

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16.12.2021

(120)

+ W.P.(C) 9627/2021, CM APPL. 29753/2021 –Stay & CM APPL. 39442/2021 –Directions.

ASSOCIATION OF WELLNESS AYURVEDA AND SPA

..... Petitioner

Through: Ms.Indu Kaul with Ms.Mani Kaul,
Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondent

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

Mr.Rajshekhar Rao, Sr.Adv. with
Mr.Zehra Khan, Ms.Sonal Sarda,
Ms.Shubhika Saluja, Ms.Shreya
Choudhary Advs for R-7.

Ms. Mini Pushkarna, SC, Ms.
Khushboo Nahar & Ms. Latika
Malhotra, Advs. for East DMC.

Mr.Tushar Sannu, S.C. with Ms.Hima
Bhardwaj, Adv & Devendra Kumar
[Insp. Health Dept.] for SDMC.

Mr.Ajjay Aroraa, S.C. for NDMC.

(121)

+ W.P.(C) 12377/2021 & CM APPL. 38913/2021 –Stay.

MS.ROMA SHIKARPURI & ORS.

..... Petitioner

Through: Mr.Davesh Vashishtha with
Ms.Srilina Roy, Mr.Abhishek
Mudgal, Advs.

versus

SDMC & ORS.

..... Respondent

Through: Ms. Mini Pushkarna, SC, Ms. Khushboo Nahar & Ms. Latika Malhotra, Advs. for East DMC.
Mr. Shadan Farasat, ASC,GNCTD for R-3 & 6.
Ms. Monika Arora, Adv for UOI.
Mr.Tushar Sannu, S.C. with Ms.Hima Bhardwaj, Adv & Devendra Kumar[Insp. Health Dept.] for SDMC.

(122)

+ W.P.(C) 13299/2021 & CM APPL. 41925/2021 –Stay.
DELHI WELLNESS SPA ASSOCIATION THROUGH ITS VICE
PRESIDENT

..... Petitioner
Through Mr.Sachin Datta, Sr.Adv. with
Mr.Rajeshwar Dagar, Mr.Himanshu
Dagar with Mr.Manjual Khatri, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ORS

..... Respondent
Through Mr.Tushar Sannu, S.C. with Ms.Hima
Bhardwaj, Adv for SDMC.
Mr.Rahul Mehra, Sr.Adv.
Mr.Rishikesh Kumar, ASC,
Mr.Premsagar Pal, Adv. for GNCTD.

(123)

+ W.P.(C) 13408/2021 & CM APPL. 42264/2021 –Stay.
MOHD AZEEM

..... Petitioner
Through Mr.Sachin Datta, Sr.Adv. with
Mr.Rajeshwar Dagar, Mr.Himanshu
Dagar with Mr.Manjual Khatri, Advs.

versus

COMMISSIONER NDMC & ORS

..... Respondent
Through Mr.Rahul Mehra,
Sr.Adv. Mr.Rishikesh Kumar, ASC,
Mr.Premsagar Pal, Adv. for GNCTD.
Mr.Tushar Sannu, S.C. with Ms.Hima
Bhardwaj, Adv for SDMC.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present batch of four petitions, three of which have been preferred by Spa owners/Associations of Spa owners and the other by four professional massage therapists practising in Delhi, seek to assail the policy issued by the Municipal Corporations in October/September for issuance/renewal of licenses for running Spas in the NCT of Delhi. Since these policy guidelines issued by the three Corporations are based on the 'Guidelines for Operation of Spa/Massage Centres in Delhi' (hereinafter referred to as Guidelines) issued by the Govt. of NCT of Delhi on 18.08.2021, it is these guidelines which the petitioner primarily assails and for the sake of convenience it is only these guidelines which are hereinafter being referred to.
2. Though the petitioners have challenged various Clauses of these guidelines they are mainly aggrieved by Clause 2 (b) thereof, whereunder, the GNCTD has completely prohibited 'Cross Gender Massage', which prohibition the petitioners contend is not only

violative of their fundamental rights under Articles 14, 15, 19 (1) (g) and 21 of the Constitution of India but also has no nexus whatsoever with the purpose of the policy which has been issued for regulating the functioning of Spas in Delhi.

3. Issue Notice. Learned counsel for the respondents accept notice. They pray for and are granted four weeks' time to file counter affidavits. Rejoinder thereto, be filed within three weeks.
4. While seeking stay of the impugned Guidelines, especially of Clause 2(b) thereof. Mr. Sachin Datta, learned senior counsel for the petitioners begins by referring to Clause 1 (c) of the guidelines in support of his plea that 'massage' is a therapeutic process for the treatment of the body and therefore, there is absolutely no justification for the respondent to put any restrictions on this method of treatment of the body. The said Clause reads as under:-

1 (c) 'massage' means any method of treatment of the body for remedial or hygienic purpose including rubbing, stroking, pressing or kneading with the hands, feet or by any mechanical or electrical apparatus or appliances or supplementary aids such as antiseptic oils, powder, cream, lotion or other similar preparation used in this practice.

5. Mr.Datta submits that not only in the entire country but all over the world Spas/wellness centres are being run without there being any such discrimination qua the gender of the massage therapist as imposed vide the impugned Clause 2 (b) of the guidelines which reads as under:- .

2 MANDATORY CONDITIONS FOR OBTAINING LICENCE

(b) Cross Gender Massage shall not be allowed for Spas/Massage Centres. Provision for male masseur for males and female masseurs for females shall be made.

6. According to Mr.Datta, the respondents themselves are aware that such a prohibition is unjustified as no such bar has been imposed on the Spas running in government/private hospitals or other state run therapeutic centres by excluding these Spas from the application of these guidelines. In support of his plea he relies on Clause 1 (d) of the guidelines which reads as under;_

1 (d) 'Massage Centre' means an establishment or premises by whatever name be known for providing massage or any other like service. However, these guidelines for operation of Spa/Massage centre in Delhi shall not be applicable for the massage or physio-centres operated by all the government/private hospitals and the hospitals of autonomous bodies or any other state run therapeutic centres;

7. Mr.Datta further contends that the impugned Clause overlooks the fact that massage therapists have been working in thee Spas for the last many years and any such sudden disruption on their right to earn their livelihood as guaranteed under Articles 19 (1)(g) and 21 of the Constitution of India, and that too in the aftermath of the pandemic of Covid-19, when most of these persons were without any source of income, is wholly arbitrary and illegal. He, therefore, prays that the impugned guidelines which are also discriminatory in nature be stayed.

8. On the other hand, Mr. Rahul Mehra, learned senior counsel for the Govt. of NCT of Delhi, while defending the impugned policy has sought to explain the background in which the same came to be promulgated. He submits that the guidelines were issued after due consultation with all stakeholders including the Delhi Commission for Women (DCW). The DCW had made detailed recommendations for prohibiting 'Cross Gender Massage' which recommendations were based upon its inspections and interactions with young girls and women working in these Spa centres. The DCW had also made independent enquiries through WhatsApp and phone calls from which it emerged that women and girls working in these Spa centres were being exploited. Moreover, the GNCTD is not seeking to curtail the business of the petitioners in any manner as is sought to be presented, and in fact is only looking to put an end to any illicit or sexual activities that have been going on in most of these Spas and wellness centres under the garb of 'Cross Gender Massage'.
9. Mr. Mehra has handed over in Court, a chart to show that some of the members of the petitioner associations are blatantly advertising on their websites that they provide not only massage services, but also other services, which services may amount to providing sexual pleasure to their clients. In fact, FIRs have been registered against some of the members of the petitioners under the Immoral Traffic (Prevention) Act, 1956. He, therefore, urges that once members of the petitioners/associations themselves are guilty of indulging in such activities, there could be no doubt about the fact that, the Spas under the garb of Cross Gender Massage have been running prostitution

centres. He, therefore, prays that the petitioners' prayer for interim relief be rejected.

10.Mr.Rajshekhar Rao learned senior counsel appearing for DCW, while adopting the arguments of Mr.Rahul Mehra, also seeks to oppose the grant of any interim relief to the petitioners herein. He contends that the prohibition imposed under the impugned Clause is in the nature of a regulatory measure in public interest, which is permissible under Article 19(6) of the Constitution of India. He further contends that the guidelines have been issued to protect the interest of vulnerable women and children and therefore, the individual rights of the petitioners ought to give way to the larger public interest.

11.Mr.Ajjay Aroraa, Mr.Tushar Sannu and Ms.Mini Pushkarna, learned counsel appearing on behalf of the three corporations, take a similar stand as that taken by the GNCTD and DCW.

12.Having given my thoughtful consideration to the submissions of the parties, even though I have no reason to disagree with the submission of learned senior counsel for Govt. of NCT of Delhi, that the objective of issuing the guidelines was to ensure that the Spas in the city are not run in a manner so as to virtually become prostitution centres or lead to exploitation of women and young girls. The intention with which the impugned guidelines were issued may have been *bona fide*, but the question before this Court is not whether the impugned guidelines were well intentioned but whether they are illegal, discriminatory and arbitrary as urged by the petitioner.

13.However, merely because the respondents found that in some of the Spa centres exploitation of women and girls has been taking place

cannot in my view be a ground to paint all the Spas and wellness centres in the City with the same brush and act on the assumption that providing the service of 'Cross Gender Massage' may lead to sexual activities in these centres.

14. On the other hand, from a perusal of the record it emerges that there are about 5,000 such Spas running in the city even though the three Corporations claim that licences have been issued to only about 400 Spas. There is absolutely no justification provided either by the Delhi Police or the Corporations as to how Spas without holding a valid licence under Section 417 of the Delhi Municipal Corporation Act are being allowed to run in the city. The three corporations have also failed to offer any explanation for their failure to take action against the illegal Spas as also those licenced Spas in respect whereof FIRs have already been registered and especially those, who are openly stated to be indulging in illegal activities, as it has been claimed that they have been advertising their services for sexual pleasure.

15. There can be no doubt that the respondents are fully justified and in fact ought to have initiated measures to regulate the Spas so that such illegal activities are discontinued. However, what *prima facie* emerges is that merely because the Corporations and the Delhi Police have not been able to take effective steps to ensure that no illegal Spas are permitted in the city, and their present strategy of withholding licences to prevent Spas from indulging in any illegal activities whatsoever has not yielded them results, they have hurriedly gone about to issue this kind of an absolute ban on 'Cross Gender Massage'. In my considered view, this ban has no reasonable

connection with the aim of the guidelines, the purpose whereof seems to be to regulate the functioning of the Spas and ensure that no illegal trafficking or prostitution takes place in the city.

16. Even though the respondents claim that they have consulted all stakeholders, it *prima facie* appears that no consultative process was undertaken with any of the professional massage therapists and, therefore, the respondents have simply overlooked the rights of these certified massage therapists. At this stage, It is pertinent to note that the livelihood of the petitioners and their employees have been severely affected on account of the Covid-19 pandemic and any further curtailment of their rights is likely to cause grave and irreparable hardship to them.

17. It is accordingly directed that till the next date, the operation of Clause 2(b) of the policy dated 18.08.2021, and all similar Clauses in the policies issued by the three Corporations would remain stayed. However, the matter does not end here, and this Court cannot turn a blind eye to the facts which have been brought to the notice of this Court. It is therefore, directed that all the three Corporations and the Delhi Police will carry out inspections in their respective areas within one week from today and take the necessary steps to ensure that no Spa is permitted to run without a valid licence. The Delhi Police will also inspect all the licenced Spas and take steps for registration of cases against them in case any illegal activity is found to be carried out in these Spas. Immediate information about any such illegality also will be provided to the respective corporation so that appropriate steps for suspension/cancellation of their licences can be taken in

accordance with law. A report, containing details of the steps taken in this regard be filed before this Court within two weeks by the respective Commissioners of three Corporations as also by the Commissioner of Delhi Police.

18. In order to facilitate this inspection, the petitioners in W.P.(C) 9627/2021 and W.P.(C) 13299/2021 are directed to file individual affidavits of all their members alongwith copies of the valid licenses issued to them within a period of five days, with advance copies to the learned counsel for the respondent.

19. List on 11.01.2022 for consideration of the affidavits to be filed by the three Corporations and the Delhi Police.

DECEMBER 16, 2021

Sr

REKHA PALLI, J

सत्यमेव जयते