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

Date of decision: 26th February, 2021

\+ **W.P.(C) 2673/2021 & CM APPLs.7902-03/2021**

MANASHWY JHA ..... Petitioner

Through: Mr. Manish Vashisht, Mr. Amitabh Chaturvedi, Mr. Jeevesh Nagrath, Mr. Sangeeth Mohan K, Mr. Ankit Monga and Mr. Rikky Gupta, Advocates. (M:9354202889) with Petitioner in person.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Anil Soni, CGSC, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Akshay Gadeock, Mr. Sahaj Garg, Mr. Devesh Dubey and Mr. R. Venkat Prabhat, Advocates for R-1/UOI.

Mr. Shadan Farasat, ASC and Ms. Tanvi Tuhina, Advocate for R-2/ GNCTD.

Mr. Jayant K Mehta, Advocate for R3/ Hon'ble High Court of Delhi

Ms. Kajal Chandra, Ms. Kanika Singh, for R-4/ DHCBA

Ms.Mini Pushkarna, Mr. Harish Vaiyanathan, Mr. Nikhil Singhvi Advocates.

With

\+ **W.P. (C) 2018/2021 & CM APPL.5897/2021**

ANIL KUMAR HAJELAY & ORS. ..... Petitioners

Through: Mr. Atul T.N., Mr. Anil Kumar Hajelay, Mr. Sagar Pathak, Mr. Devendra Verma, Ms. Shreya Ameja

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and Mr. Rajat Gautam, Advocates.

versus

HONBLE HIGH COURT OF DELHI ..... Respondent

Through: Mr. Jayant K. Mehta, Advocate for R-1.
Mr. Anuj Aggarwal, ASC with Mr. Shikher Sheel and Ms. Ayushi Bansal, Advocates for GNCTD/R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.

2. The present petition has been filed by an advocate, who is a practicing lawyer before the High Court. The reliefs sought in the petition are two-fold. Firstly, there should be a mechanism for vaccination of lawyers, who are enrolled with the Bar Council of Delhi (*hereinafter, "BCD"*) and who are members of the Delhi High Court Bar Association (*hereinafter, "DHCBA"*). Secondly, that until the vaccination process of all lawyers is completed, the impugned notifications dated 20th February, 2021 relating to the physical functioning of the Delhi High Court and Subordinate Courts ought to be suspended.

3. Mr. Mukul Rohtagi, Mr. A.S. Chandiok, Mr. Rajiv Nayar, Mr. Ramji Srinivasan, Ms. Geeta Luthra, Sr. Advocates, Mr. Atul Nagarajan, Mr. Manish Vashisht, Mr. Kirtiman Singh, Mr. Jeevesh Nagrath, Mr. Nikhil Rohtagi, Mr. Sachit Jolly, Ms. Amrita Sharma, Mr. Amit Kr. Hajely, Mr. Anuj Aggarwal, Advocates are some of the Sr. Counsels and Counsels who have made their submissions supporting the Petition. Ms. Kajal Chandra, ld.

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counsel has appeared for the Delhi High Court Bar Association and Mr. Jayant K. Mehta, ld. Counsel has appeared for the Delhi High Court.

4. Insofar as the first aspect of vaccination of lawyers is concerned, it is noted that the said issue is stated to be pending before the Supreme Court in ***Arvind Singh v. Union of India & Anr W.P.(C) 84/2021***. A copy of the said writ petition may be placed on record by Mr. Anil Soni, ld. CGSC. Mr. Chetan Sharma, ld. ASG has appeared in the matter and has sought instructions in respect of the vaccination. Both, Mr. Sharma and Mr. Soni have submitted before this Court that insofar as persons with co-morbidities above the age of 45 years and 60 years are concerned, the vaccination process is likely to commence shortly.

5. Since the decision has already been taken by the government in respect of opening of vaccination for general public falling in two categories i.e., above 60 years of age and above 45 years of age with co-morbidities, ld. counsels may seek instructions from the Ministry of Health as to whether the Bar Association can be given no objection so that they can enter into an arrangement with the manufacturers in order to make it possible for the lawyers falling in the above said two categories to be vaccinated, upon payment of the prescribed charges, in facilities that may be arranged by the Bar Associations itself. Let instructions be obtained before the next date and be communicated to the Court.

6. Insofar as the second aspect of physical hearings from 15th March, 2021 is concerned, a perusal of the notification dated 20th February, 2021 makes it clear that the Court would be opening physically, however, in exceptional cases the parties or their counsels may be permitted to join through video conferencing, subject to availability of requisite infrastructure.

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7. Various counsels have appeared today and have made their submissions in respect of why there should be open hybrid hearing and not just in exceptional circumstances. The submissions made by all the counsels today are summarized below:

i. That there is resurgence of COVID-19 in at least 8 to 10 States in the country, since the time the said decision was taken and hence there is a need to reconsider the same.

ii. That there are public reports to the effect that there is a new strain of COVID-19 in India and there is a risk which involves greater exposure.

iii. That there are several lawyers, who, due to their age and co-morbidities, are unable to attend physical courts and the request to be made only in exceptional circumstances may place a risk upon such lawyers.

iv. That several lawyers who do not belong to these categories or who are not 60 plus and are without any co-morbidities i.e., even the younger lawyers, have senior citizens like parents and grandparents at their homes, including young children, who may, get exposed if they continue to appear physically in Courts.

v. That though the expectation in the notification is to adhere to social distancing, the same is almost impossible considering the distance between court rooms and the corridors/common areas which are to be used both in the Subordinate Courts and the High Court.

vi. That insofar as the vaccination is concerned, even after the first dose of vaccination is administered, it could be at least 8 weeks

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before the development of antibodies takes place as per the scientific literature and even during that period there could be exposure to COVID-19 strain.

vii. That insofar as women lawyers are concerned, enormous apprehension is expressed by young advocates, who have small children going to school. One of the advocates submits that until schools are open fully, the option of appearing through video conferencing ought to be available, especially for women.

viii. That for hybrid hearings, insofar as the Delhi High Court is concerned, several court rooms have implemented hybrid hearing mechanism and there should be no reason why the same should be restricted to exceptional circumstances alone.

ix. That more than 1000 lawyers are stated to have signed the representation seeking hybrid hearing and not only the physical hearings.

x. Environmental concerns are also raised that hybrid hearing would also lead to lesser fuel consumption and fewer movement of vehicles in general.

xi. That the DHCBA ought to constitute a committee consisting of representatives of various sections, age groups and other stakeholders so that the DHCBA gets an overall view expressed on the issue of hybrid hearings and takes a comprehensive decision in this regard.

8. Insofar as the Delhi High Court is concerned, Mr. Jayant Mehta, ld. counsel appearing for the Delhi High Court submits that he wishes to seek instructions as to whether there was a written demand from DHCBA for full

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opening of physical courts.

9. Ms. Kajal Chandra, ld. counsel appearing for the DHCBA confirms that the DHCBA had made a demand for physical hearing, however, she seeks time to consult with the Executive Committee of the DHCBA as also consult with all the lawyers who have expressed various apprehensions today and to revert to the Court as to what is the final stand of the DHCBA.

10. The Court has heard various senior counsels and counsels who have appeared today and made their submissions on the issue of vaccination and hybrid hearings. In respect of vaccinations, the instructions of ld. Counsels appearing for the UOI is awaited for the next date of hearing.

11. The submissions *qua* hybrid hearings have been captured above for the purpose of giving a summary of the disparate views that exist within the members of the Bar itself. It is expected that the Executive Committee of the DHCBA would consider the submissions made by various sections of the Bar, recorded today in this order and constitute a committee so as to give its recommendation to the Executive Committee of the DHCBA. The DHCBA shall then place its stand on record before this Court after consulting all the stakeholders including some of the counsels who have appeared today.

12. Accordingly, considering the urgency in the matter, let the Executive Committee of the DHCBA hold a meeting on 1st March, 2021 at 4:00 pm for discussion on this matter and for constitution of a Committee. Thereafter, the said Committee may interact with the various stakeholders including at least three senior counsels, lady lawyers, some younger lawyers and submit its recommendation to the Executive Committee. The DHCBA shall place its final stand before this Court on the next date of hearing.

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13. List on 4th March, 2021.

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14. The Report of the worthy Registrar General on the infrastructure and feasibility for holding hybrid hearings in the subordinate courts has been received. The same would be perused by the Court.

15. It is submitted on behalf of various counsels that in the district courts adverse orders are being passed for example, by issuing non-bailable warrants, defendants being proceeded ex-parte, closure of evidence etc.

16. The report overall suggests that hybrid hearings are not fully possible in the district courts at this stage. Considering the large amount of apprehensions expressed by advocates in appearing in physical courts, till the next date of hearing, no adverse orders shall be passed by the subordinate courts in Delhi if the counsel does not appear in physical hearing for any justifiable cause.

17. List on 4th March, 2021.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 26, 2021/*dk/RC*