NCT of Delhi, on the other hand has apprised the Court of the measures being undertaken by the Delhi Government with regard to providing medical aid and treatment to the non-COVID patients. He submits that the Delhi Government is completely committed to ensure that no one suffers due to the Pandemic and every effort is being made to treat the patients suffering from non-COVID illnesses and diseases as also to address other grievances of the patients.

15. It is submitted that in case any difficulty is faced by a patient, the Medical Superintendent of the concerned hospital/nursing home can be approached in the first instance, who will ensure every possible help and treatment to the patient. In case the Superintendent for some reason is unable to resolve the grievance, the Control Room of Government of NCT of Delhi may be approached by the aggrieved person. The telephone numbers of these 24X7 control rooms have been published and are in public domain. Learned counsel does point out that in the wake of the extraordinary circumstances which have arisen due to the COVID-19 pandemic, certain novel problems have emerged and are emerging, which are posing a challenge to the Government, but nevertheless it cannot be argued by the petitioners that measures to take care of medical emergencies or other health issues are not in place. He submits that in order to redress the emergency medical treatment required by a citizen of Delhi, a Circular has been issued on 13.04.2020 by the Government of NCT of Delhi, which has amended the Guidelines issued for operationalising assistance through Delhi Arogya Kosh. The Office Memorandum which deals with facilitating emergency medical treatment of patients requiring maintenance haemodialysis, chemotherapy and patients of myocardial infarction/Arrhythmia requiring angiography/angioplasty/pacemaker and cerebro- Vascular Accident, till the time the emergency services of Super Specialty Hospitals of GNCTD are fully operational, is as under:

GOVERNMENT OF NATIONAL CAPITAL

TERRITORY OF DELHI

DIRECTORATE GENERAL OF HEALTH SERVICES

O/o DELHI AROGYA KOSH

3RD FLOOR, DGD BUILDING, S-1, SCHOOL BLOCK,

SHAKARPUR, DELHI-110092

F-22/(201919)/DAK/251-254 Dated: 13/04/2020

OFFICE MEMORANDUM

Subject: Amendment in the guidelines issued for operationalizing assistance through Delhi Arogya Kosh (DAK)

In order to facilitate the emergency medical treatment of patients requiring maintenance haemodialysis, chemotherapy and patients of Myocardial

Infarction/Arrhythmia requiring angiography/ angioplasty/ pacemaker & Cerebro-Vascular Accident (CVA) till the time emergency services of super

specialty hospitals of GNCTD are fully operational and in pursuance to the directions of Honâ??ble Minister of Health-cum-Chairman, DAK, vide

minutes dated 13.04.2020, the following temporary amendments are being made in the guidelines for the cashless treatment of eligible patients

(resident of Delhi identified on the basis of Voter ID of Delhi) in registered private hospitals in NCT of Delhi through Delhi Arogya Kosh:

(i) Emergent cases of Myocardial Infarction/Arrhythmia (MI/ Heart Attack) are eligible for availing cashless treatment in any registered private

hospital situated in NCT of Delhi having Cath lab and Cardiac Sciences services at DAK package rates.

(ii) Emergent cases of Cerebro-Vascular Accident (CVA/ Brain Attack) are eligible for availing cashless treatment in any registered private hospital

situated in NCT of Delhi having Deptt. of Neuro-Sciences services at DAK package rates.

(iii) Eligible patients requiring dialysis are eligible for availing cashless dialysis services from any registered private hospitals having dialysis services at

DAK rates (i.e. Rs. 1274/- per sitting)

(iv) Eligible patients requiring chemotherapy are eligible for availing cashless services from any registered private hospitals having Medical Oncology

services at DAK package rates.

The above provisions are applicable with immediate effect.

Sd/-

(Dr. Nutan Mundeja)

Director General Health Services & Member Secretary, DAKâ??

16. Mr. Satyakam further points out that when it was brought to the notice of the Delhi Government that some registered nursing homes/ private

hospitals are refusing or denying treatment to serious patients brought to them, on some pretext or the other, the Delhi Government has issued an

Order dated 15.04.2020 to resolve the said issue. The said Order has been issued under clause 14.2 of the Schedule appended to Rule 14 of Delhi

Nursing Homes Registration (Amendment) Rules, 2011 which stipulates that nursing homes shall not refuse treatment to the injured/serious patients

brought to them due to any reason, whatsoever. Clear directions have been issued that in case it is found that a registered nursing home or a private

hospital has denied emergent medical care, including dialysis, to a serious patient on any pretext whatsoever, including that the patient is not carrying a

COVID-19 negative test report, the Government would initiate action, including cancellation of registration against the default, on grounds of violation

of clause 14.2 of the aforesaid Rule.

17. Mr. Satyakam further submits that a list of the various District Control Rooms has been published District-wise, along with the phone numbers, on

which the patients or their family members can contact, in case of any emergency or grievance, with regard to non-providing of the medical aid.

Significantly, an Order has been issued today i.e. 17.04.2020 by the Additional Director, DGHS, GNCTD, wherein it is mentioned that the Department

of Health and Family Welfare is aware of the inconvenience and difficulties faced by members of the general public for redressal of their

queries/grievances with respect to the medical treatment and related issues on account of the Pandemic of COVID-19, which has been declared a

National Health Emergency. In order to alleviate and address the issue, Delhi Government through this Office Order has activated a dedicated

WhatsApp number for receiving complaints/requests from the citizens. The WhatsApp number would be uploaded on the website of the Department

of Health and Family Welfare for wide publicity. Learned counsel points out that for the present this should take care of the apprehensions expressed

in the present petition.

18. We have heard the learned counsel for the petitioners as well as the learned counsels for the respondents and also perused the detailed Guidelines

issued by the Central Government as well as various Office Orders and Office Memorandums issued by the Delhi Government.

19. At the outset, we take this opportunity to applaud and commend the work being done by the doctors, nurses, paramedical staff and all others

associated with them in various hospitals and dispensaries and clinics. We also appreciate the brilliant work being done by the other Government

agencies on the Administrative side including police, armed forces, paramilitary forces, to name a few, who amongst other tasks are helping the health

workers. COVID-19 is an unprecedented calamity, globally, which has left no country, across the globe, untouched with its scathing and devastating

effect. There can hardly be any doubt that given the magnitude of the calamity and the pandemic, the task undertaken by the health workers or the

other workers on the frontline, both inside and outside the hospital, of rendering medical aid and treatment to a patient suffering with COVID-19, is a

gigantic and herculean task. Every sector today, be it the Government or the private sector, working in the field of health or administration or law and

order, is contributing in its own way, battling the pandemic, which surely includes the citizens, who in their own way are contributing to the fight

against COVID-19. Every single day is posing new challenges. At this stage, therefore, for anyone to undermine the efforts put by the medical staff

or the Government agencies in providing medical aid and assistance, would, in our view, not only be wholly unfair and inappropriate but also

demotivating for those working dedicatedly and tirelessly, 24x7 on ground.

20. We would also pen down that the response and assistance given by the respondents in the present petition during the hearing was not only quick,

but also very positive. The counsels appearing for the respondents have also rendered complete assistance and have risen to the occasion.

21. After a lengthy hearing on the matter, we are of the view that the respondents have formulated detailed Guidelines for putting into place an

effective system of treating non-COVID illnesses and diseases to the best of their capacity, given the enormity of the calamity they are faced with.

What is of significance is that the Guiding Note to these Guidelines clearly indicates that the Government has declared Services for all crucial areas

such as Maternal, New Born and child health, prevention and management of the communicable diseases, treatment for chronic diseases to avoid

complications and addressing emergencies, as â??Essential Servicesâ? and there is a clear direction that all Health Services including Ayush would

remain functional, such as hospitals, nursing homes, clinics, telemedicine facilities as well as dispensaries, chemists, pharmacies, medical laboratories

and Collection Centres. Various aspects have been covered in these Guidelines which also include various measures with respect to illnesses like

Hypertension, Diabetes, Mental Health and diseases such as Tuberculosis, Vector Borne diseases, Viral Hepatitis, etc.

22. Thus, in our view, the contention of the petitioners that non-COVID-19 patients suffering from cancer or kidney diseases, etc. are not being

treated, is incorrect. The Guidelines have made provisions for treatment of these diseases and have clearly stipulated that the Government would

ensure uninterrupted availability of dialysis and cancer treatment services and Directives have been issued to the District Administration to allow easy

movement of these patients to access care. Special mention has been made in the Guidelines for care and medical treatment for the elderly/disabled

and palliative care patients. It is also mentioned that services for patients with blood disorders would also be ensured and blood banks have been

directed to remain operational.

23. We also find that besides issuing Guidelines and Guiding Notes for enabling essential medical services during the outbreak to the citizens, the

Central Government has also taken steps to ensure their effective implementation and letters have been addressed to the various State Governments

to take steps in that direction. A Committee has been constituted to oversee the implementation of the Guidelines on ground and a special WhatsApp

number has been created to register the grievances/complaints of any patient or his or her family member, in case of any difficulty in getting medical

treatment. A citizen friendly web-based tele-consultation has also been launched, where patients can have a safe and structured video-based clinical

consultation with the doctor while remaining in the confines of his or her home.

24. Likewise, we have seen the Guidelines issued by the Delhi Government and the steps it is taking to ensure that citizens are given maximum

possible medical treatments in case of non-COVID illnesses/diseases. We have already extracted above the Office Memorandum issued by the Delhi

Government to deal with emergent cases in fields of myocardial infarction, heart attacks or other illnesses like cerebral vascular accident, dialysis/

chemotherapy, etc. Delhi Government has also issued an Office Order directing the various nursing homes not to refuse treatment to patients and in

case of any such refusal, action would be taken. Delhi Government has also activated a dedicated WhatsApp number for receiving complaints/

requests from the citizens in case of any difficulty in receiving medical treatment. The WhatsApp number according to the Office Order issued on

17.04.2020 would be uploaded on the website of the Department of Health and Family Welfare for wider publicity to enable the citizens to make use

of it.

25. We have also been assured by the respective counsels appearing for the respondents, during the hearing that steps in aid of providing medical

treatment would continue to be taken earnestly, with respect to the non-COVID patients, having medical emergencies as well as those patients who

need treatments such as chemotherapy, dialysis, etc. Medical care is also assured to pregnant women, both during pregnancy and at the time of

delivery. We are satisfied that requisite measures are being taken by the respondents to the best of their capacity, despite the enormous pressures

which are already existing on the hospital staff and other agencies.

26. Needless to state that if any citizen has any grievance, it can approach the competent Authorities in the Government, to seek appropriate redressal

through the helplines and dedicated Whatsapp numbers. Respondents will give wide publicity to the helpline numbers and continue to render medical

aid and assistance to the citizens. The Committee which has already been constituted to oversee the health issues would continue to monitor the

situation to ensure that non-COVID patients are also taken care of.

27. In view of the above, no further orders are required to be passed in the present petition, which is accordingly disposed of.