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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 4th June, 2021

Date of decision: 12th July, 2021

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W.P.(C) 3298/2020 and CM APPL. 11567/2020

GOVIND SWAROOP CHATURVEDI

..... Petitioner

Through: Mr. G.S. Chaturvedi, Petitioner in person.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Rahul Mehra, Sr. Advocate and Mr. Satyakam, ASC for GNCTD.

Mr. Sanjay Rawat, Advocate for NIACL with Mr. Gaurav Sharma, Branch Manager.

Mr. Ramesh Gupta, Chairman, BCD.

Mr. Rakesh Khanna and Mr. K.C. Mittal, Sr. Advocates with Mr. Rajiv Khosla, Advocate for BCD.

Mr. Kamal Mehta, Advocate for LIC.

WITH

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W.P.(C) 3357/2020

BALVINDER SINGH BAGGA & ORS.

..... Petitioners

Through: Mr. Amarjit Singh Chandhiok, Sr. Advocate with Mr. Naginder Benipal, Mr. Tarranjit Singh Sawhney, Advocates with Mr. Balvinder Singh Bagga and Mr. Vaibhav Kalra, in person.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Rahul Mehra, Sr. Advocate and Mr. Satyakam, ASC for GNCTD.

Mr. Sanjay Rawat, Advocate for NIACL with Mr. Gaurav Sharma, Branch Manager.

Mr. Ramesh Gupta, Chairman, BCD.

Mr. Rakesh Khanna and Mr. K.C.
Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.
Mr. Kamal Mehta, Advocate for LIC.

AND

+ **W.P.(C) 3362/2020 and CM APPLs. 11901/2020, 17666/2020,
29369/2020**

BAR COUNCIL OF DELHI THROUGH ITS
CHAIRMAN

.....Petitioner

Through: Mr. Rakesh Khanna and Mr. K.C.
Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.
Mr. Ramesh Gupta, Chairman, BCD.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Rahul Mehra, Sr. Advocate and
Mr. Satyakam, ASC for GNCTD.
Mr. Sanjay Rawat, Advocate for
NIACL with Mr. Gaurav Sharma,
Branch Manager.
Mr. Ramesh Gupta, Chairman, BCD.
Mr. Rakesh Khanna and Mr. K.C.
Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.
Mr. Kamal Mehta, Advocate for LIC.
Mr. Apoorv Kurup, CGSC with Ms.
Nidhi Mittal, Advocate for R-3 (M:
8800185864).

AND

+ **W.P.(C) 4303/2020**
BAR COUNCIL OF DELHI THROUGH ITS
CHAIRMAN

..... Petitioner

Through: Mr. Rakesh Khanna and Mr. K.C.
Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.
Mr. Ramesh Gupta, Chairman, BCD.
Mr. P.K. Dixit, in person.

versus

GOVT. OF NCTD & ORS. Respondents

Through: Mr. Rahul Mehra, Sr. Advocate Mr.
Satyakam, ASC for GNCTD.

Mr. Sanjay Rawat, Advocate for
NIACL with Mr. Gaurav Sharma,
Branch Manager.

Mr. Ramesh Gupta, Chairman, BCD.

Mr. Rakesh Khanna and Mr. K.C.

Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.

Mr. Kamal Mehta, Advocate for LIC.

Mr. Apoorv Kurup, CGSC with Ms.
Nidhi Mittal, Advocate for R-3 (M:
8800185864).

AND

W.P.(C) 4304/2020

BAR COUNCIL OF DELHI THROUGH ITS
CHAIRMAN

..... Petitioner

Through: Mr. Rakesh Khanna and Mr. K.C.
Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.

Mr. Ramesh Gupta, Chairman, BCD.

Mr. P.K. Dixit, in person.

versus

GOVT. OF NCTD & ORS. Respondents

Through: Mr. Rahul Mehra, Sr. Advocate Mr.
Satyakam, ASC for GNCTD.

Mr. Sanjay Rawat, Advocate for
NIACL with Mr. Gaurav Sharma,
Branch Manager.

Mr. Ramesh Gupta, Chairman, BCD.

Mr. Rakesh Khanna and Mr. K.C.

Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.

Mr. Kamal Mehta, Advocate for LIC.

AND

W.P.(C) 1840/2021

KAPIL GOYAL AND ORS

..... Petitioners

Through: Mr. Sahel Sood, Advocate.
versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Rahul Mehra, Sr. Advocate Mr.
Satyakam, ASC for GNCTD.
Mr. Sanjay Rawat, Advocate for
NIACL with Mr. Gaurav Sharma,
Branch Manager.
Mr. Ramesh Gupta, Chairman, BCD.
Mr. Rakesh Khanna and Mr. K.C.
Mittal, Sr. Advocates with Mr. Rajiv
Khosla, Advocate for BCD.
Mr. Kamal Mehta, Advocate for LIC.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Insurance for lawyers has been an aspiration for several years. Though more than two decades have passed since the enactment of the Advocates Welfare Fund Act, 2001, group life insurance and Mediclaim/health insurance for lawyers, has merely remained in the statute books. It is under these circumstances that the Chief Minister's Advocates Welfare Scheme (*hereinafter, 'Scheme'*) for advocates enrolled with the Bar Council of Delhi (*hereinafter, 'BCD'*), was approved and launched in 2019 in recognition of the contribution of lawyers and advocates. The stated object of the Scheme is set out in the Background note put up before the Cabinet of the GNCTD, as under:

“1. Lawyers have played a central role since time immemorial in not only drafting the Constitution but in protecting the citizenry's basic rights and upholding the basic concepts of secularism, democracy and egalitarianism and

usher in persistent reforms since Independence. Advocates have been the tallest leaders of our democracy since independence and their work for the society at large is ample proof of the hard work and toil of each member of the legal fraternity to lead and reform his nation. The profession and the growth of the legal fraternity in our society promotes an environment which is just and strong to stand up against the wrong and nurture an environment conducive for constructive dialogue amongst citizens, builds a strong democracy encouraging active citizen engagement and participation in nation building and fosters a society which is equitable and conscientious.

2. Government of NCT of Delhi, in recognition of the role being played by the advocates in the society and the legal profession in particular announced the "Chief Minister Advocates' Welfare Scheme". An outlay of Rs. 50 crore, an annual fund, has been made under the said scheme for utilization for the welfare of the legal community, in the Budget of 2019-20."

Thus, the Scheme was launched by the GNCTD to recognise the role of advocates, both in society and in the legal profession.

2. The object of the Scheme is indeed laudable and very impactful, especially during the Covid-19 pandemic. However, two issues have been raised in these petitions, *qua* the Scheme:

- The first, is in respect of a condition in the Scheme that the benefit of the same will only be available to such advocates whose names appear in the voters list of Delhi. A large number of advocates who are enrolled with the BCD and practising in various District Courts, the High Court, the Supreme Court and other fora, have been

excluded due to this condition, as they are not residents of Delhi but reside outside Delhi, predominantly in the NCR region in areas such as Noida, Gurugram, Faridabad, Ghaziabad etc.

- The second issue concerns those lawyers who were unable to register for the Scheme within the original deadline and are thus seeking extension of the deadline for registration.

3. Three of the six petitions i.e., W.P.(C) 3298/2020, W.P.(C) 3357/2020 and W.P.(C) 1840/2021, have been filed by individual advocates who are members of the BCD but who reside outside Delhi, including Noida, Gurugram, Faridabad, Ghaziabad, Ferozpur. In W.P.(C) 1840/2021 there are 14 writ Petitioners who are all advocates. In this petition, the grievance of Petitioner No's 1 to 7 is that they have successfully applied for the Scheme but have not been provided with the insurance policies. Petitioner Nos 8 to 11 are members of the BCD who do not have a voter ID card of Delhi and seek extension of the Scheme to them. Petitioner Nos 12 to 14 are advocates who registered with the BCD after the deadline for registering for the Scheme and seek reopening of the registration.

4. The BCD has filed the remaining three petitions, being W.P.(C) 3362/2020, W.P.(C) 4303/2020 and W.P.(C) 4304/2020, broadly seeking the following reliefs –

- for issuance of insurance policies to advocates who are already registered for the Scheme,
- for extending the Scheme to advocates who are enrolled with the BCD but are residing in the NCR region/neighbouring areas and
- for reopening of the registration under the Scheme.

5. The reliefs sought in all these petitions can broadly be summarised as under:

- i. Issuance of insurance policies to all eligible advocates already registered under the Scheme;
- ii. Quashing of the condition requiring advocates to have a voter ID card of Delhi for obtaining the insurance policies under the Scheme. In effect, therefore, what is sought is the extension of the Scheme to lawyers residing outside Delhi, in the NCR region/neighbouring areas, so long as they are registered with the Bar Council of Delhi.
- iii. Reopening of the registration portal to enable advocates who have been unable to register as yet, to put in their registrations.

Background of the Scheme

6. The GNCTD decided to recognise the role of advocates in society and the legal profession in general and accordingly, constituted a Committee on 29th November, 2019 to propose schemes for the welfare of advocates. An annual outlay of Rs.50 crores was created for the year 2019-20 for the said purpose. The Committee constituted of 12 members which included the President of the Supreme Court Bar Association, the Delhi High Court Bar Association, representatives of the Bar Associations of Patiala House Court, Saket Court, Rohini Court, Dwarka Court, Tis Hazari Court and Shahdara Courts, the then Chairperson of the BCD, two Standing Counsels for the GNCTD in the Delhi High Court and two advocates chosen by the GNCTD. The order appointing the Committee reads as under:

“Government of NCT of Delhi, in recognition of the role being played by the advocates in the society and the legal profession in particular, announced the Chief Minister’s Advocates Welfare Scheme. An outlay of Rs. 50 crores, an annual fund, has been made under the said scheme for utilization for the welfare of the legal community in the Budget of 2019-20.

It is considered desirable to constitute a committee consisting of advocates which may propose schemes for welfare of advocates so that the budget outlay sanctioned by GNCTD is utilized properly for the welfare of all advocates. Towards this end, a Committee of the following is constituted:-

...

The said Committee may submit its recommendations towards drafting the scheme for the welfare of advocates within 10 days of its formation.”

7. Prior to giving its recommendations, the Committee had considered data relating to the number of advocates registered with the BCD and also held negotiations with the Life Insurance Corporation of India (*hereinafter, ‘LIC’*) and other general insurance companies for providing health and life insurance. A total of 40,115 advocates were considered by the Committee, to be beneficiaries, which included advocates from the NCR region/neighbouring areas. LIC had broadly agreed for a premium of Rs.2.478 per advocate per thousand rupees sum assured, inclusive of GST, for advocates up to the age of 60 years and Rs.2.80 per advocate per thousand rupees sum assured for advocates in the age group of 61 to 75 years. The total premium amount payable to the LIC for 40,115 advocates

was approximately Rs.10 crores.

8. Insofar as group medi-claim coverage was concerned, after considering the quotation given by the New India Assurance Company Limited (*hereinafter, 'NIACL'*) and the National Insurance Company Limited, as also the inability expressed by the United India Insurance Company, the Committee recommended accepting the proposal given by NIACL. NIACL offered a family floater policy of Rs. 5,00,000/- and other benefits at a premium of Rs.8,500/- plus GST per advocate plus their spouse and two dependent children or at Rs.8,000/- plus GST per advocate plus their spouse and two dependent children, without maternity cover. The first offer received from NIACL of a premium at the rate of Rs.8,500/- plus GST was accepted by the Committee.

9. In addition, the facility of an e-library was also recommended as per which District Court complexes would be provided ten computers with all the e-journals along with heavy duty printers. Provision for a creche facility was also discussed for six District Courts, which the LIC has agreed to provide as part of its corporate social responsibility. The verified list of eligible beneficiaries in the various bar associations were also considered. Finally, the Committee resolved as under:

“The Committee is of the considered opinion that all practising advocates in Delhi who are on the verified rolls of the Bar Council of Delhi i.e., 40,115 who are on the electoral rolls of any of the Bar Associations in Delhi namely: the Supreme Court Bar Association, the Delhi High Court Bar Association, the Bar Association of the Rohini Court, the Tis Hazari Court, the Dwarka Court, the Karkardooma Court, the Saket Court, Patiala House, National Green Tribunal, NCLT, NCLAT,

Income tax tribunals, Service Tax tribunal, Armed Forces Tribunal, Debt Recovery Tribunal, Central Administrative Tribunal, National Consumer Commission, State Consumer Forum, as on 01.12.2019, upon due endorsement by Bar Council of Delhi and cross-endorsement by the respective Bar Association where they have their voting rights, be treated as beneficiaries under this scheme.”

10. The Committee submitted its report on December, 2019 and the scheme which was proposed by the Committee was as under:

- (1) Group (Term) Insurance for practising advocates providing life cover of Rs.10,00,000/- (Rupees Ten Lakh) per advocate.
- (2) Group Medi-claim coverage for the advocates, their spouse and two dependent children up to the age of 25 years, for a family floater sum insured of Rs.5,00,000/- (Rupees Five Lakh).
- (3) E-library with 10 computers loaded with e-journals and web editions of e-journals, along with printers in all the 6 district courts.
- (4) Creche facility for advocates and staff employees in each of the 6 district courts.

11. A perusal of the annexures to the report of the Committee shows that the declaration form sought the following details from advocates:

**CHIEF MINISTER'S ADVOCATES WELFARE SCHEME
DECLARATION FORM**

1. Name of the Advocate
2. Date of birth
3. Residential Address
4. Office Address
5. Delhi Bar Council Membership No.
6. Bar Association in which advocate has voting rights.....
7. Bar Association Membership No.
8. Bar Association Voter list No.
9. AADHAR No.
- 10. Voter ID Card No.**
11. Contact No. Landline No. Mobile No.....
12. Email id.
13. Name and Date of Birth of spouse.
14. Name and Date of Birth of the first child.....
15. Name and Date of Birth of the second child.....

Verification by the Bar Council of Delhi: It is certified that the aforementioned Advocate is in the list of the verified Advocates of the Bar Council of Delhi.

Secretary of the Bar Council of Delhi

Verification by the Bar Association: It is certified that the aforementioned Advocate is a voter in the _____ Bar Association as on 01.12.2019.

Secretary/ President

_____ Bar Association

Enclosed:

1. Attested copy of AADHAR Card.
2. Attested copy of Bar Association I.D. Card.
3. Attested copy of Bar Council of Delhi I.D. Card.
4. Attested copy of Voter I.D. card.

A joint reading of the Committee's report as also the Declaration form shows that all advocates enrolled with the BCD were to be beneficiaries of the Scheme and the Voter ID Card was of a Bar Association, in order to ensure that the concerned advocate was a member of one of the Bar Associations in Delhi.

12. The report of this Committee was then considered by the Minister

(Law), GNCTD. A note was put up by the Minister (Law), GNCTD before the Council of Ministers. The background set out in this note, which forms the basis of the Scheme, is recorded as under:

“1. Lawyers have played a central role since time immemorial in not only drafting the Constitution but in protecting the citizenry’s basic rights and upholding the basic concepts of secularism, democracy and egalitarianism and usher in persistent reforms since Independence. Advocates have been the tallest leaders of our democracy since independence and their work for the society at large is ample proof of the hard work and toil of each member of the legal fraternity to lead and reform his nation. The profession and the growth of the legal fraternity in our society promotes an environment which is just and strong to stand up against the wrong and nurture an environment conducive for constructive dialogue amongst citizens, builds a strong democracy encouraging active citizen engagement and participation in nation building and fosters a society which is equitable and conscientious.

2. Government of NCT of Delhi, in recognition of the role being played by the advocates in the society and the legal profession in particular announced the “Chief Minister Advocates’ Welfare Scheme”. An outlay of Rs. 50 crore, an annual fund, has been made under the said scheme for utilization for the welfare of the legal community, in the Budget of 2019-20.”

13. Thereafter, the note records the recommendations of the Committee for group (term) insurance, group medi-claim coverage, e-library and creche facilities. In the recommendations for group (term) insurance and group medi-claim coverage, reference is made to practising Advocates registered

in Delhi. Finally, approval was sought by the Minister (Law), GNCTD in the following terms:

“APPROVAL SOUGHT

5. *After deliberations the Committee has submitted a report [ANNEXURE ‘B’] on 12.12.2019 vide which it has proposed the following schemes:-*

1. *Group (Term) Insurance for practising advocates providing life cover of Rs.10,00,000/- (Rupees Ten Lakhs) per advocate.*
2. *Group Medi-claim coverage for the advocates, their spouse and two dependent children up to the age of 25 years, for a family floater sum insured of Rs.5,00,000/- (Rupees Five Lakhs).*
3. *E-library with 10 computers loaded with e-journals and web editions of e-journals, along with printers in all the 6 district courts.*
4. *Creche facility for advocates and staff employees in each of the 6 district courts.*

Details of the aforesaid schemes are as under:

Scheme 1: Group (Term) Insurance

It has been proposed that every practising advocate in Delhi should be given Life Term Insurance of Rs.10,00,000/- (Rupees Ten Lakhs). On the basis of negotiations carried out by the Committee with various Life Insurance Companies, it has been estimated by the Committee that premium amount would work out to Rs.10,07,70,894/- (Ten Crores Seven lakhs Seventy Thousand Eight Hundred and Ninety Four). The actual premium amount would

however be known only after the Government has selected the Company through a competitive process.

Scheme-2: Group Medi-Claim Coverage

The Committee is of the opinion that every practising advocate registered in Delhi should be given Medical coverage facility by providing them Group medical Coverage through an Insurance company.

The Committee undertook the exercise of inviting quotations from the nationalised Government of India undertakings for providing group Medi-Claim coverage. It has been recommended by the Committee that Group Medi-calim Policy for the advocate, spouse and two dependent children may be provided by the Government. The annual premium cost per policy has been estimated as Rs.8500/- plus GST. The total annual premium, taking the number of advocates as 40115, which has been given by the Committee, works out to Rs.34,09,77,500/- (Rupees Thirty Four Crores Nine Lakhs Seventy Seven Thousand Five Hundred only) plus GST. The actual premium amount would however be known only after the Government has selected the Company through a competitive process.

Scheme-3: Facility of E-library

E-library facilities are lacking in the District Court Bar Associations. The advocates practising in the district courts face serious problem in carrying out legal research of the Act, Rules and the case law required to prepare their cases and arguments. The Committee has recommended that each District Court, namely, Tis Hazari Court,

Patiala House Court, Kakardooma Court, Saket Court, Dwarka Court and Rohini Court, be provided with 10 computers, fully loaded with e-journals, their web editions including SCC Online, All India Reporter, Manupatra, Delhi Law Times etc. along with heavy duty printers. The lawyers be permitted to use this E-library free of cost. However, the cost of printing of their case laws and legal material be worked out on actual basis.

Schem-4: Creche Facility

A large number of female advocates are enrolled with the Bar Council of Delhi. Similarly, there are female staff employed by the advocates and the various courts in Delhi. The Committee has pointed out that creche facilities are lacking in the district courts. Government of NCT of Delhi should undertake the establishment and running of crèches under the “Chief Minister Advocates’ Welfare Scheme” on the lines of the creche being run in the Supreme Court of India.

6. *The proposal contained in para 5 above may be approved.*

7. *The scheme would be applicable to practising advocates who are enrolled with the Bar Council of Delhi and are also in the voters’ list of Delhi.*

8. *The modalities for the implementation of this scheme would be decided by the Minister (Law, Justice & Legislative Affairs).”*

14. The said note was put up before the Council of Ministers of the GNCTD. Vide Cabinet Decision No. 2794 dated 18th December, 2019, the approval was granted, which reads as under:

“ **CABINET DECISION NO. 2794 DATED
18.12.2019**

***Subject: CHIEF MINISTER ADVOCATES’
WELFARE SCHEME” FOR ADVOCATES
ENROLLED ON THE BAR COUNCIL OF
DELHI.***

***Decision: The Council of Ministers considered
the note of the Minister (Law, Justice &
Legislative Affairs) and approved the proposal
contained in para 6, 7 and 8 of the Cabinet Note.***

***Council of Ministers further directed Pr. Secretary
(Law) to immediately initiate the process of
floating tender whenever necessary. Pr. Secretary
(Law) shall also simultaneously initiate the
process of inviting online application for
beneficiaries after development of the software for
the same”***

The Cabinet thus approved the proposals in paragraphs 5-8 of the Note extracted above.

15. Pursuant to this decision, a Notice Inviting Tender (*hereinafter*, ‘NIT’) was called for a total of 40,115 lawyers, however, for various reasons, the said exercise did not fructify. The Covid-19 pandemic broke out in March, 2020 and the process of obtaining insurance was disrupted, leading to the filing of the present writ petitions.

Proceedings in the various writ petitions

16. Various issues were canvassed from time to time in these writ petitions. The GNCTD’s stand initially was that it was not taking an adversarial stand and that the issues raised by the BCD and the advocates would be resolved. As recorded in order dated 18th June, 2020, a submission was made on behalf of the GNCTD that a total of 29,098 advocates who are

registered with the BCD and have voter ID cards of Delhi were verified. Considering the large number of advocates who would benefit during the pandemic, while keeping the issue relating to the advocates from the NCR region/neighbouring areas pending, this Court directed the NIT to be issued for finalising the insurance policies.

17. Thereafter, from time to time, this Court has monitored the issuance of the insurance policies. After the issuance of the NIT and receipt of bids, it was seen that both LIC and NIACL had nearly doubled the premium they had initially proposed, owing to the pandemic. Finally, the premium which was finalised with both the companies is recorded in order dated 7th October, 2020 as under:

“11. With the assistance of the officials of GNCTD, including the Committee constituted for this purpose, Senior Counsels who have appeared today and representatives of the Bar, including the present as well as erstwhile Chairman of the BCD, the said companies have arrived at the final figures for issuance of the policies. The terms and conditions of the group (term) life-insurance policies are provided in LIC’s email dated 14th September, 2020, which reads as under:

“This refers to the second VC held in the aforesaid matter on 9th September under Chairmanship of Shri Azimul Haque, IAS, Chairman of Technical Evaluation Committee for the aforesaid matter.

The draft minutes of the said VC has been received and the same was placed before the Chairman of the Corporation for looking into the matter of granting Exclusive and Special reduction, as requested by the Government of State of NCT of Delhi in the

aforesaid matter, so as to enable them to proceed with covering 28,744 Advocate members of Delhi Bar Council as mentioned under the bid document floated for the said purpose. It may be noted that the Chairman of the Corporation exercising his discretionary powers, has, as a very special case, accepted the said request as preferred by the Government of NCT of Delhi through the Chairman of its Evaluation Committee for the aforesaid bid and thus, **the revised annual premium for the aforesaid group of 28,774 Advocate members of Delhi Bar Council shall now be Rs. 10,07,70,894/-, provided the Age Distribution of proposed members to be covered meets following Age Distribution, as shared:**

Age (Years)	Group	No of Advocate Members
21-25		2728
26-30		5539
31-35		4230
36-40		3931
41-45		3455
46-50		3001
51-55		2029
56-60		1306
61-65		1188
66-70		886
71-74(NBD)		481
Total		28774

*This Exclusive and Special consideration shall **only** be applicable in respect of the Bid document under reference (proposing to cover 28774 Bar Council Members,*

*Delhi) and shall not include any other Group/Additional Members under the same Group (other than indicated vide Bid under reference). The special rate, approved **without** Profit sharing, shall be valid for a period of 1 year from the date of Commencement of Policy and the same will be reviewed as at next Annual Renewal Date.*

This Special Consideration shall not form any precedence for the said Group (Delhi Bar Council) for any additional members/future renewals and/or for any other Bar Council in India, if they so desire to Insure their Advocate Members. All future/further reference shall be reviewed afresh, independently.

xxxxxx

Hemant Buch

Chief/P&GS. (Marketing/Govt Business & Compliance)

LIC of India, Central Office, Mumbai

xxxxx”

Insofar as the group (term) life-insurance policies are concerned, the LIC's final quotation with respect to 28,774 lawyers is thus finalised at Rs.10,07,70,894/- as set out in the above email.

12. Insofar as the group medi-claim insurance policies are concerned, Mr. Jitendra Mehndiratta, Deputy General Manager at the NIAC has made a detailed presentation today and instead of Rs.12,000/- as earlier quoted, has agreed for a final rate of Rs.10,500/- as per family premium payable, for a total of 29,077 lawyers. However, this would be with the modification of one term of the policy i.e., co-payment would now be 25% instead of 20%. The remaining terms as contained in letter dated 14th September, 2020 and reiterated

on 4th October, 2020 shall remain intact. Mr. Mehndiratta has agreed to all these terms, subject to all the policies being purchased on or before 30th November, 2020. The above rates have also been agreed to be extended till 40,115 lawyers by the NIAC, if this Court decides that the said lawyers are also entitled to the Scheme of the Delhi Government.”

Thus, the annual insurance premium payable per advocate that was finalised is as under:

Particulars	Persons covered	Annual premium	Insured amount
Life Insurance (LIC)	Demise of advocate	Rs.3,502/- per advocate	Rs.10,00,000/-
Medicclaim Insurance (NIACL)	Advocate plus family (spouse and two dependent children up to the age of 25 years)	Rs.10,500/- per family	Rs.5,00,000/-

18. By the time of conclusion of hearings, a total of 28,744 lawyers have been issued life insurance policies by LIC and 29,077 lawyers have been issued medi-claim policies by NIACL. Out of the total number of lawyers who have been issued the policies, according to the GNCTD, 5,044 number of lawyers are not entitled to the insurance policies as they do not have a voter ID card of Delhi. Hence, it is submitted that the premium in respect of these advocates ought to be refunded to the GNCTD. Further, it is found that 557 number of lawyers, registered with the BCD and also having voter ID cards of Delhi, are entitled to the policies, however, due to the late verification, they have not yet been issued the policies. The total amount

paid by the GNCTD to the LIC and NIACL is approximately Rs. 40 crores. The policies issued by both the companies are for a period of one year.

19. During the course of hearings, the Court was informed that several advocates who had been issued the insurance policies have, in fact, availed of the same and benefitted during the pandemic.

Submissions of Mr. G.S. Chaturvedi, Petitioner in person in W.P.(C) 3298/2020

20. Mr. Chaturvedi, Petitioner in person has appeared in W.P.(C) 3298/2020 and made his submissions. The challenge in this writ petition is to the criteria prescribed by the Delhi Government for extending the benefit of the Scheme only to Advocates, who are registered voters in Delhi and possess voter ID cards in Delhi. Mr. Chaturvedi submits that the eligibility criteria of insisting on a voter ID card is completely violative and discriminatory, inasmuch as the purpose of the Scheme is to give recognition and benefit to advocates, who are practicing in Delhi. The purpose of the Scheme is not merely to give benefit to advocates living and residing in Delhi. He submits that the advocates from the NCR region/neighbouring areas, who are practicing in Delhi, also contribute to the dispensation of justice in Delhi and they appear in various courts, including the District Courts and High Court in Delhi. He also highlights the unique character of the NCR region, which is a recognized area wherein a large number of advocates, who are practicing in Delhi, live and reside and commute to Delhi on a daily basis.

21. Mr. Chaturvedi submits that the BCD as per its enrolment form merely mentions as a pre-condition for enrolment with it that advocates should practise within the state of Delhi. The enrolment form is highlighted

to show that being a resident of Delhi is not an eligibility criteria to be registered with BCD. It is also emphasised that undertakings given by the advocates registered with BCD includes the following – *‘I intent to practice ordinarily and regularly within the jurisdiction of the Bar Council of Delhi’*. As per the undertakings, advocates are permitted to live within the NCR region and if there is any change in their residence, they have to inform the BCD of the same. He thus submits that the BCD does not extend its jurisdiction only to advocates who are residents of Delhi but also to advocates who hail from the NCR region.

22. It is further urged by the Petitioner that such a discriminatory position cannot be adopted when a Welfare Scheme like the present one is being extended to advocates who face the same occupational hazards, irrespective of whether they are residents of Delhi or not.

23. He further submits that advocates from the NCR region/neighbouring areas who choose to enrol with BCD are not permitted to register with their respective State Bar Councils, for example Bar Council of Uttar Pradesh or Bar Council of Punjab & Haryana. Thus, they become ineligible for welfare schemes for advocates that are floated by those Bar Councils for their own advocates. If the said advocates are not extended benefit of the present Scheme as well, they would be adversely affected as they would not be entitled for welfare schemes either in their respective States, nor from Delhi. This would be extremely disadvantageous for advocates from the NCR region/neighbouring areas.

24. He submits that the Bar Councils in other states also have various rules, which limit the extent of practice which the advocates from the NCR region/neighbouring areas registered with BCD can engage in. Reliance is

placed upon the judgment of the Supreme Court in *Jamshed Ansari v. High Court of Judicature at Allahabad & Ors.*, AIR 2018 SC 3997 to argue that, in effect, there is a bar on lawyers enrolled with one State Bar Council to appear in another High Court without a local lawyer. Thus, interest of advocates from the NCR region/neighbouring areas should not be jeopardized by excluding them from benefit of the welfare Scheme launched by the Delhi Government.

25. Thereafter, the Petitioner relies upon the decision in *Social Jurist, A Civil Rights Group v. Government of NCT of Delhi & Anr.* (2018) 253 DLT 466 (DB), wherein a similar eligibility criteria of voter ID card for grant of medical care was struck down by the Court. He submits that the restriction that medical treatment would only be extended to persons who have voter ID cards in Delhi having been struck down in *Social Jurist (supra)*, the same criteria cannot be adopted even for extension of Mediclaim or Life Insurance policies, which are akin to grant of medical treatment.

26. It is further argued that the present case is not only a case of discrimination, it also relates to the right to live inasmuch as the insurance is a form of social security and the same is protected under Article 21 of the Constitution of India. Reliance is place upon *LIC of India & Ors. v. CERC & Ors.*, AIR 1995 SCC 1811, *Kirloskar Brothers Ltd. v. ESIC*, AIR 1996 SC 3261 and *United India Insurance Company Ltd. v. Jay Prakash Tayal*, 247 (2018) DLT 379. He seeks to distinguish the judgment in *DP Joshi v. State of M.B.*, AIR 1955 SC 334 by arguing that the domicile in that case related to capitation fee and not any health related issue. Moreover, domicile is an issue which is decided on the basis of birth, education and property but

not on the basis of voter ID.

27. It is further submitted that since the crèche facility and the library facility, which is also part of the scheme, cannot now be set up owing to the current situation, the budgetary allocation could also be made flexible. Since these facilities, if established, cannot be discriminatory *qua* lawyers from the NCR region/neighbouring areas, even the insurance facility should not be discriminatory.

28. In conclusion, the Petitioner submits that the said criteria and the cabinet decision dated 18th December, 2019 and the consequent notification dated 17th March, 2020 deserves to be struck down and the Welfare Scheme ought to be extended to include advocates from the NCR region/neighbouring areas who are registered with BCD as well. So long as they are registered with the BCD, advocates who may be from the NCR region/neighbouring areas should be entitled to the benefit of the Scheme. He further submits that all those advocates, whose verification has been conducted by the BCD, being residents of NCR region/neighbouring areas, should be entitled to the Scheme this year.

29. Mr. Chaturvedi lastly submits that if the budget is not available with the GNCTD, some part of the premium can be contributed by the advocate concerned who is a beneficiary, so as to ensure that the Scheme can be made workable and the budgets are not overstretched.

Submissions of Mr. A.S. Chandhiok, Senior Advocate for the Petitioners in W.P.(C) 3357/2020

30. Mr. A.S. Chandhiok, Id. Senior Counsel appearing for the Petitioners in W.P.(C) 3357/2020 submits that in the case of the BCD, or any other State Bar Council, primacy is given to the place of practice and not to the

place of residence. Reliance is placed on the Certificate and place of Practice (Verification) Rules, 2015, wherein repeated emphasis has been placed on the place of practice and jurisdiction under which the advocate intends to practise.

31. Ld. Senior Counsel submits that the verification which is conducted by the BCD also relates to the place of practice. The roll of advocates mentions the place and address and not just the name of advocates. Clause 6.1 of the Rules, which provides for where an advocate is to get himself/herself registered, uses the expression “*where he ordinarily practices law or intends to practice law*”. On the strength of Clause 6.2, it is submitted that even when one advocate leaves one Bar Association and moves to another State, he has to inform the said change to the State Bar Council where he is enjoying membership. Chapter 4, Rule 8 of the Rules is also relied upon to argue that the “Certificate to practice and place of Practice” which is received is also to be verified by the BCD, prior to enrolling an advocate.

32. The submission is also that there is no importance or relevance of whether the advocate is a voter or not. What is important is the Court or the place where the advocate would practice inasmuch as an undertaking is also given by the advocate that if he shifts his place of practice, his enrolment would also have to be transferred.

33. Reference is also made to the definition of “Voter”, “Electoral Roll” and other provisions of the Bar Council of Delhi Rules, 1963 to emphasize that even the BCD Rules do not give any importance to the place of residence of the advocate. The electoral roll relates to the electoral roll maintained by the BCD in which every member is permitted to vote.

Specific reliance is placed upon Rules 115, 120 and 125.

34. Mr. Chandhiok, Id. Senior counsel, refers to the declaration to be given by an advocate who seeks registration. The undertaking requires the advocate to mention that he intends to practice as an advocate within the jurisdiction of the BCD, which includes the NCR region. Reference is also made to the budget speech given at the time when the Scheme was announced to argue that the same was meant to be a welfare measure for advocates practising in Delhi, which is also clear from page 45 of the documents compilation. Neither the budget speech nor the Scheme mentions residence as being important in any manner whatsoever.

35. As per the Master Plan, the various zones which are carved out which mention the NCR and NCT region also show that the Master Plan itself contemplates that the persons who are resident in the NCR, are part of the broader Delhi region. Hence, it is submitted that there cannot be a differentiation by the Delhi Government on the basis of voters and non-voters.

36. Reference is made to the Rules of the High Court of Rajasthan, the Allahabad High Court Rules and the Punjab & Haryana High Court Rules to show that those members who are enrolled with the BCD, would not be permitted to practice in these High Courts like localites, even if their residence is in States which are in geographical proximity to Delhi. Once a lawyer is enrolled with the BCD, he or she would be required to engage a local lawyer to appear in these Courts, which itself proves the fact that the benefit would have to be extended to all advocates enrolled with the BCD. It is also submitted that if the other State Bar Councils come out with any welfare scheme, it would apply only to the advocates registered on their roll

and not advocates who are residing in the said States. Place of residence having no relevance under the entire scheme of the Certificate and place of Practice (Verification) Rules, 2015 or the BCD Rules, the said distinction which is now sought to be made is not a tenable distinction.

37. Finally, Mr. Chandhiok, Id. Senior counsel concludes by submitting that the measure which has been taken by the Delhi Government is a welfare measure for providing security, medical facilities, etc. to lawyers and the same cannot be converted into an election campaign. He submits that the lawyers who are practicing in Delhi have made a great contribution in the dispensation of justice in the Delhi Courts.

38. Page 8 of the counter affidavit is relied upon to argue that during the implementation of the scheme, an e-mail dated 16th March, 2020 was sent to all the lawyers who are enrolled with the BCD, which included the advocates from the NCR region/neighbouring areas. Thus, the scheme was never meant only for lawyers who are residents of Delhi but to all lawyers who are enrolled with the BCD whose verification would be done.

39. Mr. Chandhiok, Id. Senior Counsel also clarifies that this is not a case where the writ of mandamus is sought. This is a case where quashing of the requirement of the voter ID of Delhi is being sought, which is a condition in this scheme. Thus, it is in the nature of a writ of certiorari.

Submission of Mr. Rajiv Khosla, Advocate for the Petitioners

40. Mr. Rajiv Khosla, Id. counsel appearing in support of the Petitioners submits that it was publicly declared by the Chief Minister of GNCTD that the outlay of Rs.50 crores is not the maximum amount and in fact, public functions have been addressed where it was made clear that even if the amount is increased, advocates should be provided the medi-claim and the

life insurance. Similar submissions were also made by Mr. Rakesh Khanna, Senior Counsel and Mr. K.C. Mittal, Id. Sr. Counsel, as also the ex-chairperson of the BCD,

41. Id. counsel submits that during the Covid-19 pandemic the discrimination is to such a great effect that if there is a death of any advocate and the said advocate is a resident of Delhi, he or she is entitled to Rs.10,00,000/- under the scheme, whereas if that advocate is not a resident of Delhi, he/she is not being benefitted under the scheme. He submits that such discrimination ought not to be permitted by the Court.

Submissions of Mr. Ramesh Gupta, Senior Advocate for the BCD

42. Mr. Ramesh Gupta, Id. Senior Advocate, who is also the current Chairman of the BCD, submits that the lawyers practising in Delhi, who could not register and had to go back to their home town, ought to be given liberty to register for availing of the benefit of the scheme. He further submits that advocates from the NCR region/neighbouring areas, who are primarily practicing and appearing in Delhi District Courts and Delhi High Court ought to be permitted to avail of the benefit under the said scheme.

Submission of Mr. Rakesh Khanna, Senior Advocate for the BCD

43. It is submitted that the present petitions raise two issues, first is in respect of the opening of a window of opportunity for those advocates who could not register themselves for availing the benefit of the Chief Minister's Advocates Welfare Scheme and secondly, as to whether the benefits of the Scheme ought to be extended to advocates who are residents of the NCR region/neighbouring areas.

44. Insofar as the first issue is concerned, it is urged that the insurance companies have already agreed to make available insurance policies on the

basis of pro-rata arrangement i.e., for the remainder of the period for which insurance has been availed of for the entire set of lawyers to whom policies have already been issued. Accordingly, it is submitted that even if a window of opportunity is opened as on date, the insurance premium that would be payable would be on a pro-rata basis for the remainder of the period and hence, no prejudice would be caused.

45. Insofar as the second issue is concerned, in respect of the advocates who are residing in the NCR region/neighbouring areas, reference is made to the provisions of the Advocates Act, 1961, including the definitions.

46. On the basis of Sections 16 and 18 it is argued that the important fact is the place where the advocate is practicing and not the place of residence of the advocate. Under Section 24, the various qualifications which are needed for an advocate to be admitted on a State roll are specified and residence is not one of the criteria. It is thus urged that the concept of residence is completely alien to the Advocates Act, 1961 and to the roll maintained by the Bar Council.

47. Reliance is, thereafter, placed on the rules of the BCD, specifically Rule 102, Rule 120 and Rule 140, as also the declaration form and the undertaking which is given by every advocate. It is emphasised that the undertaking is to the effect that every advocate would undertake to practice ordinarily within Delhi and is not required to give an undertaking that he would reside in Delhi.

48. The following judgments are also cited to support the proposition that advocates are governed by the Advocates Act, 1961 and even when pensionary benefits etc. are to be computed in respect of those persons who are either part of the district judiciary or the higher judiciary, the computing

of experience is on the basis of the years of practice by being attached to a particular Bar Council and not the place of residence:

1. *S.P. Gupta v. President of India & Ors., AIR 1982 SC 149*
2. *All India Young Lawyers Association v. GNCTD & Ors., (2006) 128 DLT 29 (DB)*
3. *State (NCT of Delhi) v. All India Young Lawyers Association, (2009) 14 SCC 49*
4. *P. Ramakrishnam Raju v. Union of India & Ors., (2014) 12 SCC 1*
5. *Shanker Raju v. Union of India & Anr., 2019 SCC OnLine Delhi 6675*

49. On the basis of all these judgments, it is argued by Mr. Khanna that advocates are to be considered as one class of persons and there cannot be any demarcation or delineation based upon the residence of the advocate.

50. Insofar as the Scheme is concerned, the Committee's report is relied upon to argue that the report recommended that the advocate has to be registered with the BCD. Insofar as the voters list is concerned, the same related to the Bar Association which is located within one of the Court complexes in Delhi. It is not specified that the voter ID has to be showing residence of Delhi. It is, thereafter, argued that there are various schemes floated by the GNCTD, like the Delhi Government Employees' Health Scheme wherein medical facilities are made available to employees working with the Delhi Government. In the FAQ questions 1 and 16, it is made clear that the beneficiaries are those who work with the Delhi Government. Even those beneficiaries who have settled outside Delhi, in the NCR region are entitled to the benefits of the scheme. Thus, the NCR region has always been contemplated to be within Delhi and in any event, even for such health

schemes, the fact that the employee resides outside Delhi does not disentitle the employee of benefits under the Scheme.

51. Thereafter, other Schemes meant for migrant workers, mid-day-meal schemes etc. are relied upon to argue that migrant workers belonging to different States are also entitled to benefits under the scheme. Students may be residing in Gurgaon or Noida but so long as they study in schools in Delhi, they are also entitled to the benefit of the schemes. Similarly, in order to avail of the reservation which is available for 85% Delhiites, students who study in Delhi in class 11 and 12 are entitled to the benefit of the scheme, irrespective of whether the said students reside within Delhi or not.

52. A distinction is sought to be made insofar as advocates who may be practicing in Delhi but not enrolled with the BCD are concerned. It is submitted that even those advocates who may be residing in Delhi, practicing in Delhi but not enrolled may not be entitled to the benefit of the scheme and therefore, what is relevant is the enrolment with the BCD and not residence in Delhi.

53. It is further urged that under the Rules of the BCD, so long as the advocates are subject to the code of conduct prescribed by the BCD, advocates would be entitled to the benefit of the Scheme. Those advocates who are practicing in Delhi also render services to the citizens of Delhi, they contribute to the revenue of the Delhi Government by paying court fee and stamp duty etc. Thus, the said advocates hailing from Delhi NCR/neighbouring areas cannot be discriminated against.

54. Finally, it is argued that the distinction sought to be made between advocates who are residents of Delhi and those from the NCR

region/neighbouring areas is not based upon an intelligible differentia. There is no nexus with the object which is sought to be achieved, the object being to help advocates by providing social security. Enormous discrimination would be caused if advocates who cannot afford residences in Delhi and who belong to a lower financial strata or having financial disabilities are deprived of the benefit of the scheme. A scheme being a social welfare scheme should be meant for those advocates who have financial disabilities rather than simply to those who can afford to buy residences in Delhi. Though the issue is one of policy, since the Right to Health is recognised under Article 21 of the Constitution of India, to which even a foreigner is entitled, advocates from the NCR region/neighbouring areas ought not to be deprived of the same.

Submissions of Mr. Rahul Mehra, Standing Counsel (Criminal), GNCTD

55. Mr. Rahul Mehra, Id. Senior Advocate along with Mr. Satyakam, Id. ASC, have made submissions on behalf of the GNCTD. The following broad propositions have been canvassed before this Court:

- (i) There is no statutory duty which exists upon the GNCTD and hence, a writ of mandamus cannot be issued. Thus, the writ itself is not maintainable.
- (ii) The question as to which category of lawyers are eligible for benefits under the Scheme is an issue of policy in which the intervention of Court would be very limited. The manner in which the Rs. 50 crores is to be utilised would also be a question of policy. The two requirements of enrolment with the Bar Council of Delhi and possessing a voter ID of Delhi is a decision which the Government has taken in order to ensure that the benefits which are being extended

do not exceed the amount of the outlay. Both these issues are questions of policy which cannot be interfered with by the Court.

(iii) In so far as the domicile issue is concerned, the question of domicile is again a decision which the Government has taken in order to give benefits to local citizens.

56. The submission of Mr. Mehra, Id. Standing Counsel, in respect of the first proposition is that there has been no failure to perform a statutory duty by the GNCTD. The Petitioners do not have any legal rights which they can enforce by filing a writ of mandamus. The Scheme, being a welfare scheme akin to schemes which are launched to benefit a section of the public, the same cannot be enforced like a statutory right.

57. The submission is that the BCD has an obligation to take care of all lawyers and this obligation cannot be transferred upon the GNCTD in the manner in which it is sought to be done. Reliance is placed on the following three judgments:-

- (i) ***Oriental Bank of Commerce v. Sunder Lal Jain, (2008) 2 SCC 280;***
- (ii) ***Union of India v. C. Krishna Reddy, (2003) 12 SCC 627;***
- (iii) ***Umakant Saran v. State of Bihar, (1973) 1 SCC 485***

58. The next submission on behalf of the GNCTD is that the present Scheme is completely independent of the duties and obligations of the BCD under the Advocates' Welfare Fund Act, 2001. Reliance is placed on the provisions of this Act to highlight the fact that under Section 24 of this Act, the primary purpose of creation of this fund was to enable availing of life insurance policies and medical insurance policies for members of the

fund. However, though this Act was enacted way back in 2001, for almost two decades, no insurance policy has been availed off for lawyers.

59. The Court then queried the Chairperson of the BCD, as also Mr. Sangwan, Id. Counsel, as to whether any life insurance or other policy has been availed of for advocates. However, their response is that due to the lack of adequate funds no policy could be availed of since the enactment of this particular statute.

60. It is submitted that it is only for enforcement of a statutory duty that a writ is maintainable. Unless a statute imposes this legal duty and the writ petitioner shows a legal right, a writ of mandamus cannot be issued.

61. In respect of the argument that the Chief Minister's Advocates Welfare Scheme is a policy matter, reference is made to the Cabinet decision dated 18th December, 2019 which was made public on 19th December, 2019. As per the said decision, the proposal that was approved by the Cabinet was contained in paragraphs 6,7 and 8 of the Cabinet note.

62. While referring to the note which was placed before the Cabinet, the purpose of the scheme i.e., to benefit lawyers who play a central role in various facets of life, is set out. It is highlighted that the purpose, as is evident from the Cabinet Decision as well as the background note is to recognize the role of lawyers in the strengthening of democracy and to ensure that the amounts are properly utilised for the welfare of lawyers. However, it is submitted that the term '*practicing advocate*' in Scheme 1 and Scheme 2, has to be read along with paragraphs 6, 7 and 8, where it is specifically mentioned that the scheme would apply to practicing advocates who are enrolled with the BCD and are on the voters list of Delhi. Thus, the word '*practicing advocate*' cannot be read in isolation and the entire scheme

has to be read as a whole. The policy decision taken by the Cabinet was to approve paragraphs 6,7 and 8 of the note placed before it. Paragraph 7 of the note clearly stipulates both these conditions as pre- conditions for being eligible to avail of the scheme. Thus, it is submitted that reliance on the word '*practicing advocate*', which is being pressed into service in isolation, would not be a tenable submission.

63. Moreover, it is submitted that a policy decision consists of two separate steps. Firstly, the approval of a sum of Rs.50 crores as the maximum amount to be spent on the Scheme. Within the said amount, the Government had the discretion to expand it in whatever manner it sought appropriate for the welfare of advocates. After receiving approvals from the insurance companies as to the insurance premium that they would be charging, the following four items were agreed to be introduced for the welfare of advocates:

- i) Group (Term) Insurance;
- ii) Group Medi-claim Coverage;
- iii) E-library; and
- iv) Creche Facility.

64. The said four schemes are not the end in itself, however, the final amount is Rs.50 crores within which these four schemes were fitted in order to benefit lawyers. Thus, it is submitted that the twin policy decisions are; one, Rs.50 crores being assigned as the maximum amount and secondly, the four schemes which have been mentioned in the decision itself.

65. It is further submitted that the GNCTD consulted all the stake holders in the matter and thereafter, a Committee was constituted, consisting of Presidents of various Bar Associations, the Chairman of the Bar Council of

Delhi and two other advocates, who would represent the interest of lawyers. A twelve members committee was constituted under the convenorship of Mr. Rakesh Khanna, Sr. Advocate, who, at that time was the President of the Supreme Court Bar Association. This Committee had, after considering the entire matter, clearly concluded that the Scheme would be applicable to 40,115 advocates who are both verified on the BCD's roll and who are on the electoral roll. The mere fact that the list of advocates contained advocates who are from NCR region/neighbouring areas would not by itself make them eligible if the initial eligibility conditions, as approved by the committee, were not satisfied.

66. Reliance is placed upon the declaration form for the welfare scheme which asks for the voter ID card. This, according to Mr. Mehra, means that only if the advocate is registered as a voter in Delhi, in terms of the policy decision taken, can he/she be entitled to the benefit under the scheme.

67. Thus, on the question of policy, Mr. Mehra's concluding submissions are:

- i) that the object of the scheme is paramount i.e., it intends to extend benefits to advocates who are enrolled with the BCD and who are residents of Delhi;
- ii) the amount of Rs.50 crore was a sacrosanct amount. The said amount is not a temporary amount which has been allocated but a sum within which the benefits are to be made available;
- iii) the manner in which the said amount was to be extended is again, a question of policy. There is no obligation of any nature on the GNCTD to extend this policy. The scheme is an *ex-gratia* scheme meant for the benefit of a particular class of citizens, recognizing their

contribution to society. Accordingly, it is submitted that the arguments of the Petitioner that the scheme should be extended to advocates from the NCR region/neighbouring areas is without any basis and the policy ought not to be interfered with in any manner.

68. Heavy reliance is placed upon the judgment of the Supreme Court in *D.P. Joshi v. State of M.B., AIR 1955 SC 334* in order to canvass the proposition that a State Government can extend schemes on the basis of residence. Thus, any scheme which is floated based on domicile or residence would not violate any law, inasmuch as the classification based on residence is perfectly valid and legal in the constitutional scheme.

69. It is further submitted, relying upon the judgment in *State of A.P. v. Nallamilli Rami Reddi, (2001) 7 SCC 708* that as long as the classification is a permissible classification and is based on intelligible differentia, the same ought to be upheld by the Court.

70. Further, it is submitted that the Committee's recommendation is at best a recommendation insofar as the GNCTD is concerned and the same would not be binding. What would be binding is the finally approved scheme, which requires that the name of the advocate appear in the voters list in Delhi.

71. Thereafter, Mr. Mehra, Id. Senior counsel, highlights the issue as raised in the Constitutional Bench judgment in *State of (NCT of Delhi) v. Union of India & Another, (2018) 8 SCC 501* to argue that executive power of the Council of Ministers is co-extensive with the legislative power and in view of entry 26, list III of the 7th Schedule to the Constitution of India, the GNCTD has complete freedom to exercise its executive jurisdiction within its territorial limits only and not beyond that.

72. It is finally argued that as per paragraphs 25 and 41 of the written submission, that admissions to hospitals and to schools cannot be equated with welfare schemes. Giving admission to non-residents of Delhi in hospitals would constitute a part of right of life, however, the same standard cannot be applied by the Court when the question is of extending a welfare scheme to advocates who are non-residents of Delhi.

73. Finally, it is submitted that the initial proposal which was requested from the GNCTD was for an outlay of Rs.5 crores, which was thereafter increased to Rs.15 crores and finally to Rs.50 crores. Considering the amount of premium which is now charged by the insurance companies, it is submitted that the GNCTD cannot be forced to extend the insurance policies to lawyers/advocates who are residing outside the National Capital Territory of Delhi.

74. Insofar as the extension of the date for registration is concerned, Mr. Mehra, Id. Sr. counsel submits that there were a total of 40,000 lawyers which were part of the pool and approximately 37,145 lawyers had applied. Out of them, 6,476 were duplicate and the remaining were 30,669. Thus, out of the 40,000 pool almost 100% had already applied and hence, there is no reason why the date needs to be extended further.

Submission of Mr. Apoorv Kurup, Advocate for the Union of India

75. Mr. Apoorv Kurup, Id. counsel appearing for the Union of India submits that in these writ petitions, there are no reliefs sought against the Union of India. Insofar as the Union of India is concerned, there is no budgetary provision for contributing for the benefit of advocates from Delhi or the NCR region/neighbouring areas. Moreover, no discrimination can be made at this stage by the Union of India between advocates and other

professionals. Since the scope of the present writ is only related to the Chief Minister's Advocates Welfare Fund, the Union of India has no role to play.

Submission of Mr. Vaibhav Kalra and Mr. P.K.Dixit, Advocates

76. Mr. Vaibhav Kalra, ld. counsel points out order dated 28th August, 2020 wherein it is clearly noted that initially the tender was for 40,115 advocates and the said advocates included advocates from the NCR region/neighbouring areas. It was only when the initial tender could not be carried to its logical conclusion and the re-tender was done and the number of lawyers was restricted.

77. Mr. P.K. Dixit, ld. counsel who is a new lawyer enrolled in December, 2020 submits that he is a resident of Delhi and he has now been enrolled with the BCD and one opportunity ought to be given to him to register for the Scheme.

Analysis and Findings

78. During the pendency of the petitions, the Scheme has been rolled out and insurance has been provided to a large number of advocates. Considering the reliefs sought, the issues that now remain to be adjudicated in these writ petitions are:

- i. Whether advocates registered with the BCD who reside in the NCR region/neighbouring areas are entitled to benefits under the Scheme?
- ii. Whether registration ought to be reopened to enable advocates who missed the initial deadline to obtain benefit under the Scheme?

Issue (i) - Whether advocates registered with the BCD who reside in the NCR region/neighbouring areas are entitled to benefits under the Scheme?

79. The profession of advocates is recognised by the Advocates Act, 1961. Under Section 2(a), an “*advocate*” means an advocate entered in any roll under the provisions of the Advocates Act, 1961. As per Section 2(d), “*bar council*” means a bar council constituted under the Act. Most States and Union Territories have separate bar councils. The “*State Bar Council*” under Section 2(m) for Delhi is the Bar Council of Delhi. The BCD is provided for under Section 3(f) as under:

“3. State Bar Councils.—(1) There shall be a Bar Council—

...
(f) for the Union territory of Delhi, to be known as the Bar Council of Delhi.

...”

80. The procedure for admission and enrolment of advocates is set out in Chapter 3 of the Act. Under Section 17, every State Bar Council is required to prepare and maintain the roll of advocates. The said roll would consist of the names and addresses of all the persons who are admitted as advocates on the roll of that State Bar Council. The roll of advocates is maintained on the basis of seniority, which is determined on the basis of the date of enrolment or admission of the advocate. Section 18 permits transfer of the name of the advocate from one State roll to another. Under Section 24, any person can be enrolled by the State Bar Council if the person is a citizen of India, has completed 21 years of age, has obtained a degree in law which is recognised by the Bar Council of India and fulfilled such other conditions as specified in the Rules of the concerned State Bar Council. It is relevant to note that

under Section 24, in order to obtain enrolment in the roll of a State Bar Council, the person need not be a resident of that particular State. Advocates are the only class of persons who are entitled to practise law as per Section 81. Under Section 34 of the Advocates Act, 1961, High Courts of the respective States have the power to make rules that lay down the conditions subject to which advocates would be permitted to practise in the High Court and the courts subordinate thereto. This provision would be of some significance and shall be discussed later.

82. Advocates who are on the roll of a State Bar Council are subject to the supervision and disciplinary control of the said State Bar Council. The State Bar Council has the power to entertain and consider complaints against an advocate. Under Section 35 of the Advocates Act, 1961, upon consideration of any complaint, the disciplinary committee of the State Bar Council can dismiss the complaint, reprimand the advocate or even resort to the extreme step of removing the name of the advocate from the roll of advocates. If an advocate's name is removed from the roll of advocates by any State Bar Council, no other bar council can permit such an advocate to be enrolled in their bar council.

83. Apart from the disciplinary committees of the State Bar Councils, the Bar Council of India (*hereinafter, 'BCI'*) also has disciplinary powers over advocates. In addition to the provisions of the Advocates Act, 1961, the BCI is governed by its own rules, namely, the Bar Council of India Rules, 1975, which were last amended in 2020.

84. Insofar as the BCD is concerned, there are various rules which have been enacted. The Bar Council of Delhi Rules, 1963 are quite extensive and the relevant rules are set out below:

“115. Every advocate shall notify to the Council from time to time any change of address and all suspensions or assumptions of practice. Every such intimation shall contain the roll number of the advocate, the date of his enrolment, his address and other necessary particulars.

...

120. The Council shall prepare and maintain a Roll of Advocates in which shall be entered the name, address and the date of enrolment of each advocate and any action decided to be taken by the Disciplinary Committee against such an advocate from time to time .

...

123. In case of an advocate duly transferred to the Bar Council of another State, his name shall be removed from the roll and an intimation to that effect shall be sent to the Bar Council of the State to which he has been transferred as well as to the Bar Council of India. In case of an advocate whose name has been duly transferred from the Bar Council of another State an entry to that effect, maintaining his seniority as in the State from which he has been transferred, shall be made in the roll.

...

125. Subject to the provisions of section 21(I) of the Act any dispute, arising in respect of the seniority of any person on the roll of advocates maintained by the Council shall be referred to the Enrolment Committee which shall submit its report to the Council. The decision of the Council thereon shall be final.”

85. The declaration form to be filled by every person who intends to get enrolled with the BCD requires the person to fill in their name, address, date

of birth etc. The form requires the advocate to express their intention to practise as an advocate within the jurisdiction of the BCD. The relevant paragraph of the said form is set out below:

“I intend to practise as an Advocate within the jurisdiction of the Bar Council of Delhi and have therefore to request you to enter my name and address on the Roll of the Bar Council.”

86. In the application form to be filed with the BCD, the permanent address as also the temporary/present address is sought. The other declarations which are sought are that the person proposes to practice law within the State of Delhi. An undertaking is given in the following terms:

“UNDERTAKINGS

...

(c) I do hereby declare and undertake that –

...

*(iv) **I intent to practice ordinarily and regularly within the jurisdiction of the Bar Council of Delhi.***

(v) I shall inform the Bar Council of any change of address of my residence or place of practice for the proper maintenance of the roll and the voter’s list.

...”

87. Apart from the provisions of the Advocates Act, 1961 and the Bar Council of Delhi Rules, 1963 the Bar Council of India has also enacted the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 (*hereinafter, “BCIPP Rules”*). Under Rule 5 of these rules, the BCI issues a certificate of practice to advocates after they qualify the All India Bar Examination. Under Rule 6, an advocate needs to be a member of the

bar association where he or she normally practices law. Under Rule 6.2, if an advocate leaves one bar association and joins another, due to change of place of practice or by reason of change of field of law, intimation of this would need to be given to the State Bar Council. As per these Rules, the verification of lawyers is conducted by the bar councils and the certificate of practice is only valid for a period of five years.

88. A conjoint reading of the provisions of the Advocates Act, 1961, the Bar Council of Delhi Rules, 1963 and the BCIPP Rules shows that insofar as advocates are concerned, primacy is given to the place of practice and not to the place of residence of the advocate. An advocate is entitled to register in the State where he/she intends to primarily practice. The reason for this is that an advocate may have a permanent place of residence in any part of the country but choose to practice in a different geographical area. There are advocates who may want to specialise before particular forums and may choose to reside in the place where that court, forum, tribunal, authority etc. is located. Financial constraints could also compel advocates to not live in a metropolitan area but still practice in the said metropolitan area. So long as the advocate intends to regularly practise in a particular geographical territory, he/she is entitled to enrol with the Bar Council of that State/ Union Territory. Upon enrolling with a particular Bar Council, the advocate is governed and controlled by the rules and regulations of the said Bar Council. In none of these statutory provisions or rules is any importance given to the place of residence of the advocate. The address of the advocate is sought only as a means of information and the same can be changed with intimation being given to the Bar Council. Thus, the place of residence of the advocate does not affect the status of the advocate or take away the right of the

advocate to practise in a particular jurisdiction.

Legal practice in Delhi and the NCR region/neighbouring areas

89. The country's capital Delhi enjoys a unique position, especially in respect of the practice of law. The physical location of the Supreme Court in Delhi is a major focal point for advocates from across the country. It is the aspiration of most advocates to be able to practise in Delhi. A large number of specialised fora, authorities etc., where advocates can practise, are also located in Delhi. The High Court of Delhi and the District Courts in Delhi attract a large quantum of important commercial litigation, owing to the economic activity in and around Delhi. The quantum of non-commercial litigation in the Courts is also quite high.

90. The city of Delhi itself is home to a large number of families which have moved here during partition and families which have migrated to Delhi due to professional or employment compulsions. There are also a large number of first-generation lawyers who have shifted to Delhi in order to achieve their aspirations. Delhi, by itself, is an extremely cosmopolitan city and the profession of law is no exception. Advocates in Delhi hail from all across the country and have achieved great laurels. The Bar in Delhi is extremely cosmopolitan in nature and has accepted persons from all over India with an open heart.

91. It is common knowledge that the people who are employed in Delhi live in the outskirts of Delhi, which includes the States of Uttar Pradesh (U.P.), Punjab, Rajasthan and Haryana, due to various reasons including economic and financial reasons. However, their entire career is based in Delhi. This character of Delhi is, in fact, recognised while constituting the National Capital Region, which includes the Union Territory of Delhi and

areas from Haryana, U.P., Rajasthan, etc. The National Capital Region Planning Board Act, 1985 has been amended from time to time to add various territories into the NCR region. Delhi is no longer simply the Union Territory of Delhi but includes the NCR region. The people residing in the NCR region/neighbouring areas contribute immensely to the progress of Delhi. It is estimated that a large percentage of employees working in Delhi, including in the Central and State Government, as also private establishments, do not reside in Delhi but in the NCR region/ neighbouring areas.

92. Specifically in the case of advocates, a substantial number of advocates who primarily practice in Delhi live in the NCR region/neighbouring areas, including in areas such as Noida, Gurugram, Sonapat, Rohtak, Faridabad, Ghaziabad, some areas of Punjab etc. They commute from these areas to Delhi almost on a daily basis. Such advocates are registered with the BCD and are also members of the Bar associations of the court complexes where they practice. They play an important role in serving the citizenry in Delhi and assisting courts in Delhi for the adjudication of disputes. They also contribute to the revenue stream of the Delhi Government by practising in Delhi. They may also have chambers/offices in various court complexes in Delhi.

93. The practice of law in Delhi is pivoted on appearing before various courts and forums in Delhi. The advocates' place of residence has no bearing on this whatsoever. Moreover, the place of residence of the advocate is also not set in stone. Depending upon the income levels of the advocate, the advocate may move to Delhi. It is a matter of common knowledge that not all advocates can afford housing in Delhi and may, therefore, choose to

reside in the NCR region/neighbouring areas. However, the character of their practice, being essentially in Delhi, would not change.

94. It is in the backdrop of this legislative scheme and the nature of Delhi NCR that the issue in respect of lawyers based in the NCR region/neighbouring areas is to be adjudicated.

Legal issue raised:

95. The question as to whether the Scheme can be restricted to advocates who have voter ID cards of Delhi has various legal dimensions. The fundamental submission of the GNCTD is that the Scheme being a welfare scheme and not emanating as a statutory right, it is up to the Government to craft it in whatever manner it deems fit. If the Government wishes to restrict the benefits of the Scheme to a sub-classification of advocates registered with the BCD as also residing in Delhi, the Court cannot interfere in this policy decision.

96. On the question whether Courts can interfere in policy decisions of the Government, the law is well settled by various judgments of the Supreme Court, including *Balco Employees' Union (Regd.) v. Union of India*, (2002) 2 SCC 333, *Sidheshwar Sahakari Sakhar Karkhana Ltd. v. Union of India*, (2005) 3 SCC 369 and *Directorate of Film Festivals v. Gaurav Ashwin Jain*, (2007) 4 SCC 737. In *Directorate of Film Festivals (supra)*, the Supreme Court has observed as under:

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the

Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364] , Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] , Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304] , BALCO Employees' Union v. Union of India [(2002) 2 SCC 333] , State of Orissa v. Gopinath Dash [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162])”

From the above it is clear that Courts may interfere in a policy decision of the Government,

- if the same violates the fundamental rights of the citizens,
- is opposed to the provisions of the Constitution,
- is opposed to any statutory provision or
- is manifestly arbitrary.

97. This Court is of the opinion that the submission that Courts cannot at all interfere in policy matters or fix the contours of such policy decisions, would thus not be tenable. Almost all decisions of governments taken as executive decisions would involve policy matters. Such decisions, as per the settled law would be amenable to judicial review, if it is seen that the same is either discriminatory or arbitrary. There cannot be a hard and fast rule that in a welfare scheme, Courts cannot interfere, even if they are violative of the rights of a section of the citizens.

98. In the backdrop of this legal position, whether the sub-classification of advocates registered with the BCD would be permissible in law is the question. In order to decide this issue, the Court would have to consider the object sought to be achieved by the Scheme and whether, considering the object, the sub-classification which has been carved out is based on an intelligible differentia. If the said sub-classification is not based on an intelligible differentia, then the said condition would be violative of Article 14 of the Constitution of India and the Scheme would be liable to be extended to lawyers from the NCR region/neighbouring areas.

Object of the Scheme:

99. The object of the Scheme which is the subject matter of the present writ petition is contained in the following documents:

- a. Order dated 29th November 2019 constituting the Committee
- b. The Report of the Committee
- c. The background note put up by the Minister (Law), GNCTD
- d. Cabinet Decision No. 2794 dated 18th December 2019 approving the Scheme

100. A perusal of the above four documents shows that the stated object sought to be achieved by the Scheme is the recognition of the role played by advocates in society and the legal profession in particular. The Scheme is for the welfare of advocates. The note put up by the Minister (Law), GNCTD before the Council of Ministers again states the object of the Scheme to be to recognise the following roles played by advocates in society:

- drafting the Constitution of India
- protecting the basic rights of the citizenry
- upholding the concepts of secularism, democracy and egalitarianism

- leading and reforming the nation
- fighting against wrongs and nurturing an environment which is just and strong and conducive for constructive dialogue among citizens
- building a strong democracy
- encouraging active citizen engagement and participation in nation building.
- fostering a society which is equitable and conscientious.

101. In recognition of the above stated roles played by advocates, the Chief Minister of Delhi announced the Scheme with an outlay of Rs.50 crores to be utilised for the welfare of the legal community. All other documents placed on record by the GNCTD, including the minutes of meeting, primarily relate to the implementation of the Scheme as conceived in the above four documents.

102. A perusal of the stated objects for which the Scheme was conceived and promulgated shows that the Scheme has the intention of recognising the positive role played by advocates in society. Nowhere do these documents provide a reason for the Scheme to be restricted to those advocates who have a voter ID card of Delhi. The Scheme has not been announced for advocates who constitute the electorate for the GNCTD but for recognising the contribution of advocates in bettering the lives of the citizenry of Delhi and the practice of law in Delhi.

103. A perusal of the report of the Committee shows that the Committee never considered voter ID cards of Delhi as being an essential pre-condition for availing of benefits under the Scheme. The pre-condition that the names of the advocates should be in the voters list of Delhi is seen for the first time in the background note put up by the Minister (Law), GNCTD before the

Council of Ministers, GNCTD. There is no discussion in the entire background note as to the reason why the Scheme should be restricted to only those advocates whose names are in the voters list of Delhi. Apart from the above mentioned four documents, even contemporaneous documents and events such as the Budget Speech 2019-20, do not restrict the Scheme's applicability to residents of Delhi:

“105. On the request of the Supreme Court, the High Court and the District Courts Bar Associations and realising the struggle and difficulties of young Lawyers, our Government is proposing a new scheme in 2019-20 i.e., “Chief Minister Advocates’ Welfare Scheme”, for which, an amount of Rs.50 crore is provided in the budget. This fund will be utilised for various social security measures: life insurance, medical facility, scholarship etc. for the needy advocates and their family members. This is a remarkable initiative for the legal community and shall pave the way for the welfare of legal professionals in the country.”

104. The stand of the GNCTD that the pre-condition of having a voter ID card of Delhi is to honour advocates who are residents of Delhi and intend to exercise the right of adult suffrage and not only advocates practicing in Delhi, is belied by the fact that the documents referred to above do not mention this being the object anywhere. Further, in its own counter affidavit, the GNCTD has stated as under:

“XI. It is submitted that the Voter Identity card is a valid residence proof to ensure that the applicant is a resident of Delhi which is apart from the requirement that the applicant practices in the Courts of Delhi.”

105. Thus, as is clear from the GNCTD's counter affidavit and all the other

documents referred to above, the voter ID card of Delhi was to merely act as proof of residence. However, the stand of the GNCTD has changed during the course of hearing to expand that the Voter ID Card has been added to promote democratic ideals within the legal community, residing in Delhi. In effect therefore the argument is that it is only meant for advocates who form the electorate for the GNCTD. This justification however does not appear in any of the base documents referred to above.

Rationale behind the sub-classification

106. The condition recognised in Cabinet Decision No. 2794 dated 18th December 2019, which approved point number 7 of the background note put up by the Minister (Law), GNCTD, i.e., that the names of the advocates should appear in the voters list of Delhi, does not find any linkage or connection with the stated object of the Scheme. Advocates who are registered with the BCD primarily practise in Delhi and contribute to the administration of justice in Delhi. They also contribute to the revenue of Delhi and service the citizens of Delhi. Merely because they reside outside the geographical boundaries of the Union Territory of Delhi does not mean that they do not play the positive role which the Scheme seeks to recognise. Advocates who may be residing outside Delhi but practise in Delhi are intricately and intrinsically linked with the dispensation of justice in Delhi.

107. It is the admitted position that advocates registered with the BCD would not be entitled to benefits of any schemes launched by other State Bar Councils. In fact, advocates registered with the BCD are required to engage local advocates in the States of U.P., Punjab, Haryana etc., if they wish to file any case or appear before the Courts in those States. The focus of advocates registered with the BCD is to pursue their profession in Delhi

before the various courts and fora in Delhi. Advocates registered with the BCD have given a declaration that they would primarily practise in Delhi. Under such circumstances, the pre-condition that the advocate would have to be in the voters list of Delhi is clearly not connected with the object of the Scheme and, in fact, contradicts the purpose of the Scheme.

108. The objects of the Scheme, which are enumerated above, all relate to the practice of advocates in Delhi and not to their role as voters in Delhi. The Scheme centers around the professional contribution of advocates, not their role as citizens of Delhi who participate in the election process.

109. In the seminal judgment of the Supreme Court in *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75, the Supreme Court has laid down the test for determining whether a classification is valid or not. The Supreme Court has observed as under:

"55. ... It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not

be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a **reasonable relation to the object of the legislation**. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them....”

110. The test laid down in *Anwar Ali Sarkar (supra)* has been applied in innumerable judgments by the Supreme Court and various High Courts. In each case, the question is whether the class of persons who are grouped together have been rightly grouped together or not and what is the rationale behind such grouping in the context of the object sought to be achieved. Recently in *Union of India v. N.S. Rathnam, (2015) 10 SCC 681*, the Supreme Court has explained the test as follows:

“13. It is, thus, beyond any pale of doubt that the justiciability of particular notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At

the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.

***14.** What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. In *Sube Singh v. State of Haryana*, this aspect is highlighted by the Court in the following manner:*

“10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector

on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of Appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A', 'B' and 'C' class, nor is it stated how the amalgamation of all 'A' class structures was feasible and possible while those of 'B' and 'C' class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some landowners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case

of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring, etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."

18. *We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. To borrow the phrase from the judgment in *Roop Chand Adlakha v. DDA* : "To overdo classification is to undo equality."*

111. The crux of the classification test is that if there is no rational nexus between the grouping and the object, and the same is found to be arbitrary, the classification is unreasonable and is liable to be struck down.

112. On behalf of the GNCTD, reliance has been placed on ***D.P. Joshi v.***

State of M.B., AIR 1955 SC 334, which recognises domicile as a valid basis for classification. It is, however, noticed that in the said decision, the domicile test has been applied in the context of admission to educational institutions etc., and not in respect of social welfare schemes. Moreover, in the present case, the Scheme is not an ordinary scheme, it is a scheme which is meant to recognise the role of advocates in the practice of law. This role is to be gauged not on the basis of the place of residence of the advocate but on the basis of their place of practice, as the former has no recognition whatsoever in the statutes governing the practice of law. The submission on behalf of the GNCTD that the conditions to be imposed in the Scheme being one of governmental policy, the Court ought not to interfere in the same, would not be correct if the conditions are found to be discriminatory or arbitrary.

113. Furthermore, the GNCTD had accepted the recommendation of the Committee for providing life insurance and health insurance policies for advocates and their families. Insurance is inextricably linked with healthcare. Though such a scheme, which is in the nature of a special scheme for advocates, cannot by itself be demanded by advocates as a matter of right, once the Scheme is promulgated and is being implemented as a health related scheme, it takes the colour of a scheme which is intending to protect 'Right to life' under Article 21 of the Constitution of India. It is the settled position in law that Right to health and healthcare is a part of Article 21 of the Constitution of India, as held in *LIC of India & Ors. v. CERC & Ors., AIR 1995 SCC 1811*, *Kirloskar Brothers Ltd. v. ESIC, AIR 1996 SC 3261* and *United India Insurance Company Ltd. v. Jay Prakash Tayal, 247 (2018) DLT 379*.

114. A Division Bench of this Court in *Social Jurist, A Civil Rights Group v. Government of NCT of Delhi & Anr. (2018) 253 DLT 466* has, in fact, struck down a similar condition while dealing with hospital services for non-Delhi residents. The Court has clearly observed that the condition imposed by a Government hospital in Delhi that its services would not be available for a patient who does not hold a voter ID card of Delhi is liable to be struck down. The observations of the Court are as under:

“9. ... The circular therefore clearly creates two categories of patients with two different procedures and systems for treatment and consequently the medical facilities available in the hospital to these two categories of patients differ. There is nothing to indicate as to what is the difference between these two categories of patients. The only differentiation indicated in the counter affidavit filed by the respondents and what is made out from the circular is that one category of persons have a Voter ID Card issued by a particular authority classifying them to be voters of a particular constituency or area within the territory of Delhi and others do not have such a Voter ID Card. The question is - Is this a reasonable basis for classifying identically situated citizens for the purpose of extending medical facility in a hospital? Providing medical facilities to each and every citizen is a constitutional responsibility, and the State may in the matter of providing medical facilities classify citizens into different categories by adopting a principle of permissible classification which has nexus to the purpose to be achieved. In the present case, the classification is based not on the basis of any scientific or intelligential classification or system but it is based on availability of a Voter ID Card and the purpose to be achieved by this classification is to decongest the hospital and to

bring in a system of discipline in the functioning of the hospital and running it in a smooth manner. In our considered view, neither is the classification reasonable, is not based on any justifiable reason nor is the nexus said to be achieved a reasonable one.

*10. Health care facility and its access to a citizen is a right available under the Constitution and Article 21 of the Constitution imposes a duty on the Government to take whatever steps are necessary to ensure that every citizen has free and fair access to health facilities and treatment in a Government hospital. In fact, Article 21 of the Constitution not only imposes upon the State a constitutional obligation but also a legal obligation to ensure access to treatment, medicine and other facilities in a hospital. In the case of *State of Maharashtra v. Chandrabhan Tale*; (1983) 3 SCC 387 : AIR 1983 SC 803, the Hon'ble Supreme Court has held that right to life enshrined in Article 21 of the Constitution means something more than a mere survival or an animal like existence. It includes all other aspects of life which go to make a man's life meaningful, complete and worth living and all such requirements which are required to make a living life meaningful are the integral components of the right to life. There are catena of judgments which reiterate the fact that right to medical aid is a fundamental right of all citizens guaranteed under Article 21 of the Constitution and the Constitution Bench of the Hon'ble Supreme Court in the case of *Confederation of Ex- Servicemen Assns. v. Union of India*, (2006) 8 SCC 399 has evaluated the aforesaid principle. It is also a well settled principle of law that non-availability of finance infrastructure facilities cannot be a ground to be put forth by a State to say that medical facilities cannot be made available.*

11. In the case of Paschim Banga Khet Mazdoor Samity v. State of West Bengal (supra), denial of emergency medical aid in a Government hospital was classified as violating the mandate of Article 21 of the Constitution and while considering the same in Para 16 the Hon'ble Supreme Court has laid down the principles that financial resources cannot be a constraint in the matter of providing medical facilities to a citizen. ...

13. The State cannot avoid or shirk away from this constitutional obligation on account of financial constraint or non-availability of facilities etc. If we analyse the justification given by the State Government in the present case, it would be seen that the State is shirking away from discharging its constitutional obligation and liability by contending lack of facilities like infrastructure, manpower and law and order situation created by outburst of population, the number of patients coming to the hospital for treatment. In our considered view, this is not permissible. A State is obliged and mandated to provide all such facilities as are to be provided to a citizen, particularly, the requirement envisaged under Article 21 of the Constitution and the reasons given before us cannot be substantial or reasonable reasons for shirking away from discharging this constitutional liability.”

115. The GNCTD cannot impose the condition of residence in Delhi to advocates and not to its own employees. In fact such a condition is not imposed by the GNCTD on its own employees for whom it launched a Health Scheme. The relevant FAQs relied upon on behalf of the Petitioners, are set out below:

“Q1: What is this “Delhi Government Employees Health Scheme” all about?

- Delhi Government Employees Health Scheme is

a welfare scheme of Delhi Government for providing comprehensive medical facilities to its beneficiaries. The scheme is based on CGHS pattern and generally follows CGHS rates and provisions.

...

Q16: Is the scheme benefits available to pensioners residing outside Delhi/NCR also?

- The beneficiaries who travel/settle outside Delhi/NCR, may avail non-emergent treatment directly from any Govt./Govt. empanelled private hospital. However, the expenditure incurred on such treatment will be reimbursed by concerned department, where beneficiary is working or retired from, as per CGHS approved rates of that city/nearest CGHS covered city centre then rates of that State hospital or CGHS rates of that city, whichever are less are reimbursable.”*

From the FAQs relied upon by the Petitioners it is clear that employees of the Delhi government are entitled to benefits of various schemes, without any distinction carved out on the basis of residence. There is no reason why the same principle ought not to be applied in respect of advocates.

116. From the above discussion it is firstly clear that the scheme of the Advocates Act, 1961 as also the various Bar Council Rules and Regulations give primacy to the place of practice and not residence. Governmental policies are amenable to judicial review and if the allegation is one of discrimination the same would have to be examined on the touchstone of Art.14. The Scheme carves out a distinction within advocates registered with the BCD, between those advocates who are residents of Delhi and those who are not. The Scheme is extended to the former and not to the latter. The said

classification does not have a rational nexus with the object of the Scheme which is to recognise the contribution of advocates to the practice of law in Delhi. The unique nature of the capital city of Delhi and the National Capital region is that several advocates primarily practising in Delhi's courts and tribunals and are also voters in Bar Associations may reside in and around Delhi. To exclude such advocates would be unreasonable and contrary to the object of the Scheme itself. In view of the above, this Court holds that the condition that advocates enrolled with the BCD should also be in the voters list of Delhi for being eligible to avail of the benefits of the Scheme would run foul of Article 14 of the Constitution of India. In fact, the understanding of the GNCTD itself was that all advocates who are members of the BCD would be entitled to benefits under the Scheme, which is evident from the first NIT where the base number of advocates was considered as 40,115. It is not in dispute that this number included advocates from the NCR region/neighbouring areas. Moreover, in the documents which have been placed before the Court, no reason has been provided for the imposition of the pre-condition that advocates must be in the voters list of Delhi. Accordingly, this Court holds that the said condition and the resultant classification has no nexus with the object sought to be achieved by the Scheme and is thus discriminatory and arbitrary.

The Advocates Welfare Fund Act, 2001

117. This Court is, however, conscious of the fact that the Advocates Welfare Fund Act, 2001 has not been implemented till date. The purpose of enactment of the said Act was to provide social security, especially to junior lawyers, indigent and disabled lawyers. The provisions in the various Bar Council statutes were considered insufficient to provide financial assistance

and launch welfare schemes for indigent, disabled or other advocates. The Act contemplates the creation of a 'Welfare Fund' for advocates and the constitution of a trustee committee for the implementation of the fund. Section 24 envisages obtaining of insurance for members of the fund. The said provision reads:

“24. Group Life Insurance for members of Fund and other benefits.—The Trustee Committee may, for the welfare of the members of the Fund,—
(a) obtain, from the Life Insurance Corporation of India or any other insurer, policies of Group Insurance on the life of the members of the Fund; or
...”

118. The fund is overseen by the BCD in Delhi. When queried, the Court was informed by ld. counsels for the BCD, that though 20 years have passed since the enactment of this statute, group insurance of any form, for advocates registered with BCD, has not been possible due to the lack of adequate funds. It is stated that the BCD now gives out sums of money as compensation in the case of death and some health related emergency, however, the same is not uniform and depends upon the facts and circumstances of the concerned advocate. It is thus clear that the Advocates Welfare Fund Act, 2001 has not been able to achieve insurance for the entire group of advocates enrolled with the BCD.

119. In this context, the Scheme floated by the GNCTD deserves to be lauded for recognising the need of advocates who belong to various strata of society for having insurance for themselves and their families. Since the time the Scheme was announced in December, 2019, though there were a few impediments in the implementation of the same, during the pendency of these petitions, a substantial number of advocates enrolled with the BCD

with voter ID cards of Delhi have already availed of the Scheme. Thus, the Scheme is already having a practical impact on the lives of advocates practising in Delhi, especially during the pandemic.

120. Vide order dated 4th March, 2021, the BCD was asked to disclose the funds available with it. The status report submitted reads as under:

“1. Post the enactment of the Advocates’ Welfare Fund Act, 2001, the details of annual amount collected by the Bar Council of Delhi under the said Act, on yearly basis since 2001 is annexed herewith as Annexure-1.

2. The details of total amount disbursed on an annual basis to advocates who are in need of medical or any other form of benefits, or any ex-gratia payment made to any member of the Bar Council of Delhi or to the family of such member is annexed herewith as Annexure-2.

3. The details of corpus of the Bar Council of Delhi, which exists as on today collected under the Advocates’ Welfare Fund Act, 2001, for the welfare of the advocates enrolled with the Bar Council of Delhi, is annexed herewith as Annexure-3.”

Annexure-1

Financial Year	Collections made by Sale of Stamp	Collections by Subscriptions Recd.	Collections by Cost Recd.	Collections by Voluntary Contribution	Collections by Interest	Annexure-1' Total Income
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)
2001-2002	6,79,170.00	4,600.00	1,01,000.00	-	-	7,84,770.00
2002-2003	25,62,320.00	63,600.00	9,28,650.00	-	8,22,663.00	43,77,233.00
2003-2004	27,04,710.00	45,700.00	6,48,723.00	-	6,85,468.00	40,84,601.00
2004-2005	27,49,343.00	2,59,340.00	5,41,650.00	-	98,388.50	36,48,721.50
2005-2006	29,07,140.00	1,06,000.00	3,38,300.00	-	16,39,770.00	49,91,210.00
2006-2007	32,92,300.00	9,22,050.00	2,43,985.00	-	1,99,244.30	46,57,579.30
2007-2008	38,35,800.00	14,80,200.00	2,64,000.00	-	18,63,794.00	74,43,794.00
2008-2009	36,81,500.00	12,49,210.00	13,36,132.50	-	20,00,279.00	82,67,121.50
2009-2010	31,28,600.00	9,76,550.00	13,78,100.00	-	22,07,292.00	76,90,542.00
2010-2011	35,54,000.00	24,46,350.00	3,09,200.00	-	23,73,786.00	86,83,336.00
2011-2012	32,94,000.00	24,22,800.00	12,32,000.00	-	20,04,156.00	89,52,956.00
2012-2013	36,18,000.00	20,77,650.00	14,27,988.00	-	46,52,300.00	1,17,75,938.00
2013-2014	37,26,000.00	21,46,000.00	13,88,700.00	-	48,52,276.00	1,21,12,976.00
2014-2015	37,80,000.00	25,62,050.00	17,72,300.00	13,69,086.00	59,44,671.00	1,54,28,107.00
2015-2016	39,96,000.00	26,61,000.00	8,15,900.00	14,93,296.00	68,86,660.00	1,58,52,856.00
2016-2017	43,74,000.00	27,68,000.00	4,47,000.00	15,67,211.00	68,99,876.00	1,60,56,087.00
2017-2018	43,74,000.00	36,39,500.00	3,20,500.00	36,09,194.00	75,12,517.00	1,94,55,711.00
2018-2019	44,73,820.00	47,39,000.00	14,51,500.00	26,15,208.00	88,03,062.18	2,20,82,590.18
2019-2020	1,04,00,000.00	57,52,400.00	16,82,500.00	8,32,453.00	89,65,130.90	2,76,32,483.90
2020-2021	56,80,000.00	33,17,733.00	3,52,000.00	1,08,06,000.00	12,96,137.00	2,14,51,870.00
Total	7,68,10,703.00	3,96,39,733.00	1,69,80,128.50	2,22,92,448.00	6,97,07,470.88	22,54,30,483.38

Annexure-2

Details of Advocate Welfare Fund Trustee Committee

Annexure-'2'

Financial Year	Disbursed Amount	Number of Beneficiaries
	Rs.	
2001-2002	-	0
2002-2003	4,40,000.00	14
2003-2004	3,60,000.00	10
2004-2005	15,35,000.00	25
2005-2006	15,35,000.00	16
2006-2007	10,64,000.00	16
2007-2008	31,53,000.00	32
2008-2009	54,29,056.00	48
2009-2010	11,84,000.00	11
2010-2011	68,85,627.00	70
2011-2012	35,30,000.00	35
2012-2013	40,37,500.00	33
2013-2014	20,84,223.00	20
2014-2015	9,52,580.00	12
2015-2016	-	0
2016-2017	-	0
2017-2018	17,74,732.00	11
2018-2019	-	0
2019-2020	1,07,06,433.00	57
2020-2021	2,67,16,000.00	2070
Total	7,13,87,151.00	2480

Annexure-3

**Advocates Welfare Fund Trustee Committee
Details of Corpus**

Annexure-'3'

ADVOCATES WELFARE FUND TRUSTEE COMMITTEE A/C DETAILS AS ON 04.03.2021		Amount(Rs.)
1	Total Amount in Bank	5,17,60,599.00
2	Total Amount in FDR's	10,39,55,042.00
	Grand Total	15,57,15,641.00

From the above extracts it is clear that the funds mentioned above are details of funds collected under the Advocates Welfare Act, 2001. The BCD, under the statutes also has other sources of funds for e.g., funds generated from registration/enrolment of advocates.

Issue (ii) - Whether registration ought to be reopened to enable advocates who missed the initial deadline to obtain benefit under the Scheme?

121. Insofar as the re-opening of registration for new advocates is concerned, a proper scheme would have to be evolved. Re-opening of the registration, for the current year, would not be possible considering that this is the first year of the implementation of the Scheme and the number of advocates who were considered by the Committee in late 2019 and early 2020 was already frozen. For the future, however, registration would have to be re-opened.

122. Upon extension of the Scheme to advocates from the NCR region/neighbouring areas, newly enrolled advocates and advocates who may register afresh for the Scheme having been enrolled post the deadline of 2019, the number of advocates who may become eligible may increase considerably. At the moment, the stand of the GNCTD is that only Rs.50 crores has been fixed as the outlay for the purpose of this Scheme. With the increase in the number of advocates that is expected every year and taking into consideration the pandemic, as also the inflationary trends, it is hoped and expected that the GNCTD would be able to increase the outlay of the Scheme from year to year. However, considering that the total outlay at the moment is only Rs.50 crores, the Scheme having been extended to all advocates who are enrolled with the BCD, while availing the insurance for such advocates, there could be some deficit of funds.

123. From the data filed by the BCD, it is clear that the BCD has funds to contribute to the Scheme, though the same may not be fully sufficient to fund the entire Scheme. The Advocates Welfare Fund Act, 2001 having been enacted for the purpose of welfare of Advocates, this Court is of the opinion that to the extent possible, the said Fund ought to be utilised to support the Scheme for insurance. In the past, in *W.P.(C) 6705/2014* titled *KR Chitra v. Advocates Welfare Fund Trustee Committee & Ors.*, concerns have been expressed by this Court on the manner of utilization of funds collected by the BCD under the Advocates Welfare Fund Act, 2001. In order to ensure that the utilization of funds is streamlined and the purpose for which the fund was created is at least partially satisfied, the BCD would be liable to share some part of the responsibility for insurance of advocates. Some of the Petitioners and their counsels have also expressed willingness to contribute some part of the premium. In a group insurance scheme of such a big scale, insurance companies are likely to provide substantial benefits of lower premia, as is evident from the insurance already availed of for advocates from the LIC and NIACL. The annual premium amount for each advocate for both life insurance and Mediclaim for four members of the family i.e., advocate, spouse and two dependent children up to the age of 25 years, is in the range of Rs.14,000/-. Thus, the burden on each advocate, even if some contribution is made by them, is not likely to be very high. Thus, the BCD either by itself or by receiving contributions from the advocates themselves ought to willingly share the burden.

CONCLUSIONS & DIRECTIONS:

124. In view of the above discussion, the following are the conclusions and directions:

- a. The Chief Minister's Advocates Welfare Scheme ('Scheme') announced by the GNCTD is a Scheme that has a laudable objective of recognising the role of lawyers in protecting the rights of citizens and their constructive role in society. It is also in recognition of the role played by advocates and their contribution to the legal profession. The Scheme has, with this objective already enabled insurances for thousands of advocates in Delhi and has provided relief and succour to them especially during the pandemic. However, the condition in the Scheme that it would be applicable only to residents in Delhi with Voter IDs, is held to be discriminatory and arbitrary as the sub-classification from amongst the advocates enrolled with the Bar Council of Delhi, has no rational nexus with the object to be achieved. Accordingly, the Scheme shall be extended to all advocates registered with the Bar Council of Delhi, whose names and credentials are verified, without insistence of Voter ID showing residence in Delhi;
- b. For the current year's policies, all advocates who had registered themselves and are eligible for the benefits under the Scheme shall be extended the benefits. The GNCTD has already spent approximately Rs.40 crores to enable advocates to avail of the insurance policies. Out of the total number of advocates for whom policies have already procured, there are 5,044 advocates from the NCR region/neighbouring areas within the verified list of advocates for whom premium has already been paid. They shall enjoy the benefits of the Scheme. All such further eligible advocates, who had registered within the deadlines prescribed, as per this judgement, who have been left out shall now be included and the policies/coverage, on the same

terms, for the remainder period of the current year, shall be procured from the LIC and NIACL by 31st July 2021. Only the pro-rata premium would be liable to be paid by the GNCTD to the insurance companies, which the insurance companies had agreed to, during the course of hearing.

- c. Insofar as the future years are concerned, since the pool of advocates has been increased, the total premium for life and Mediclaim insurance, may be more than the budget outlay of Rs.50 crores. The GNCTD cannot be made to solely bear the burden of providing the insurance premium, though it is urged that the outlay may be increased depending upon the requirements, taking inflationary trends etc., into consideration. The BCD which has been unable to provide for group insurance for advocates, ought to complement the efforts of the GNCTD which has clearly taken the position that the issue is not being treated in an adversarial manner. Thus, the deficit on a year-to-year basis, beyond the budgeted amount of the GNCTD, shall be funded by the BCD.
- d. For the said purpose, the BCD may source the funds in the following manner. It is -
- Free to utilize its own funds, including the funds collected under the Advocates' Welfare Act, 2001.
 - Free to seek any voluntary contribution from Senior advocates and other financially well-off advocates, who may be willing to contribute for the betterment of the legal community.
 - The BCD may, if the need so arises, collect some part of the premium from the advocates who are beneficiaries of the Scheme.

125. Irrespective of the manner in which the funds would be raised by the BCD, the deficit on an annual basis shall be contributed by the BCD to the GNCTD to enable it to provide insurance under the Scheme to advocates.

126. The Law Secretary of the GNCTD and the Chairman Bar Council of Delhi shall be responsible for working out the modalities of the Scheme. Both the GNCTD and the BCD shall appoint Nodal Officers to coordinate with each other so as to streamline the implementation of the Scheme. The GNCTD, after consulting the BCD, would be free to decide on the nature of the Scheme to be availed of from the insurance companies, either on an annual basis or on a periodic basis such as three years or five years, so that the annual premia can be duly scaled down. The new scheme in terms of the present judgment shall accordingly be announced by 30th September, 2021, after consultation with the BCD and insurance companies. Upon announcement of the new scheme, fresh registrations for advocates shall be opened.

127. The writ petitions, and all pending applications are disposed of in the above terms. Parties are permitted to approach this Court for clarification or further directions, if the need so arises.

128. The Court records its appreciation for the assistance rendered by all the Senior counsels, Advocates and parties who appeared in these petitions.

PRATHIBA M. SINGH
JUDGE

JULY 12, 2021/dj/T