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

+ **W.P.(C) 11802/2022**

DEEPAK NIRULA

..... Petitioner

Through: Mr. Vaibhav Gaggar, Mr. Vidur
Mohan, Ms. Shefali Munda and
Mr. Prerak Khurana, Advocates.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. T. Singhdev, Mrs. Ramanpreet
Kaur, Ms. Michelle Biakthansangi
Das, Mr. Abhijit Chakravarty,
Ms. Sumangla Swami and Mr. Bhanu
Gulati, Advocates for R-4.
Mr. Rishikesh Kumar, ASC, GNCTD
with Ms. Sheenu Priya, Advocate for
R-GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **06.08.2022**

CM APPL. 35185/2022 (exemption)

1. Exemption is granted, subject to all just exceptions.
2. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

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4. The present writ petition has been listed pursuant to an urgent

mentioning being allowed. Issue notice. Counsel for Respondents, whose appearance is noted above, accept notice. Let counter-affidavit be filed within a period of two weeks from today. Rejoinder thereto, if any, be filed before the next date of hearing.

5. Upon filing of process fee, issue notice to the remaining Respondents, by all permissible modes, returnable on the next date of hearing.

6. The Petitioner - Mr. Deepak Nirula, a 70-year-old senior citizen suffering from a debilitating illness called Progressive Supranuclear Palsy [*hereinafter*, '**PSP**'] which attacks the brain and nerve cells, causing acute problems with balance, movement, vision, speech, is under domiciliary hospitalisation at his home, which is an arrangement akin to an ICU setting in tertiary care. Petitioner is aggrieved by the prohibition created by the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [*hereinafter*, '**PNDT Act**'] read with rules framed thereunder, as well as the Notification No. 9(7)/23/PNDT/DFW/2014/898-914 dated 3rd February 2015 issued by the Directorate of Family Welfare, Government of NCT of Delhi [*hereinafter*, '**the Notification**'], which prevent him from accessing a portable ultrasound machine that is required immediately to administer the prescribed medical treatment. In the above circumstances, he has approached this Court for urgent directions.

7. The Court has heard the counsel and perused the documents accompanying the petition. The said documents establish that Mr. Nirula is

currently undergoing treatment at his residence and is in urgent need of a portable ultrasound machine. The medical history of Mr. Nirula reveals that he was diagnosed with Ataxia in 2013, characterised with '*poor muscle control that causes difficulty in walking, hand coordination, speech and swallowing, etc.*'. Although twice he has been transported to a hospital to undergo ultrasound procedure, but in that effort his condition deteriorated. Petitioner is now under domiciliary hospitalisation, which means that a home ICU has been setup for him under the advice of his team of doctors, and thus, he cannot be taken to a Genetic Clinic/Centre for an ultrasound, especially in the present case, for removing the infected Peripherally Inserted Central Catheter [*PICC*] line which has been inserted in his body, having 3 ports, so that the Petitioner can simultaneously, intravenously and round the clock be given: TPN (Total Parenteral Nutrition) in one port; maintain a balance of sodium and potassium in the second port, as the levels of both the essential salts must be monitored regularly in order to maintain regular body function; and, give all the medicines intravenously to the Petitioner in the third port, as oral administration of the same are not possible.

8. Ms. Maya Nirula, daughter of the Petitioner, received a diagnostic report from Dr. Lal Path Labs [annexed as Annexure P-1] which stated that the PICC line has been infected by a fungal organism/infection called '*Candida Auris*', which, as per the report, is resistant to all antibiotics. If the said PICC line is not replaced immediately, it may have dire consequences to his already frail condition. The doctors of the Petitioner – i.e., Dr. Praveen Gupta, Principal Director and Unit Head (Neurology) and Dr. Neha Rastogi

Panda, Consultant, Infectious Disease, Fortis Hospital, Gurgaon – in their separate reports each dated 6th August, 2022, have opined that the PICC line will have to be changed immediately, otherwise the same will result in life-threatening consequences for the Petitioner [annexed as Annexure P-2]. Given his instability and other medical conditions, Petitioner cannot be transported to a hospital.

9. The petition also encloses a medical certificate issued by Fortis Hospital [annexed as Annexure P-3 at page 53 of the petition], which reads as under: -

“This is to certify that Mr. Deepak Nirula, 70 years male (UHID 7266397) is being treated at Fortis Memorial Research Institute. He is diagnosed with ‘Progressive Supranuclear Palsy (PSP) with C1 Vertebral Fracture with Well Differentiated Squamous Cell Carcinoma oral cavity’. He is quadriparetic and is nursed in bed at his home care facility. He has tracheostomy, feeding Jejunostomy and urinary catheter.

It is not recommended to move the patient from his home care facility to hospital for investigations or procedures that can be done bed side. In view of C1 vertebral fracture, there is a risk of increasing his neurological deficits in shifting him to the hospital.”

10. Further, *vide* certificate dated 6th August, 2022, Dr. Saurabh Kumar, Consultant, Interventional Radiology, Fortis Memorial Research Centre, who is attending to the Petitioner, has certified [annexed as Annexure P-3] that for incision of a new PICC line – an ultrasound machine is required on the bedside, as there is paucity of superficial veins on both arms of patient due to prolonged treatment.

11. Accordingly, it is submitted that in order to remove the infected PICC line and insert a new one, a portable ultrasound machine would be required

at the home ICU set-up at the residence of the Petitioner.

12. Mr. Vaibhav Gaggar, counsel for Petitioner, states that a portable ultrasound machine is available at the Genetic Clinic/Centre at Fortis Flt. Lt. Rajan Dhall Hospital, Vasant Kunj [*hereinafter* ‘**Fortis Hospital, Vasant Kunj**’] and the hospital is agreeable to transporting the said machine to the residence of the Petitioner, if the Court were to pass such a direction.

13. Mr. Rishikesh Kumar, counsel for GNCTD, has cited the provisions of the PNDT Act which prevent the removal of an ultrasound machine (Sections 3(3) and 23 of PNDT Act read with Rule 3B of the PNDT Rules, 1996 along with the afore-noted Notification issued by the Government of NCT of Delhi).

14. In the opinion of the Court, the legal provisions cited cannot be interpreted in such a manner so as to deprive the Petitioner of a treatment that is urgently required as per the advice of the concerned doctors. Any delay or failure would impede his treatment and may cause deterioration of his health. The purpose of enacting the PNDT Act was to prevent the misuse of ultrasound machines for sex determination; however, in extraordinary circumstances, the Courts can always make an exception on the use of the ultrasound machinery. The Court *prima facie* finds that Petitioner's right to life guaranteed by the Constitution of India would be violated, if the provisions of the PNDT Act are interpreted in a manner that prevents him from accessing essential medical equipment. In a medical emergency case such as the one before us today, where a Petitioner is genuinely not in a

position to be transported to a location where the said machine is available, and where a procedure has been prescribed for a patient in domiciliary care, the afore-noted provisions of the PNDD Act and the Notification of the Government of NCT of Delhi, cannot come in his way. It also merits noting that the rationale for introduction of the said prohibitory provisions in the PNDD Act was in the context of prevention of the social evil of pre-natal sex determination, which is very far removed from the facts of the instant case; therefore, the providing the said machine to the Petitioner is clearly not in contravention of the objective promoted by the PNDD Act. Nevertheless, to ensure compliance with the provisions of the PNDD Act, Fortis Hospital, Vasant Kunj is directed to ensure that the machine is used only for the treatment of the Petitioner and for no other purpose whatsoever.

15. In view of the facts and circumstances noted above, the Court is satisfied that the Petitioner is entitled to the relief as sought for in the present petition. Accordingly, the Director, Fortis Hospital, Vasant Kunj, is directed to transport an ultrasound machine to the residence of the Petitioner forthwith. The Petitioner shall bear all charges and cost of such transportation. The above directions be carried out under the supervision of District Magistrate (New Delhi) and/or District Magistrate (Najafgarh) along with the concerned Chief District Medical Officer, (i.e., the concerned PNDD Officer) of the afore-said districts, who shall forthwith issue instructions/approvals to Fortis Hospital, Vasant Kunj, as may be required, to ensure comply with the above directions.

16. Considering the urgency in the matter, such instructions be

communicated to the concerned hospital and authorities without awaiting a signed copy of this order. Counsel for the Respondents are requested to immediately convey the directions telephonically to the concerned officers as well as on their respective e-mail IDs.

17. Considering the fact that the situation faced by the Petitioner can also be faced by others, the questions of law urged requires further deliberation.

18. List before the Roster Bench on 7th September, 2022.

19. A copy of this order be given *dasti* under signatures of the Court Master.

SANJEEV NARULA, J

AUGUST 6, 2022

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