

High Court Directs Delhi Govt To Ensure Free Food, Medical Treatment To Below Poverty Line HIV+ Persons

2023 LiveLaw (Del) 1

IN THE HIGH COURT OF DELHI AT NEW DELHI
SATISH CHANDRA SHARMA; CJ., SUBRAMONIUM PRASAD; J.

W.P.(C) 7213/2011; 20.12.2022

GIRISH & ORS. versus UNION OF INDIA & ORS.

Respondents Through: Mr. Gautam Narayan, ASC for GNCTD with Ms. Asmita Singh, Advocate for R-6 Ms. Manisha Agrawal Narain, CGSC with Mr. Sandeep Singh Samaria, Ms. Rakshita Goyal, Advocates.

ORDER

1. The present writ petition has been filed by the Petitioners as Public Interest Litigation (PIL), praying for the following reliefs:-

“a) Direct the respondents to forthwith accept the petitioners No. 1-5/ homeless, displaced patients in its present condition and do necessary and immediate arrangements for their housing, safety, well-being, food, hot cooked meals 24 hour hospice care and shelter, caregivers to help them out to seek medical treatment, medicine, counselling and care at an appropriate place in 24 hours.

b) Direct the Respondent No 1 to expeditiously decide all required policies and schemes at the national and state level for food security, hot cooked meals, permanent housing and shelter, hospice for terminally ill, caregivers for assistance to all such patients at terminal stage.

c) Direct the respondents to make required allotment of housing for HIV/AIDS survivors in the government's housing schemes for the poor, namely, Indira Awas Yojna and Rajiv Awas Yojna; and create Night Shelter for HIV/AIDS infected and affected citizens and Family Home for HIV/AIDS infected and affected family members.

d) Direct the Ministry of Urban Development and Poverty Alleviation to enroll such citizens for allotment of permanent housing with independent rights and inheritance rights to benefit not only them but also their widows or children.

e) Direct the Ministry of Finance, the Respondent no. 6 to provide appropriate financial allocation to the departments concerned including that of the Ministry of Health and Family Welfare, Ministry of Labour and Employment, Ministry of Social Justice and Empowerment and the Departments concerned with Food and Grain for welfare of such persons at the national and state level;

f) Direct the Ministry of Labour and Employment to establish Labour Welfare Centres, Hospice and Half Way Homes, Long stay Homes for its terminally sick and homeless evicted/former/retired labour force in each and every state and district to facilitate its labour force and their family members so that such persons are not made to live on the street or hop from temporary shelter to shelter or a square meal for survival; to organize a labour census to identify the needs of the vast unorganised migratory labour force.

g) Direct National AIDS Control Organisation, the Respondent no. 2 to formulate policy and planning for such marginalized citizens for their permanent housing, food security, monthly pension and subsistence allowance, hospice, halfway home, long stay home etc.; To start Free Ambulance/Patient Transport Facilities for providing easy access to treatment to such persons.

h) To provide Tatkal single window counters in each and every government hospitals and private hospitals to run special Economically Weaker Section services for such patients for

expeditious and out of turn medical and diagnostic services and earmark at least 4 beds in each hospital for such patients;

i) Direct the Ministry of Social Justice and Empowerment to establish Half Way Home, Long Stay Home, Hospice for homeless, abandoned, destitute, mentally sick and physically handicapped HIV/AIDS citizens and their Children and Widows with immediate effect.”

2. It is stated that the Petitioners are suffering from HIV/AIDS and other multiple disabilities and ailments. They have been given shelter by Petitioner No.6/Shramik Referral Centre for People Living with HIV/AIDS. It appears that owing to the stigma attached to the HIV/AIDS infection, the Petitioners have been abandoned by their families and they have no shelter.

3. A perusal of the material on record shows that notices were issued in the matter and a detailed reply was filed by Respondent No.4/Ministry of Urban Development & Poverty Alleviation. Respondent No.4 has brought to the attention of this Court the existence of a scheme titled “Jawaharlal Nehru Urban Renewal Mission” (JNNURM), which is aimed at providing housing and basic services to urban poor and slum dwellers in 65 specified cities under the Sub Mission Basic Services to Urban Poor (BSUP) and in other cities/towns under the Integrated Housing and Slum Development Programme (IHSDP). However, Respondent No.4 has stated that it does not have a specific scheme targeted towards rehabilitating HIV/AIDS positive persons, and, therefore, no relief can be claimed for allotment of a house/shelter as far as Respondent No.4 is concerned.

4. Two replies have been filed on behalf of Respondent No.6/GNCTD. *Vide* the first reply, the GNCTD apprised this Court that a “National AIDS Control Programme” is being implemented in Delhi since 1998 by the “Delhi State AIDS Society”, under the technical and financial support of National AIDS Control Organization, Government of India. In this regard, Paragraph 2 of the affidavit reads as under:-

“2. That Delhi state AIDS control society, Govt of NCT of Delhi is implementing National AIDS Control Programme in state of Delhi Since 1998 under Technical & financial support of National AIDS control organization, Govt of India. The primary goal of third phase of National AIDS Control Programme (NACP III: 2007 -2012) is to Halt and reverse the epidemic in India over the next five years through following strategy :

- i) Prevention of new infections (saturation of HRG coverage and scale up of interventions for general population)*
- ii) Increased proportion of PLHIV receiving care, support and treatment*
- iii) Strengthening capacities at district, state and national levels*
- iv) Building strategic information management systems.”*

5. The latest Status Report dated 19.12.2022 filed on behalf of Respondent No.6/GNCTD places on record the various rehabilitative schemes floated, and measures taken by the GNCTD to provide aid and assistance in order to ameliorate the condition of patients who are HIV positive. The relevant portion of the Status Report has been reproduced as under:-

“4. 12 Anti Retroviral Treatment (ART) centres including one Centre in Tihar Prison) have been established in Delhi that provide free investigations and free antiretroviral treatment (ART) to PLHIV. Besides under the VIHAAN Project of NACO, 5 Community Support Centres (CSCs) are being operated in Delhi through the HIV positive People Network for facilitation to outpatient and inpatient care for people infected with HIV/AIDS (PLHIVs) including

treatment of opportunistic infections, drug adherence and for linking PLHIV to social security schemes available to all.

5. Govt. of NCT of Delhi provides financial assistance to eligible People Living with HIV/AIDS (PLHA)/ Children Living with HIV/AIDS (CLHA), Orphan/ Destitute Children Infected with HIV/AIDS (OCI) and Orphan Children Affected by HIV/AIDS (OCA), since 1st April 2012. The present criteria for enrolment under the scheme are being resident of Delhi for 3 years with family income not exceeding 1 Lakh per annum and regular on ART in proceeding 12 months of enrolment. (Annexure I and II). The current status of the scheme is as under:

S. No.	Category	No. of enrolled beneficiaries	Financial Assistance per month (in Rs.)
1	People/Children living with HIV/AIDS on ART	5644	2296/-
2	Orphan Children infected with HIV/AIDS	32	4706/-
3	Destitute Children infected with HIV/AIDS in institutional care	49	4706/-
4	Orphan children affected by HIV/AIDS	26	4018/-
	Total	5751	

6. There is a provision for annual increase of this assistance by indexation to inflation capped at 5% per annum. Delhi has been the first state to start the Financial Assistance Scheme for PLHIV on ART in Delhi to improve the treatment adherence and the assistance under the scheme at present is highest in the country. Since April 2012 an amount of Rs. 56.08 Crores has been disbursed to the eligible beneficiaries since initiation of scheme up to December 20, 2022 (Annexure III).

7. Another scheme viz. 'Travel concession scheme for PLHIVS/CLHIVs for People/Children infected with HIV, attending the ART centres in Delhi for undertaking visits to the ART centres' with eligibility for enrolment being Delhi resident on ART from ART Centres situated in Delhi under National AIDS Control Programme irrespective of their income level. The scheme provided for a travel assistance of Rs. 120/- per visit to PLHIV with maximum 12 visits in a year (Annexure II). The scheme is under process of implementation with 120 enrolled beneficiaries and with another 429 applications under process.

8. The Human Immune Deficiency Virus and Acquired Immune Deficiency Syndrome (Prevention & Control) Act 2017, has been implemented across the country w.e.f. 10th September 2018 to establish a robust system to deal with grievances of protected persons. The Act provides to addressing stigma and discrimination faced by the People Living with HIV (PLHIVs,) creating an enabling environment for enhancing access to services, safeguarding rights of PLHIV & those affected by AIDS, Promoting safe workplace in healthcare settings to promote occupational exposure and the Act brings in legal accountability and establishes formal mechanisms for enquiring in to complaints and redressing grievances by appointing/designating Ombudsman. (Annexure IV).

9. Under section-8 of The HIV AIDS (P&C) Act 2017, Disclosure of HIV status is prohibited and no one can disclose the Status of HIV of a protected person other than a "... healthcare provider who is involved in the care treatment or counselling of such person, when such disclosure is necessary to provide care or treatment..." Or " an order of a Court that the disclosure of such information is necessary in the interest of Justice for the determination of issues and in the matter before it..."

10. *The Govt. of NCT of Delhi has notified rules under 'The HIV AIDS(Prevention and Control) Act 2017' vide gazette notification dated 02.11.2022 designating district Magistrates as Ombudsman in their respective districts. (Annexure V).*

11. *In view of the above facts, it is hereby prayed before the Hon'ble High Court that the Delhi Government has taken all the possible measures to provide the best possible care, support and treatment to people Living with HIV-AIDS in Delhi and shall extend all the support in future also, hence it is requested to the Hon'ble Court that the present submission may be taken on record and the case may be dropped."*

6. The above Status Report highlights the various schemes floated by the GNCTD, which are targeted towards providing free Anti-Retroviral Treatment (ART) to the patients and granting financial assistance to persons affected with HIV/AIDS, children suffering from HIV/AIDS. Further, another scheme titled "*Travel concession scheme for PLHIVS/CLHIVs for People/Children infected with HIV, attending the ART centres in Delhi for undertaking visits to the ART centres*" has also been implemented by the GNCTD. The Status Report also reveals that 120 beneficiaries are enrolled under this Scheme, and 429 applications are under process.

7. It has also been brought to the notice of this Court that the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 has been implemented across the country with effect from 10.09.2018 ("2017 Act") to establish a robust system to deal with grievances of affected persons. The GNCTD, in exercise of powers conferred under the Act of 2017, has framed Rules called as the Delhi Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2022. In order to ensure compliance of the Rules, the GNCTD has even appointed the District Magistrate as the "Ombudsmen" under the said Rules.

8. A perusal of the above makes it abundantly evident that the GNCTD is ensuring strict compliance under the statutory provisions of the 2017 Act. Further, the GNCTD has taken all possible steps to ensure that affordable treatment is available to individuals afflicted with HIV/AIDS, who do not possess the financial wherewithal to do so.

9. This Court finds it apposite to mention that the Government shall ensure strict compliance of the statutory provisions under the 2017 Act, read with its Rules made thereunder. The Government is also directed to ensure free food and medical treatment to HIV positive persons who are below the poverty line and hence, are unable to afford the same.

10. In light of the aforesaid and the Status Report filed by GNCTD, no further orders are required to be passed in the present PIL. Accordingly, the same stands disposed of, along with pending applications, if any.