



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

Reserved on:- 06th September, 2023

Date of Pronouncement: 5th October, 2023

+ **W.P.(C) 1938/2019**

TARUN NARANG

..... Petitioner

Through: Mr. Avinash Chaudhary, Mr. Surjeet Singh, Mr. Amit Naagar, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) AND ORS. Respondents

Through: Mr. Anupam Srivastava, ASC, GNCTD with Mr. Ujjawal Malhotra, Advs for R-1 to R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. In this Public Interest Litigation (PIL), the Petitioner, a member of the legal fraternity, raises concerns on behalf of citizens residing in the National Capital Territory (“NCT”) of Delhi. Drawing upon the critical findings outlined in a performance audit report prepared by Comptroller and Auditor General (“CAG”), the Petitioner emphasizes that the Directorate of AYUSH, Government of NCT of Delhi (*hereinafter referred to as “the Directorate”*), has failed to perform its functions effectively, leading to deficiencies and irregularities in the State healthcare system. According to the Petitioner, these shortcomings have denied citizens access to quality healthcare services under the AYUSH framework of medicine within Delhi. He therefore, urges this



Court to exercise its writ jurisdiction under Article 226 of the Constitution of India to issue a series of directives aimed at rectifying the issues highlighted in the said audit report.

BACKGROUND AND PETITIONER'S CONTENTIONS

2. Between May and August of 2017, the CAG undertook a comprehensive performance audit that scrutinized the operations of 24 dispensaries and 3 hospitals under the purview of the Directorate. This audit, which covered a five-year span from 2012 to 2017 (*hereinafter termed "the performance audit"*), aimed to evaluate the efficacy of the Directorate's initiatives and programs. Specifically, the audit sought to determine whether these initiatives were well-conceived and effective to advance the use of alternative medicinal systems in healthcare delivery, as well as to promote research and education in these domains.

Scope of Audit and Criteria for Evaluation

3. CAG conducted a meticulous review of an array of records which encompassed:

3.1. Various divisions of the Directorate, including the Drug Control Cell and the Homeopathic Wing, along with Drug Control Department records. Six Ayurvedic, three Unani, and fifteen Homeopathic dispensaries, selected from an existing network of 40 Ayurvedic, 20 Unani, and 103 Homeopathic dispensaries, were also scrutinized.

3.2. Four autonomous bodies under the Directorate's jurisdiction, namely the Board of Homeopathic System of Medicine, Delhi Bhartiya Chikitsa Parishad ("**DBCP**"), Examining Body for Para-medical Training in Bharatiya Chikitsa Delhi ("**EB**"), and Delhi Homeopathic Anusandhan Parishad



(“*DHAP*”).

3.3. Files from three educational institutions — each of which has an attached hospital. These include the Ayurvedic and Unani Tibbia College and Hospital (“*Tibbia College/ Tibbia Hospital*”), Dr. B.R. Sur Homeopathic Medical College, Hospital and Research Centre (“*SHMC*”), and Ch. Brahm Prakash Ayurvedic Charak Sansthan (“*CBPACS*”).

4. The performance audit’s evaluative criteria was explicitly laid out, drawing upon the GNCTD’s goals and objectives as outlined in the “12th Five Year Plan” (“*FYP*”). The audit also adhered to a range of government policies, directives, orders, guidelines and considered regulatory frameworks, such as the Drugs and Cosmetics Act, 1940 and the General Financial Rules, 2005 (“*GFR 2005*”).

CAG Report and its Key Findings

5. CAG’s performance audit was officially published under the title: “Report of Comptroller and Auditor General of India on Social, General and Economic Sectors (Non-Public Sector Undertakings) for the Year Ended 31st March, 2017, Government of National Capital Territory of Delhi, Report No. 3 of the Year 2018” (*hereinafter referred to as the “CAG Report”*). It contains three performance audits: on the functioning of the Directorate, strengthening/ development of road network by MCD, and the working of Department of Weights and Measures, Delhi with special focus on safeguarding consumers. The CAG Report exposes significant shortcomings in both, planning and implementation of AYUSH-related schemes/ programmes, by the Directorate. In summary, the key findings of the CAG Report pertaining to the Directorate are as follows:

5.1. Despite earmarking of targets in the FYP, the Directorate failed to



create action plans or implementation strategies, hindering the execution of AYUSH schemes as outlined in the FYP.

5.2. The Directorate did not maintain records of the State Medicinal Plant Board's meetings or develop any plans for the cultivation of medicinal plants, contrary to governmental directions.

5.3. A total of Rs. 31.57 crore remained unused by the Directorate between 2012-2017. Additionally, expenditure spikes in March violated financial regulations under Rule 56(3) of GFR 2005.

5.4. Between 2015-2017, Rs. 1.11 crore was spent on advertisements and publicity without the approval of competent authorities, rendering the expenditure unauthorized.

5.5. Significant gaps in staffing levels—ranging from 37-52% in key medical roles—were found in three medical colleges and attached hospitals, impacting overall performance and patient footfall.

5.6. Three audited hospitals outsourced services without acquiring necessary approvals from the finance department, breaching policy requirements.

5.7. Sixteen Ayurvedic dispensaries operated in two-room structures and five in one-room structures, falling short of the Directorate's three-room standard. Facilities for disabled persons were also missing.

5.8. The Ayurvedic Drug Store was relocated to Tibbia College's guest house without ensuring proper storage conditions, compromising drug safety.

5.9. A new girls' hostel for Tibbia College, of which construction was completed in March 2015, remained unoccupied as of October 2017, depriving students of necessary accommodation.

5.10. SHMC failed to construct an additional facility on vacant land since



2008, impacting the implementation of a 27% OBC reservation quota and the corresponding increase in total seats.

5.11. CBPACS and Tibbia Hospital lacked emergency/ accident areas and the requisite equipment for their operation.

5.12. Multiple locations, including the Central Homeopathic Drugstore, operated without a No-Objection Certificate from the Delhi Fire Services, with no remedial action taken even after a significant fire incident.

5.13. CBPACS, SHMC, and Tibbia Hospital lacked a Medical Record Department, resulting in improper data maintenance and non-compliance with hospital guidelines.

5.14. Despite recommendations for equipment procurement to make Tibbia College a “center of excellence”, no such acquisitions were made. Additionally, existing equipment and beds lay unused.

5.15. A well-equipped OT in SHMC has been unused since 2007 due to a lack of medical staff. Likewise, multiple OTs in CBPACS and Tibbia Hospital remain non-functional, causing patient transfers.

5.16. SHMC and Tibbia College possessed ambulances that were either ill-equipped or unused, contrary to regulations.

5.17. CBPACS had non-functional pathology labs due to a lack of reagents, and similarly, Tibbia Hospital failed to repair or utilize its biochemistry analyzer.

5.18. None of the AYUSH hospitals, except for CBPACS, provided Yoga and Naturopathy facilities, contradicting claims on the Directorate’s website and breaching extant regulations.

5.19. Tibbia Hospital did not have an Infection Control Committee to oversee sterilization and disinfection processes, violating DGHS Hospital Manual



guidelines.

5.20. Tibbia Hospital had a bed occupancy rate of 31-35%, and SHMC had 14-26% occupancy between 2012-2017, indicating suboptimal utilization of existing infrastructure.

5.21. Less than 40% of the Essential Drug List (“**EDL**”) was available at the Directorate's central drug stores at any given time from 2012-2017.

5.22. Medicines costing Rs. 7.02 lakh with less than the required 60% remaining shelf life were procured during 2012-2017.

5.23. Medicine procurement by the Directorate, Tibbia College, and CBPACS violated official policy on multiple occasions between 2012-2017.

5.24. Recruitment rules remained pending, and staff were appointed contractually without proper approvals. Moreover, DBCP was dissolved in 2015 and was not reconstituted within six months as required.

5.25. The Examining Body, constituted under DBCP Act of 1998, had issues related to staff appointments and fundraising, contradicting the provisions of the said Act.

5.26. There were unauthorized promotions, extensions, and provisional affiliations to institutions running pharmacy courses.

5.27. Issues included the absence of a regular Director-Principal, unauthorized contractual hiring, lack of advisory committees, and expired medicines in stock while shortages were faced in supply to other facilities.

5.28. DHAP did not initiate any new in-house research from 2012-2017, and failed to monitor 14 ongoing research projects started before 2012.

5.29. GNCTD did not establish a Management Information System Monitoring and Evaluation Cell, as required by the National AYUSH Mission (NAM).



5.30. An expenditure of Rs. 14 crore was incurred for testing 1,000 Ayurvedic/Unani Medicine samples between 2012-2017. This could have been avoided if GNCTD had established a state drug testing laboratory, for which, funds had been allocated by the central government in 2001-2002.

5.31. The Drug Inspector of the Drugs Control Department (DCD) did not maintain records to verify if retail units selling AYUSH medicines had been inspected, violating Rule 51(1) of the Drugs and Cosmetics Rules, 1945.

5.32. The Drug Controller (ISM) did not have an effective system to identify manufacturing units operating without a valid license. Three such units were discovered in NCT of Delhi.

5.33. From 73 drug samples found to be not of standard quality, only 21 were manufactured in Delhi. Despite informing other state authorities, there was no follow-up by the Directorate.

5.34. As of 31st March, 2017, there were only 23 Drug Inspectors in the DCD out of a sanctioned strength of 31, and only 3 in the Indian System of Medicine department out of a sanctioned strength of 5 inspectors.

Reliefs sought by Petitioner

6. The Petitioner anchors his argument on the above findings presented in the CAG Report. He urges that it is vital that the irregularities are urgently addressed to ensure public health and safety stresses and requests this Court to institute a Special Investigation Team (*hereinafter referred to as "SIT"*), presided over by a sitting judge of this Court to scrutinize the rampant irregularities plaguing the Directorate. He also prays for directions to the Directorate, compelling them to meticulously plan and execute their schemes and programs, with the aim to not only promote the utilization of alternative systems of medicine in healthcare delivery but also to create a conducive



environment for research and educational advancements in these medicinal practices.

7. Moreover, the Petitioner prays that a directive be issued to the Respondents, specifically the GNCTD, to undertake the following immediate measures:

7.1. Provide quality healthcare facilities in Indian Systems of Medicine to millions of people in NCT of Delhi.

7.2. Provide infrastructure facilities and equipment in AYUSH hospitals and dispensaries, as detailed in the petition.

7.3. Fill up vacancies in the medical staff, as detailed in the petition.

7.4. Provide adequate essential medicines in Ayurvedic, Unani and Homeopathic dispensaries.

7.5. Ensure supply of Ayurvedic/ Unani Medicines with proper shelf life.

7.6. Conduct adequate inspections of manufacturing and selling units of medicines for assurance on the quality of these medicines.

7.7. Procure AYUSH medicines following the Government/ CVC instructions to promote transparency and competition in procurement.

ANALYSIS AND FINDINGS

8. We have carefully considered the above submissions as well as the detailed affidavit dated 16th December, 2019 filed by the GNCTD in relation to the issues raised in the CAG Report. The CAG, having noted the areas of concern regarding Directorate's operations, made several recommendations in the CAG Report, as under:

“2.1.13 Recommendations

(i) The Department may assess the infrastructural and staff requirements of AYUSH hospitals, dispensaries and drug controllers afresh and take effective action to fill up the gap in a time bound manner.



(ii) The Department may prepare annual action plans and implementation strategy to ensure implementation of all elements of the Five Year Plan in a time bound manner.

(iii) The Department should ensure that AYUSH medicines are procured by following the government/CVC instructions to promote transparency and competition in procurement.

(iv) The Department may take adequate steps to establish in-house drug testing facility in order to facilitate quality testing of AYUSH drugs including independent testing of purchased medicines.

(v) The Department may strengthen the inspections of units manufacturing and selling AYUSH medicines in NCTD to seek assurance on the quality of these medicines.

The matter was referred to the Government in November 2017 and their reply is awaited as of January 2018.”

9. In our assessment, the State and the relevant departments, including the Directorate, are well-aware of the concerns raised in the CAG Report. The assertions in the affidavit indicate that that they have either already taken or are currently taking appropriate measures to address concerns, which include:

9.1. Establishment of new dispensaries, such as Homeopathic dispensaries, which are co-located with the existing dispensaries of the Directorate of Health Services.

9.2. Development of course curriculum for paramedical courses in Delhi by the EB, coupled with the creation of requisite posts within the EB to ensure its streamlined functioning.

9.3. Recognizing and evaluating the potential for cultivating specific medicinal plants in NCT of Delhi, ensuring their economic feasibility.

9.4. Regularly issuing recruitment requisitions in accordance with the inauguration of new dispensaries annually.

9.5. Optimizing the utilization of existing facilities, for instance, the girls' hostel for Tibbia College. There is also active coordination with the PWD to enhance facilities at SHMC, to align with the sanctioned student intake.



- 9.6. Ensuring all IPD and OPD hospital facilities are used to their fullest potential and concurrently expanding these facilities.
- 9.7. Establishing of crucial departments or committees within the Directorate and its related entities. These include the “Swastharvritta Department” and “Infection Control Committee”.
- 9.8. Revising the EDL of medicines to ensure better accessibility of these medications across all dispensaries.
- 9.9. Implementing stringent measures to prevent distribution of expired medicines to retail units. This involves routine inspections to identify any such stocks.
- 9.10. Ensuring compliance with prevailing purchase policies and approval procedures, especially in the context of medicine procurement.
- 9.11. Formulating recruitment guidelines for the DBCP, and other divisions of the Directorate, to augment staff shortage.
- 9.12. Assuring the quality and safety of medicines distributed in Delhi, which involves scrutinizing the licenses of units deemed ‘illegal’ in the CAG Report and, where necessary, initiating corrective legal action.
10. That said, the GNCTD has also candidly acknowledged the challenges/shortfalls spanning from administrative delays in the disbursal or utilization of funds to procedural oversights in sanctioning publicity or advertisement expenditures. Additionally, there are infrastructural hurdles that have impeded the roll-out of specific policies. The failure to comply with the stipulation for three distinct rooms in every AYUSH dispensary is one such example. There is also an evident shortfall in personnel, as is evident by the fact that the in-charge sister shoulders the responsibility of data management at the hospital — a role ideally earmarked for a specialized Medical Record



Department.

11. Nonetheless, we note that the State has adopted a proactive approach to rectify many of these challenges. A case in point is the resolution of discrepancies in the stock register entries—a concern flagged in the CAG Report. The GNCTD’s affidavit underscores this rectification, noting:

“Directives have been dispatched to the pharmacists and respective in-charges of dispensaries, underscoring the importance of meticulous record-keeping for medicines in the stock register, thereby ensuring the elimination of potential discrepancies henceforth.”

12. In response to the findings of the CAG Report, alterations have been made to procurement policies, as elucidated in the GNCTD’s affidavit as follows:

“xxx(b)(ii) In light of the aforementioned audit observations, the Directorate of AYUSH has made the informed decision to procure medicines in smaller package sizes. Consequently, in the recently issued tenders for the acquisition of Ayurvedic & Unani Medicines, standard smaller packaging sizes have now been authorized.”

“It is standard practice for proprietary medicines to be sourced directly. In our protocol, even these proprietary medicines are procured solely from central government enterprises. However, given the audit’s recommendations, the Directorate of AYUSH has introduced an open tender mechanism for medicine procurement.”

13. Addressing the need of conducting market surveys to detect illegal drugs, ensuring compliance with relevant laws/regulations, and the deployment of Drug Inspectors in these processes, the GNCTD’s affidavit provides details on the initiatives undertaken as follows:

“...In terms of market surveys, it should be noted that the Answering Respondent persistently executes market surveys and reviews newspaper advertisements to identify illegal manufacturers. Following these efforts, the Department has initiated multiple prosecutions in the relevant courts under Section 33EEC, in line with the contraventions identified under the Drugs and Cosmetics Act, 1940.”



“xxxvi(e) Addressing the Petitioner's concerns regarding insufficient action against manufacturers of sub-standard medicines, it is essential to clarify that for the substandard samples identified, which originated from states outside Delhi, this Directorate could not directly pursue legal or administrative action. Since these samples of Ayurvedic/Unani medicines were not produced within the jurisdiction of this Directorate (i.e., Delhi) and the distribution records of these drugs are maintained exclusively by the respective state's manufacturer and licensing bodies, our office promptly communicated with the relevant state licensing authorities, advising them to take necessary actions against these substandard drug manufacturers within their jurisdiction.”

“xxxvi(f) As a proactive measure to address the vacant position of Drug Inspectors, one post designated for a Drugs Inspector (Unani) has been formally announced through UPSC for recruitment. This was made public under Advertisement No. 12/2019 in September 2019.”

14. Based on the details presented in GNCTD's affidavit, it is evident that constructive steps are undeniably underway. We thus find no reason to direct any court-monitored investigation. A court-monitored investigation is a significant measure, typically invoked when there is a palpable sense of governmental neglect or oversight. It is not a mechanism to be employed routinely or without just cause. We must preserve its weight for situations where the state appears either ignorant or non-cognizant of issues. Resorting to such an investigation without substantial reasoning could inadvertently diminish its efficacy. That said, we earnestly hope that GNCTD remains steadfast in its mission, taking insights from the CAG Report, identifying the areas of improvement as outlined in its affidavit, and implementing remedial measures.

15. Now, we turn our attention to the prayer clause. The directions sought for the provision of "quality healthcare," ensuring the availability of "adequate" medicines with an appropriate "shelf life," overseeing the inspections of manufacturing units, and championing "transparency and



competition" in procurement processes, all cast a wide and somewhat nebulous net. It is a foundational principle of our constitution that the judiciary must avoid encroaching upon the functions vested in the executive. Setting standards for healthcare facilities—be they centered on allopathic or traditional Indian medicinal systems—entails a depth of expertise, rigorous examination, and nuanced understanding. The intricate nature of procurement, healthcare standards, and administrative oversight is best addressed by the executive and legislature, which possesses, both, requisite expertise and the mandate for such tasks. Consequently, we must exercise restraint and avoid unnecessary intervention in such matters. The Court cannot dictate procedures concerning medicine supply, purchase, or the detection of illicit drugs, unauthorized manufacturing and retail units. Such issues are policy-oriented which is beyond our purview.

16. It is worth noting that the Petitioner did not make any prior representation or communication to the GNCTD to address the grievances presented before us. Even though the petition is presented as a PIL, it does not exempt the Petitioner from the responsibility of initially approaching the state authorities. That said, since the matter has been thoroughly heard, we wish to express our strong reservation on the practice of filing petitions without prior communication or representation to the relevant state authorities.

17. Before parting, we must note that the CAG Report commences its observations by highlighting a marked increase in in-patient admissions and out-patient visits across all three hospitals and dispensaries of the Directorate during the period 2012-2017. Such a trend signifies a growing recognition and trust in the effectiveness of the Indian System of Medicines. Given this backdrop, GNCTD must continue to amplify the utilization of alternative



medical systems in healthcare, and bolster research and education in these domains. The same must be achieved through strategic planning and efficient execution of AYUSH schemes and initiatives.

18. With the above observations, the petition is disposed of.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

OCTOBER 5, 2023/nk