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

+ **CONT.CAS(C) 116/2021**

**INDIAN PROFESSIONAL NURSES THROUGH ITS JOINT  
SECRETARY SIJU THOMAS** ..... Petitioner

Through: Dr. Amit George, Mr. Rayadurgam  
Bharat, Mr. P. Harold and Mr. Amol  
Acharya, Advs.

versus

**GOVERNMENT OF NCT OF DELHI & ANR.** ..... Respondents

Through: Mr. Gautam Narayan, ASC GNCTD  
with Ms. Asmita Singh, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

% **17.05.2022**

**CM APPL. 4604/2021 (Exemption)**

Allowed, subject to all just exceptions.

**CONT.CAS(C) 116/2021**

1. The instant contempt petition has been filed for the alleged non-compliance of the order dated 22.07.2019 passed by this Court in W.P. (C) 5103/2017.

2. The genesis of the dispute arises out of the directions passed by the Apex Court in W.P. (C) 527/2011 in Order dated 29.01.2016. The said writ petition was filed by the Trained Nurses Association of India (TNAI) highlighting the grievances of the working conditions of the nurses in

private hospitals as well as in nursing homes. The Apex Court by the said order dated 29.01.2016 passed the following directions:

*“4. We expect that the Central Government will look into the grievances ventilated in this petition, by forming a Committee within four months from today. We are sure that after examining the factual situation, if the Committee is of the view that the grievances ventilated in the petition are correct, the Committee will make its recommendations, so as to do the needful for improvement of working conditions and pay of the nurses working in private hospitals and nursing homes within six months from its constitution, which can ultimately be given a form of legislation by the respondent-States or by the Central Government itself.*

*5. We are sure that the recommendations of the Committee shall be duly considered by the Central Government and it shall do the needful.*

*6. We do not propose to give any guidelines, as prayed for in this petition, as the grievances are to be looked into by the Committee consisting of experts.*

*7. So far as the grievance, with regard to system of execution of bonds by private hospitals and nursing homes, is concerned, the learned counsel appearing on behalf of Indian Nursing Council has submitted that the said system has not been abolished. Therefore, the said grievance does not survive.”*

3. Apropos the said Order dated 29.01.2016 passed by the Apex Court, a Committee consisting of 9 members, including Directorate General of Health Service, Joint Secretary, MoHFW amongst others, was constituted by the Ministry of Health and Family Welfare, Government of India vide Order dated 24.02.2016 to look into the grievances raised by TNAI. The said Expert Committee made the following recommendations:

*“Committee examined all the information collected from various States, All India Govt Nurses Federation (AIGNF) and Trained Nurses Association of India (TNAI) and felt that adequate salary and basic facilities are not provided to nurses employed in private hospitals/nursing homes. Their pay and working condition is really pathetic and some steps are required to be taken to uplift the standard of working conditions in respect of nurses. After deliberations and discussions, the committee has made following recommendations:*

*1. Salary:*

- In case of >200 bedded hospitals, salary given to private nurses should be at par with the salary of State Govt. nurses given in the concerned State/UT for the similar corresponding grade.*
- In case of >100 bedded hospitals, salary given to private nurses should not be more than 10% less in comparison of the salary of State Govt. nurses given in the concerned State/UT for the similar corresponding grade.*
- In case of 50-100 bedded hospitals, salary given to private nurses should not be more than 25% less in comparison of the salary of State Govt. nurses given in the concerned State/UT for the similar corresponding grade.*
- Salary given to private nurses should not be less than Rs.20000/- pm in any case even for <50 bedded hospitals.*

*2. Working conditions:*

- Working conditions viz. leaves, working hours, medical facilities, transportation, accommodation etc. given to nurses should be at par with the benefits granted to State Govt. nurses working in the concerned State/UTs.*

*3. Steps should be taken by all States/UTs for formulating legislation/guidelines to be adopted for implementation of the above recommendations in case of Nurses working in private hospitals / institutions.”*

4. The recommendations of the Expert Committee constituted by MoHFW, GoI, were accepted by the Government of NCT of Delhi and an Order was passed by the Directorate General of Health Service (DGHS) on 25.06.2018 directing all hospitals/nursing homes to comply with the recommendations of the Expert Committee. The said Order also stated that failure in compliance of the Apex Court's Order would be viewed seriously and strict action, including cancellation of registration in respect of defaulter private hospital/nursing homes, would be initiated.

5. The Order dated 25.06.2018 passed by the Directorate General of Health Service (DGHS) was challenged before this Court by filing W.P. (C) 7291/2018 by private hospitals and nursing homes.

6. During the pendency of the said writ petition, the Petitioner filed a writ petition bearing W.P.(C) 5103/2017 before this Court by contending that the recommendations of the Expert Committee which was constituted in compliance of the Order dated 29.01.2016 passed by the Apex Court in W.P. (C) 527/2011 were not being implemented. The Division Bench of this Court, after noticing that in compliance of the Order dated 29.01.2016 passed by the Apex Court in W.P. (C) 527/2011, an Expert Committee was formed which had given its recommendations and the same had been accepted by the Government of NCT of Delhi vide Order dated 25.06.2018, passed the Order dated 22.07.2019 directing that the recommendations be implemented. Non-compliance of the order has been alleged in the instant contempt petition.

7. The challenge to the Order dated 25.06.2018, passed by the DGHS, in W.P. (C) 7291/2018 was rejected by the learned Single Judge of this Court vide Order dated 24.07.2019. In the said order, the Union of India and the

Government of NCT of Delhi vehemently defended the Order dated 25.06.2018. Paragraph No.17 and 18 of the said order which records the stand of the Government reads as under:

*“17. Mr. Sanjoy Ghose submitted, by way of response, that the impugned Order, dated 25th June, 2018, had nothing to do with the Minimum Wages Act, or the fixation of minimum wage thereunder. Apropos the objection, of learned Senior Counsel appearing for the petitioners, that the private hospitals had not been heard, before the impugned Order came to be issued, Mr. Ghose drew my attention to the Order, dated 24th February, 2016 supra, constituting the Expert Committee, which specifically included two members from private hospitals, namely Fortis, New Delhi and Narayana Health, Bangalore. Mr. Ghosh submitted, however, that he was not averse to grant of a post-decisional hearing to the members of the petitioner-Association. In fine, Mr. Ghosh submitted that no ground, whatsoever, existed, for this Court to interfere with the impugned Notification.*

*18. Additionally, the counter affidavit filed by the GNCTD draws attention to the fact that, consequent to the recommendations of the Expert Committee, e-mail communications were sent to private hospitals and nursing homes, seeking their comments/opinion thereon and that, in response thereto, replies had been received from certain hospitals. It is also pointed out that the Minimum Wages Act only sets out the minimum amount payable to employees covered thereunder, and did not prohibit fixation of wages at a level higher than the minimum wage.”*

8. The learned Single Judge of this Court vide Order dated 24.07.2019 rejected the challenge to the order dated 25.06.2018 and observed as under:

*“34. Having examined the matter in all its aspects and contours, this Court is convinced that the Expert Committee cannot be faulted, in any manner, for not having proceeded in*

*accordance with the Minimum Wages Act, or the provisions thereof. Inasmuch as the Supreme Court has already found that nurses, in private hospitals and nursing homes, were not being treated fairly in the matter of their service conditions and pay, the recommendations of the Expert Committee, constituted by the Supreme Court in order to examine the issue, have necessarily to be treated as binding in nature. This Court therefore, sees no infirmity, whatsoever, in the impugned Order dated 25th June, 2018, whereby the DGHS, GNCTD has mandated compliance with recommendations of the Expert Committee.*

*35. Compliance with the impugned Order, based as it is on the recommendations of the Expert Committee constituted by the Supreme Court to remedy the pay and service conditions of nurses employed in private hospitals / nursing homes, cannot be avoided on the ground of financial hardship. Empirically, therefore, this Court finds itself unable to subscribe to this contention, of the petitioner, either. Not one iota of material has been produced, to bear out the contention that compliance, with the recommendation of the Expert Committee, would render it unviable for hospitals to continue functioning.*

*36. Besides, a reading of the recommendation of the Expert Committee discloses that care has been taken, therein, not to direct uniform enhancement of the salary of nurses for all categories of hospitals. Depending on the number of beds in the hospital, the extent, to which enhancement of the salary of nurses is recommended, has been staggered. For hospitals having less than 50 beds, the recommendations only require that nurses, employed by the hospital, should not be paid less than Rs. 20,000/- per month. In the case of hospitals having between 50 and 100 beds and between 100 and 200 beds, the Expert Committee has not recommended absolute parity, in pay, between nurses employed in such employment and nurses employed in State Government hospitals, but has only recommended that the difference should not exceed 25% in the first case and 10% in the Second case.*

42. *The Committee, which constitutes extremely high-ranking officials, and also includes representatives of private hospitals, has positively found that the “pay and working condition” of nurses employed in private hospitals/nursing homes “is really pathetic”. It is sacrilegious, therefore, to require nurses, who discharge selfless service night after night, to work in conditions which are pathetic. No compromise can, therefore, be made, so far as ensuring optimum working conditions, for nurses, is concerned. The Expert Committee merely equated the salary, to be paid to nurses in private hospitals and nursing homes, with the salary paid to nurses in government hospitals. It cannot be said, by any stretch of imagination, that the recommendation is expropriatory in nature.*

52. *In view of the above this writ petition is disposed of in the following terms:*

(i) *The impugned Ordcr, dated 25<sup>th</sup> June, 2018, issued by the DGHS, GNCTD, to the extent it directs mandatory compliance with the recommendations of the Expert Committee, by all private hospitals/nursing homes, in the matter of pay and service conditions of nurses, employed by such hospitals/nursing homes, is upheld, and the challenge, thereto, by the petitioner is rejected.*

(ii) *Before proceeding to cancel the registration of any nursing home/hospital, on the ground of failure, on the part of such nursing home/hospital, to comply with the recommendations of the Expert Committee, the DGHS would grant an opportunity to the allegedly defaulting nursing home/hospital to represent against such proposed cancellation of its registration. The nursing home/hospital would also be extended an opportunity of personal hearing, before any such decision is taken. All defences, against the proposed cancellation of its*

*registration, would be open to such allegedly defaulting nursing home/hospital, including the question of whether such cancellation could be effected, in view of Section 7 read with proviso to Section 5 (1) of the DNHR Act (supra). The DGHS would, on the conclusion of such representation/hearing by the affected hospital/nursing home, pass a speaking order, dealing with all the defences raised by the hospital/nursing homes concerned, before proceeding to take any such proposed action for cancellation of the registration of the hospital/nursing home.*

*(iii) In order to avoid any confusion, it is clarified that the limited protection against cancellation of any defaulting hospital/nursing home. As provided in (ii) (supra), would not detract from the enforceability of the recommendations of the Expert Committee, and the impugned Order, dated 25<sup>th</sup> June, 2018, insofar as it mandates compliance, by all hospitals/nursing homes, with the said recommendations, would stand upheld in its entirety.*

*(iv) The period of three months, provided in the impugned Order dated 25th June, 2018, for the hospitals/nursing homes to report compliance with the recommendations of the Expert Committee, would stand extended, and would now commence from the date of pronouncement of this judgment, i.e. 24<sup>th</sup> July, 2019.”*

9. The Government of NCT of Delhi, after defending the Order dated 25.06.2018, has now filed an affidavit dated 19.08.2020 in the instant contempt petition stating that the recommendations of the Expert Committee are unimplementable. The relevant portion of the said affidavit reads as

under:

*“5. That it is necessary to appreciate certain crucial facts which have a vital bearing on the issue at hand;*

*5.1 It is submitted that the Government of India, Ministry of Health and Family Welfare on 20.09.2016 had forwarded recommendations of the Committee constituted by it in compliance of the judgment of the Hon'ble Supreme Court in 29.01.2016 in WP (C) No.527/2011, to all States/Union Territories for formulation of necessary legislation/guidelines to be adopted in respect of nurses working in private hospitals/nursing homes. Pursuant thereto, a Committee was constituted by the GNCTD in this regard. The said Committee in its report dated 10.01.2018 recommended that the minimum wage payable to nurses should not be less than 20,000/- per month even by nursing homes having less than 50 beds. A copy of the recommendation of the Committee dated 10.01.2018 is annexed herewith and marked as Annexure-B.*

*5.2 Unfortunately, the then DGHS issued the order dated 25.06.2018 inadvertently without taking into consideration the aforesaid report of the Committee dated 10.01.2018.*

*5.3 It is necessary to bear in mind that nurses working in the NCT of Delhi are classified as skilled workers vide the notification dated 26.07.2011 issued by the Joint Secretary, Labour GNCTD. A copy of the notification dated 26.07.2011 is annexed herewith as Annexure-C. Furthermore, at present the wages of skilled workers in the NCT of Delhi has been fixed at Rs.19,291/- with effect from 01.04.2021 vide order dated 18.06.2021. A true copy of order dated 18.06.2021 is annexed herewith as Annexure-*

D.

*5.4 Another crucial fact that the needs to be noticed is that several nursing homes functioning in GNCTD provide food and housing to nurses apart from wages being paid to them.*

*6. It is also submitted that the salaries / wages payable to staff of all categories of nursing homes and hospitals are a component of the input costs that such establishments incur in the course of the provision of medical services and these are passed on and borne by the general public which avails treatment at such establishments. A manifold increase in the benchmark figure required to be paid as salaries / wages will have a ripple effect and will be passed to the general public thereby increasing cost of provision of such services which will be borne by public at large.”*

10. Dr. Amit George, learned Counsel appearing for the Petitioner, states that the Expert Committee, which was constituted by the Ministry of Health and Family Welfare, Government of India in compliance of the Order dated 29.01.2016 passed by the Apex Court in W.P. (C) 527/2011, had made its recommendations and the same had been categorically accepted by the Government of NCT of Delhi by passing an Order dated 25.06.2018. He, therefore, states that after passing such an Order and then defending the same, it is now not open to the Government to renege on its own Orders and state that the said Order cannot be implemented.

11. *Per contra*, Mr. Gautam Narayan, learned ASC for GNCTD, submits that, at this juncture, it is not financially viable for the Government to compel private hospitals/nursing homes to implement the pay scale as recommended by the said Expert Committee. He draws attention of this

Court to the Report dated 10.01.2018 furnished by the DGHS regarding implementation of the recommendations made by the Expert Committee wherein it was noted as under:

*“3. The details so collected by the concerned branch in this directorate revealed that:*

*i) Some leading private Hospitals submitted that salary structure suggested by expert committee constituted by Hon'ble Court is on much higher side and shall have repercussion on the cost of treatment. However, they were positive regarding improvement in working conditions. As per information gathered from different private hospitals, the salary being given to nurses was found to be varying from Rs. 14000/- as minimum & Rs 33500/- as maximum. Some hospitals give other incentives like free uniform, leave encashment, gratuity concession in medical treatment, leaves DA/Increment and also have working hours 48 Hrs in a week. The private hospitals gave comparison of nursing ratio in private hospital viz a viz Govt. hospital & stated that financial impact would be disproportionately higher, patient cost, FDI momentum will come down with these recommendations. It was also found that the nursing staff working in certain hospitals having critical areas are paid more than in other areas.*

*ii) Another large hospital chain in Delhi submitted that there should be overall development, improvement in working conditions and they are aligned with Apex Court's Judgment and recommendation, however they were not involved, no inputs were taken from them by the expert committee and no specific benchmark for working conditions have been mentioned. Further, the recommendations given by committee were not in line with free market principles and nowhere Govt*

*has gone beyond setting minimum wage guidelines and dictated as to how comparative level of job across limit in private sector should be decided.*

4. *Delhi Nursing Council was also requested to give its opinion to which it has submitted that all nursing homes/hospital in private should pay adequate salary and basic facilities. Delhi Nursing Council on its own had attempted to collect some information from private hospitals and found that salary being paid by private hospital range from Minimum Rs 10000/- by some hospitals and around Rs 19250/- by some hospitals.*

5. *The committee also looked into the pay being given in Govt institution. It was found that the nurses who are recruited through selection process are given Govt scale allowance and the gross salary is about Rs 62946/- as per prevailing pay scales Another group of nurses engaged on contractual basis under Delhi State Health Mission (DSHM) for specific jobs under the programme get Rs. 27359/- at level I and Rs. 29801/- in a month at level II with provision of leaves.*

6. *The committee also observed that the Nurses working in private institutions are covered under statutory Labour laws which was evident from notification dated 26/07/2011 where the Nursing staff is covered under skilled worker. (Annexure- A)*

### **CONCLUSION**

1. *The committee after having gone through these details and discussion on the matter unanimously agreed that the minimum wages as recommended by expert committee, GOI, seem to be justified and it should not be less than Rs.20,000/- p.m even by a smaller nursing home having less than 50 beds. There are private hospitals in Delhi that have different specialities and have large number of beds, some hospitals with super-specialities even with lesser than 50 beds, thus they should consider higher salary to attract good and skilled nursing staff, which, ultimately would help in better patient*

*care. Therefore, the hospital with more specialized kind of facilities should consider paying more than the minimum wages skilled workers.*

*2. It was also observed by the committee that the hospitals with NABH accreditations are being paid more than the non NABH hospitals by the insurance agencies. Their charges for the same treatment procedure are also higher than the smaller hospitals and non NABH hospitals. The committee is of the view that it is beneficial for the hospitals to attract better talent with better salary and thus they should implement the recommendations.*

*3. In regard to working conditions the committee was apprised that there is a provision in Section 5 (b), of DNHR Act 1953 that registration may be refused if a nurse is not resident in nursing home. Some provisions are already there under relevant DNHR Rules with regard to the working environment in nursing home/hospital. Thus the nursing staff need to be provided suitable accommodation or alternatives even for registration, therefore, advisories should be issued to private hospitals to implement the same.*

*4. The concerned branch dealing in private nursing homes and hospitals in this directorate may consider to check various provisions already there in the relevant act and rules, relevant provisions under labour laws etc. are met before grant of registration/renewal of registration. Advisories to this effect including yearly submission of compliances of Labour Laws may also be issued and check list if any should be suitable modified.*

*5. Since fixation of minimum wages for skilled worker is the domain of Labour Deptt, therefore, it may be requested to consider changes in minimum wages of Nurses in view of Hon'ble Supreme Court Judgment in WP (C) no 527/2011 and report of Expert Committee, GOI, MOHFW.*

12. Mr. Gautam Narayan, learned ASC for GNCTD, further relies upon the Minutes of Meeting dated 13.08.2021 under the Chairpersonship of Minister of Health, GNCTD, and refers to the following paragraphs:

*“3. Addl. Chief Secretary (H&FW) informed that the earlier Order No. F.23/ (413)/GEN/Circular/DHS/HQ/14/643-645 dated 25.06.2018 was issued by then DGHS at his own level without seeking approval of Department of Health & Family Welfare, GNCTD and the competent authority. He pointed out that any Government Order requires suitable backing of the existing laws which was not the case in respect of the aforesaid Order dated 25.06.2018. Further, fixation of wages lies under the purview of Labour Department and there are no provisions of fixing of wages of nurses in the existing Delhi Nursing Homes Registration Act, 1953 and Rules made thereunder.*

*4. Addl. Chief Secretary (H&FW) further informed that Department of Health & Family Welfare, GNCTD had sought the views of Law Department, GNCTD on the said matter. Law Department, GNCTD opined that Hon'ble Delhi High Court in W.P. (C) 7291/2018 had upheld the DGHS order dated 25.06.2018. As regards the issue that the same does not have the approval of the competent authority, the same may be obtained ex-post facto. On the contrary, if the administrative department now intends to put in place any new policy in place of the earlier one, on any ground or facts or the circumstances, which have not been considered earlier or placed before the Hon'ble High Court, the same shall required to be placed before the Hon'ble High Court. Similarly, the circumstances/developments emerged in the matter requiring change in stance of Govt. of NCT of Delhi are required to be apprised to the Hon'ble High Court in the Contempt Petition. Accordingly, the appropriate policy decision may first be taken in the matter before adopting the measures as suggested above that would be subject of consideration and orders of Hon'ble Court.*

*5. Medical Superintendent Nursing Homes informed that Director, Nursing Section, MoHFW, Gol vide letter dated*

20.09.2016 had forwarded the recommendations of the Committee to all States/UTs for formulating the legislation/ guidelines to be adopted in r/o nurses working in private hospitals/ institutions. In pursuance to the same, a Committee was constituted vide Orders dated 04.07.2017 & 11.07.2017. The said Committee in its report dated 10.01.2018 recommended that the minimum wages should not be less than Rs.20,000/- per month even by smaller nursing home having less than 50 beds. Since, fixation of minimum wages for skilled worker is a domain of Labour Department, hence, it may be requested to consider changes in minimum wages of Nurses in view of Hon'ble Supreme Court judgement in W.P. (C) No. 527/2011 and report of the Expert Committee, MoHFW, GoI. The copy of the report of the Committee is annexed at Annexure 'A'.

6. Medical Superintendent Nursing Homes further informed that Order No. F.23/(413)/GEN/ Circular/DHS/HQ/14/643-645 dated 25.06.2018 was issued by then DGHS inadvertently without considering the report of the Committee.

7. Medical Superintendent Nursing Homes pointed out that nurses in NCT of Delhi are considered under Skilled category vide Notification No. 12(28)/142/11/MW/Lab 2046 dated 26.07.2011 issued by Jt. Secretary (Labour), GNCTD. The copy of the notification is annexed at Annexure 'B'. He also informed that presently the wages of skilled worker in NCT of Delhi notified vide Order No. 12(142)/02/MW/VII/Partfile/2044-2055 dated 18.06.2021 is Rs. 19,291/- per month w.e.f. 01.04.2021. The copy of the said Order is annexed at Annexure 'C'.

8. DGHS informed that several nursing homes provide food and lodging to their nurses apart from their wages and this fact should also be taken into consideration.

9. Hon'ble Minister of Health, GNCTD; Addl. Chief Secretary (H&FW) and the other officers present in the meeting

*agreed that implementation of Order No. 23/ (413)/GEN/ Circular/DHS/HQ/14/643-645 dated 25.06.2018 issued by then DGHS without seeking approval of the competent authority is unworkable and impracticable. It was decided that nurses working in private hospitals/ nursing homes in NCT of Delhi are included in the Scheduled employment under Skilled category of employees vide Notification No. 12(28)/142/11/MW/ Lab 2046 dated 26.07.2011 issued by Jt. Secretary (Labour), GNCTD. Therefore, the minimum rates of wages in Scheduled Employments under Minimum Wages Act, 1948 in the National Capital Territory of Delhi notified by Labour Department, GNCTD should be applicable upon these nurses working in private hospitals / nursing homes. It was further decided that Hon'ble High Court of Delhi may be suitably apprised regarding the change in stance of Govt. of NCT of Delhi, and the reasoning for it, as per advice of Law Department.”*

13. Despite the report dated 10.01.2018, pointing out the difficulties to implement the recommendation of the Committee, the State accepted the recommendation and order dated 25.06.2018 was passed. Further the GNCTD chose to defend the Order dated 25.06.2018 before the learned Single Judge in W.P. (C) 7291/2018. This indubitably reveals that the GNCTD has willingly given the recommendations of the Expert Committee of the State a go-by and accepted the recommendations of the Expert Committee constituted under the orders of the Apex Court. If the GNCTD is of the opinion that the recommendations of the Expert Committee are not financially viable, it is for them to approach the Division Bench to seek a clarification on the same. However, GNCTD has chosen not to adopt that procedure and has now filed an affidavit dated 19.08.2021 stating that the recommendations of the Expert Committee are unimplementable.

14. At this juncture, this Court is not open to accepting the change in

stance of the GNCTD inasmuch as the GNCTD, after accepting the recommendations of the Expert Committee and defending the Order of the DGHS dated 25.06.2018 before the learned Single Judge, is now taking a U-turn by stating that said Order cannot be implemented. This conduct of the GNCTD is not appreciated. It further raises the apprehension that something has transpired during the time that has passed between the rendering of the learned Single Judge's Order dated 24.07.2019 and the filing of the affidavit dated 19.08.2021 that has caused the GNCTD to take a 180° change in its stand. This can be construed as wilful disobedience of the Orders of this Court.

15. Mr. Gautam Narayan, learned ASC for GNCTD, seeks three weeks' time to get further instructions in the matter.

16. List on 12.07.2022.

17. It is expected that the GNCTD shall comply with the Order dated 22.07.2019 before the next date of hearing. In case the said Order is not complied with, the concerned Officers are directed to be present in the Court to explain as to why contempt proceedings under Section 12 of the Contempt of Courts Act, 1971 should not be initiated against the erring Officers.

**SUBRAMONIUM PRASAD, J**

**MAY 17, 2022**

*S. Zakir*