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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of decision: 24<sup>th</sup> February, 2021*

+ **W.P.(C) 10445/2020 & CM APPLs. 33046/2020 & 7449/2021**  
ALL INDIA INSTITUTE OF MEDICAL SCIENCES..... Petitioner  
Through: Mr. V. Shashank Kumar, Advocate.  
versus

AIIMS NURSES UNION ..... Respondent  
Through: Mr. Santhosh Krishnan & Mr. Sayid  
Marzook, Advocate.

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.
2. The present petition was filed by the All India Institute Of Medical Sciences (AIIMS) against the AIIMS Nurses Union challenging the notice issued by the Union for going on an indefinite strike w.e.f. 16th December, 2020. The Nurses Union had raised various demands and issues with the Petitioner which, according to it, were not addressed. Hence, the notice for a strike.
3. In the present petition, the Id. Single Judge had the occasion to consider the matter on 15th December, 2020 and after hearing Id. counsel for the Petitioner, the Court had directed that the Respondent would not go on strike till further orders. The extract of the said order reads:-

*3. The learned counsel for the petitioner submits that apart from the strike being in violation of Section 22 of the Industrial Disputes Act, it is also in violation of the judgment dated 20.05.2002 passed by this Court in **Court on its own Motion v. All India Institute of Medical Sciences, 2002 (64) DRJ 418** wherein, keeping in view the special circumstances of the petitioner as an*

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*institution and the sensitive nature of such super speciality referral hospital requiring uninterrupted and smooth functioning of each and every sphere of activity, it was inter-alia directed that no employee or staff or faculty member shall cease work for any reason whatsoever.*

*4. Keeping in view the submissions made and the assurance given by the petitioner that the grievance of the respondent is being considered and will be duly considered in an appropriate manner, **the respondent is restrained from continuing with the strike till further order.***

4. Since then, the counter affidavit has been filed on behalf of the Nurses Union. The submission of Mr. Santosh Krishnan, appearing for the Nurses' Union is three fold:-

- (i) That the maintainability of the writ petition is under doubt as no writ ought to be entertained against a trade union;
- (ii) That the matter is already pending before the Conciliation Officer under the Industrial Disputes Act, 1947 ("ID" Act) and the said proceedings have been adjourned awaiting further orders of this writ petition. The said conciliation proceedings ought to continue;
- (iii) No coercive measures ought to be taken by AIIMS against the nurses due to the one day strike.

5. He further points out that in *W.P.(C) 6727/2018* titled *Delhi Metro Rail Corporation Ltd Vs. General Secretary (Staff Council) & Ors*, initially an order was granted restraining the Union from going on strike. Finally, however, the Court had passed an order permitting the Union to avail its remedies.

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6. On behalf of AIIMS, it is submitted that the merits of the grievances raised by Nurses has not been dealt with in the writ petition. The only relief which AIIMS is seeking is that the strike should not be given effect to considering the public nature of the function performed by AIIMS as also the nurses working therein. In so far as the Conciliation proceeding is concerned, the counsel for the AIIMS submits that he had no objection, if the conciliation proceedings go on.

7. Heard ld. counsels for the parties. In *DMRC Ltd (supra)*, the ld. Single Judge had, initially vide order dated 28<sup>th</sup> January 2019 restrained the DMRC workers from going on strike. The operative portion of the said order reads:

*“15. Considering the fact that the petitioner is running a public utility service which caters to around 25 Lakhs citizens of Delhi as a daily basis who come largely from the middle income group and the fact that they would be greatly inconvenienced if the respondents go on strike, as also the fact that, prima facie, the action of the respondents does not appear to be justified or legal since sufficient notice has not been given to the petitioner and the conciliation proceedings are still in progress, I am inclined to grant ad-interim relief as sought in the application. Accordingly, the respondents are restrained from going on strike on 30.06.2018 or till further orders in the matter.”*

8. The above writ petition was finally disposed of with the following directions:

*“3. Today, the respondent nos.3, 5 and 9 appear in person, while the respondent nos.1, 2, 4, 6 to 8 and 10 are represented by their respective counsel.*

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*They all state in unison that the aforesaid notices issued by them may be treated as withdrawn. They further assure the Court that they will not resort to any strike or threaten to go on strike any strike without following the procedure as prescribed under the provisions of the Industrial Disputes Act. The respondents will remain bound by their aforesaid statement.*

*4. In view of the specific statement by the respondents to withdraw the impugned notices and the further assurance given by them not to resort to any strike in contravention of the provisions of the Industrial Disputes Act, learned senior counsel for the petitioner does not press the present petition any further. The same is accordingly disposed of as infructuous along with the pending application.”*

9. In the case of DMRC the services were held to be ‘public utility services’. In the present case it is the AIIMS Nurses’ Union. There can be no doubt that healthworkers and nurses in general including nurses working at AIIMS have rendered *yeoman’s service* to society and patients, especially during the COVID-19 pandemic. Their service has been selfless and prone to enormous risk for their own self and their families. Their necessity during the pandemic was indispensable. The order restraining them from going on strike is in fact a recognition of their importance to the patients and to the working of the hospital. In view of the role that nurses play, their grievances, if any, ought to be considered and redressed in a timely and expedient manner. The Nurses have some long pending grievances. Both sides ought to be reasonable and not take extreme positions while attempting redressal. The interim order has already restrained the Nurses’ Union from

going on a strike. The matter is now pending before the Conciliator under the ID Act, the petition is disposed off with the following directions:

- i. The conciliation proceedings shall go on under the ID Act and shall be decided expeditiously and in any case within a period of three months from today.
- ii. The AIIMS Nurses Union assures this Court that they will not resort to a strike without following the procedure as prescribed under the ID Act. The Union, all its members and nurses shall be bound by this statement.
- iii. Subject to the said assurance given above being honoured by the Nurses Union, it is directed that the AIIMS shall not take coercive steps against the Petitioner for the Nurses having gone on strike under the impugned notice dated 16<sup>th</sup> December, 2020.

10. Once the conciliation proceedings conclude, if there is no resolution, both parties are left to avail of their remedies in accordance with law. The question of maintainability, raised, is left open to be gone into in an appropriate case.

11. The petition is disposed of in these terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**FEBRUARY 24, 2021**

*mw/RC*