

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

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**Date of decision: 25<sup>th</sup> March, 2015**

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**W.P.(C) No.1879/2015 & CM No.4220/2015 (for directions).**

**LEENA TUTEJA**

**.....Petitioner**

Through: Mr. Gaurav Bahl, Adv.

Versus

**UNION OF INDIA & ORS.**

**..... Respondents**

Through: Ms. Monika Arora with Mr. Prateek Joshi, Advs. for UOI.  
Ms. Zubeda Begum with Ms. Sana Ansari, Advs. for GNCTD.  
Mr. Kapil Dutta, Adv. for Mr. Ajay Arora, Adv. for MCD.  
Mr. R. Mohanty, Adv. for R-4.  
Ms. Vatika Sharma, Adv. for R-5.

**CORAM:-**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL) seeks, (i) a direction to the Government of National Capital Territory of Delhi (GNCTD) to immediately establish a multiple testing laboratory at all the Government Hospitals wherein the identification test for Swine Influenza popularly known as Swine Flu / H1N1 can be conducted; (ii) a direction to the Union of India (UOI) and GNCTD to

immediately provide public awareness and information to the public at large about the viral infection called Swine Influenza; (iii) a direction to the Lt. Governor, Delhi to in turn direct all the hospitals within the city of Delhi to keep the medicine for the treatment of Swine Influenza and to ensure that sufficient and required amount of this medicine in the form of tablet or injection is available with all the hospitals and nursing homes of Delhi; (iv) a direction to the UOI, GNCTD and Lt. Governor, Delhi to permit the medical shops to sell this medicine off the counter in response to a medical prescription being tendered; (v) a direction for immediate shut down of classes KG and Nursery to ensure that small children of Delhi do not get affected; and, (vi) a direction for providing “huge number of ventilators in all government hospitals to meet with the eventuality of number of patients coming to the hospital who are affected by Swine Influenza”.

2. Though from the steps being taken by various governmental agencies to fight the epidemic of ‘Swine Flu’ in the city, as was evident from the media reports, it appeared that the requisite efforts were being made but considering the fact that there were also reports of some deaths having resulted from Swine Flu, we entertained the petition and issued notice thereof.

3. GNCTD has filed an affidavit wherein, besides pleading information, clinical presentation, classification, surveillance, symptoms and transmission of the disease, it has informed that, (i) to contain H1N1 in Delhi, an Expert Committee was constituted to monitor the upsurge of H1N1 influenza, death audit, reviewing the preparedness in hospitals, districts, health centres, laboratories, logistics etc.; (ii) meeting of the District Surveillance Officers (DSOs) of the 11 districts was conducted on 10<sup>th</sup> January, 2015 to review the real-time preparedness of the hospitals under their jurisdiction regarding stock of medicines, Personal Protection Equipment (PPE), Hand Rub, Viral Transport Media (VTM), sensitization of doctors raising awareness etc.; (iii) 26 hospitals in the government and private sector have been designated for treatment and management of influenza patients; (iv) process of creating BSL 3 laboratories in Maulana Azad Medical College and University College of Medical Sciences and extension of new government labs is under process; (v) hoardings / metro panels, flex boards with information regarding seasonal flu including H1N1 have been affixed in all the Delhi government dispensaries / mobile health clinics cross Delhi; (vi) guidelines and specific Standard Operating Procedures were prepared and disseminated to all the Nodal Officers of identified hospitals, DSOs and Medical Officers of health facilities; (vii)

regular monitoring and day to day analysis is being undertaken under the Integrated Disease Surveillance Project (IDSP); (viii) Press and media are updated regarding current status and measures being taken; (ix) continuous coordination is being maintained with National Centre for Disease Control (NCDC) and Emergency Medical Relief (EMR) Divisions of Directorate General of Health Services, Government of India for updates and change in guidelines of H1N1 influenza; (x) three more private labs at Sir Ganga Ram Hospital, Max Super Specialty Hospital and sequence referral lab have been given provisional permission for testing H1N1 samples; (xi) letters were written to all private laboratories to send five positive samples and two negative samples to the NCDC for quality control purpose; (xii) doctors and paramedical staff in all designated hospitals have been trained; (xiii) 1000 PPE kits were given to Rajasthan Government on loan basis for managing seasonal influenza; (xiv) Action Taken Report is being sent to EMR on daily basis; (xv) messages regarding seasonal flu are being regularly broadcasted; (xvi) directions had been issued for priority admission / treatment of influenza like illness in General Ward; (xvii) request for buffer stock of the medicines had been made; (xviii) DO's and DON'Ts were disseminated to all hospitals; (xix) list of designated hospitals and labs with Nodal Officers was uploaded on the

Directorate of Health Services website; (xx) supply order of procurement of reserve stock of medicine had been placed; (xxi) medicines and PPE kits were distributed to all hospitals as per demand; (xxii) permission had been extended to all hospitals having more than 100 beds with ventilator for treatment of H1N1; (xxiii) adequate stock of medicines were being maintained at Directorate of Health Services (DHS) Headquarters; (xxiv) adequate stock of Sample Collection kit, VTM, PPE, Masks, 03 layered Surgical Masks, Hand Rub etc. are available at designated hospitals; (xxv) private labs were sensitized to perform test only on category 'C' patients so that unnecessary tests are avoided; ceiling amount for testing H1N1 was / has been fixed at Rs.4,500/-; (xxvi) awareness campaign had been lodged in print and electronic media; (xxvii) Drug Controller, GNCTD is consistently in touch with the chemists in the city and there is no shortage thereof; (xxviii) licenses had been issued to 40 more chemists for sale of the said drug to remove the panic regarding non-availability of drug; (xxix) continuous meetings are being conducted to ensure compliance of all the directions; and, (xxx) action is being taken with respect to all the defaulting persons / institutions.

4. UOI in its affidavit has also detailed the steps taken by it and has further informed that, (i) that the drug / medicine recommended by World Health

Organization (WHO) for combating the disease is manufactured in India; (ii) that the meetings had been held with the manufacturers of the drug and the manufacturers have confirmed that they have sufficient capacity and stock of active pharmaceutical ingredients to meet the requirements; (iii) that one of the manufacturers is a Central Public Sector Undertaking; (iv) that the said medicine / drug i.e. 'Oseltamivir' however cannot be sold over the counter – it is to be made available only against prescription by a qualified doctor and sold through a chemist with license under Schedule X of the Drugs and Cosmetics Act, 1940; (v) that the drug is also available through public health system; and, (vi) irrational use of the drug may lead to a resistance thereagainst being developed, rendering the drug incapable of fighting the virus.

5. We are satisfied with the steps already taken and being taken by the GNCTD and UOI in the matter. The counsel for the petitioner is also satisfied but has contended that, (i) as far as UOI is concerned, its attention is directed against the States of Rajasthan, Madhya Pradesh, Telangana, Maharashtra, Karnataka, West Bengal and Jammu & Kashmir and not adequate steps have been taken vis-à-vis Delhi and should be asked to clarify; this contention is made on the basis of the information available on the website of the Ministry of Health and Family Welfare, Government of India; (ii) that again as per the

website of UOI, only 19 laboratories all over the country are available for testing influenza; and, (iii) that on the ground level there is a shortage of medicine and masks for protection.

6. The petitioner suggests, (i) that passengers arriving at Delhi Airport and at Delhi Railway Stations from hugely infected States such as Rajasthan, Madhya Pradesh, Gujarat, Telangana, Jammu & Kashmir should be thoroughly checked both at Domestic and International Airports and Railway Stations and should be provided with masks free of costs; (ii) hoardings should be put up at all public places informing about the disease; (iii) it should be made mandatory to use only N95 masks and use of any other kind / nature of masks should be prohibited; and, (iv) a vaccination should be developed for the disease.

7. The counsel for the petitioner has orally argued that the price of the test should be reduced from Rs.4,500/-. It is contended that very few can afford the said price.

8. As far as the contentions of the counsel for the petitioner based on the websites are concerned, we would rather proceed on the basis of the affidavits filed on behalf of GNCTD and UOI before this Court and the contents of which

have not been controverted and as per which the requisite measures have been taken / are being taken. We, in the circumstances are also not able to accept the general statement of the counsel for the petitioner, without any statistics and basis, of the alleged shortage of the medicines and the N95 masks to prevent Swine Flu.

9. The suggestions made by the counsel for the petitioner though well meaning, are not practical. We during the hearing enquired from the counsel whether he has any idea of how many flights and trains come to Delhi from the States which are alleged to be heavily affected and how many passengers they carry. In our opinion it will be virtually impossible to implement, even if we were to issue a direction for screening all such passengers as is suggested. We have further asked as to how much time it takes to screen each passenger and whether not the passengers till the reports of the test conducted are received would be required to be quarantined. The counsel of course has no idea of all these matters and has made the suggestion in a utopian state. The suggestion is also unmindful of the huge influx by road, of people from some of such States into Delhi, including on daily basis.



10. As far as the suggestions for public awareness are concerned, from our own experience of living in Delhi, we can record that there is no deficiency therein. The subject is being actively debated and discussed in all strata of the society. Already enough panic exists about the disease. It is in the affidavit of GNCTD that it is only a certain category of influenza which requires the requisite preventing and protective steps to be taken. Similarly, as far as the plea for reducing the cost of the tests is concerned, without knowing as to what are the manufacturing and marketing costs and how much is the profit element, no general direction can be given. We have no reason to disbelieve that the appropriate authorities constituted in this regard have applied themselves to the said issue as well. Also, from the affidavits, sufficient steps towards research and prevention already appear to be underway.

11. Moreover, these are all policy and administrative matters, in which the Courts ordinarily have no jurisdiction. The Court is neither equipped to nor can itself take over the task of administering the city and dealing with problems thereof. No case of the failure of administration is made out, for this Court to step in.

12. We therefore do not deem it necessary to keep this petition pending any longer and dispose of the same with the rider of course that if in future it is deemed expedient that any further step on the subject needs to be taken and the government / governmental agencies are lacking in it, this judgment shall not come in the way of a fresh plea therefor being made.

The petition is disposed of.

No costs.

**RAJIV SAHAI ENDLAW, J**

**CHIEF JUSTICE**

**MARCH 25, 2015**

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