



LEGISLATIVE ASSEMBLY
NATIONAL CAPITAL TERRITORY OF DELHI

COMMITTEE ON PETITIONS

TWENTY FOURTH REPORT OF THE SIXTH ASSEMBLY

SUBJECT: IN THE MATTER OF ALLEGED NON-
COMPLIANCE OF FREE TREATMENT OF EWS PATIENTS IN
PRIVATE HOSPITALS OF DELHI

PRESENTED ON 03RD DECEMBER 2019.
ADOPTED ON 3RD DECEMBER, 2019

Legislative Assembly, Old Secretariat, Delhi – 110054

INDEX

1. Composition of the Committee	Page- 01
2. Preface	Page- 02
3. Genesis	Page- 03-05
4. Introduction	Page- 06-07
5. Proceedings	Page- 08-14
6. Issues raised in the Petition	Page- 15-24
7. Observations & Conclusion	Page- 25-26
8. Recommendations	Page-27-28

DELHI LEGISLATIVE ASSEMBLY
COMMITTEE ON PETITIONS

Composition of the Committee

1. Sh. Saurabh Bhardwaj	CHAIRMAN
2. Sh. Pankaj Pushkar	MEMBER
3. Sh. Akhilesh Pati Tripathi	MEMBER
4. Ms. Bhavna Gaur	MEMBER
5. Ms. Bandana Kumari	MEMBER
6. Ch. Fateh Singh	MEMBER
7. Sh. Girish Soni	MEMBER
8. Sh. Raju Dhingan	MEMBER
9. Sh. Shri Dutt Sharma	MEMBER

Assembly Secretariat:

1. Shri C. Velmurugan	Secretary
2. Shri SadanandSah	Deputy Secretary
3. Shri Manjeet Singh	Deputy Secretary

PREFACE

1. I, the Chairman, Committee on Petitions, having been authorised by the Committee to present on their behalf, this Report on the petition received Mr. Arbind Kumar Tiwary, Dhirpur, New Delhi-110019, on the issue related to the non-compliance of free treatment of EWS Patients in Private Hospitals of Delhi. The Petition was countersigned and presented to the Hon'ble Speaker, Delhi Legislative Assembly by Sh. Nitin Tyagi, Hon'ble MLA and referred to the Committee on Petitions on 04.01.2019.
2. The Committee considered and adopted the Draft Report at their sitting held on 29/11/2019
3. The observations/recommendations of the Committee on the above matter have been included in the Report.
4. I would like to thank all the Members of the Committee for their continued guidance.
5. The Committee places on record their profound appreciation for the valuable assistance rendered to it by Sh. Sadanand Sah, Deputy Secretary, Sh. Manjeet Singh, Deputy Secretary, Sh. Subhash Ranjan, Section Officer, Mr Kumar Rajesh, Fellow, Delhi Assembly Research Centre and other staff of Delhi Assembly Secretariat in preparation of this report.



Date: 30.11.2019
Place: Delhi

SAURABH BHARDWAJ
CHAIRMAN
COMMITTEE ON PETITIONS

Genesis

The constitutional mandate for assuring the dignity of an individual is contained in the very preamble of the Constitution of India. To live with dignity would take within its ambit legitimate expectation of the citizens of the country for being provided with a good environment and health care. Unlike the right to education, the right to health and a healthy environment has so far not been incorporated in the fundamental rights of the people of India. However, an obligation in the form of the directive principle under Article 47 of the Constitution is cast upon the State to raising of the standard of living of its people and improvement of public health among its primary duties.

According to a 2018 study by Public Health Foundation of India (PHFI), Out-of-pocket (OOP) health expenditure drove 55 million Indians—more than the population of South Korea, Spain or Kenya—into poverty in 2017, and of these, 38 million (69%) were impoverished by expenditure on medicines alone. Over 80% of Indians incur OOP direct payments individuals make to healthcare providers on healthcare, as per 2011-12 figures cited in the study. In real terms, monthly OOP payments increased by more than 100% from Rs 26 in 1993-1994 to Rs 54 in 2011-2012. The consequence of the inadequate public health system is that India has become the sixth biggest private spender on health among low-middle income nations. About 68% of the Indian population has limited or no access to essential medicines, according to a World Health Organization report. Besides, over the last two decades, the availability of free medicines in public health facilities declined from 31.2% to 8.9% for inpatient care and from 17.8% to 5.9% for outpatient care, according to a 2011 PHFI study.

Thus, the time have come when the State has to prescribe a proper course of action and take steps well in time to ensure that private sector which comes up for the assistance of the Government and claims various concessions during the period of establishing their big multi-specialty and super-specialized hospitals, must conform to the conditions of law and the persons in position should not only check the breach of conditions but ensure

consequential actions. The Government and various authorities should act in the event of a breach. Lack of interest from any quarter would result in uncharitable profits to the private sector at the cost of deteriorating standards of public health and depriving the poor strata of the society of seeking benefits of the State policies only as a result of poor governance.

Moved with the lack of adequate facilities for health care to poorer sections of the society with particular reference to breach of conditions of free treatment to poor in compliance to the condition of allotment of land to such hospitals/medical institutions, Social Jurist, a Lawyers Group filed a writ petition being WP(C) No. 2866/2002 praying that conditions of allotment of land to hospitals/nursing homes particularly in regard to free treatment to the poor and indigent persons are complied with, and the respondent authorities be directed to take action against those hospitals in accordance with law and to take action on the recommendations of Justice Qureshi Committee. In the petition, prayer was also made for holding a high-level inquiry and also a direction that action be taken against the erring officers. In the said Petition, the Hon'ble High Court of Delhi noted in its judgment that private hospitals were obliged to adhere to the land allotment conditions and that unwarranted profits be recovered from the hospitals violating the conditions.

On November 15, 2002, the Delhi High Court had passed its first order in a PIL petition filed by Social Jurist, stating that EWS patients were to be provided "free admission, bed, medication, treatment, surgery and nursing facility, consumables and non-consumables. The hospitals charging any money from such patients shall be liable to be proceeded against in accordance with the law."

The court order further states that money recovered from the hospitals should go into a pool for the treatment of poor patients in government hospitals. The Court had appointed a Special Committee in 2007 to calculate the notional loss to the State government caused by hospitals violating the lease agreement norms.

This Petition came before the Committee at a critical juncture when the Government of NCT of Delhi (GNCTD) is working hard to ensure affordable and accessible health care for all. However, the Private Hospitals are still violating the directives and orders of the GNCTD as well as the Hon'ble High Court of Delhi to earmark 25 per cent of their OPD services and 15 per cent of their IPD services to the patients from Economically Weaker Sections (EWS).

Introduction

1. Mr. Arbind Kumar Tiwary, Dhirpur, New Delhi-110019, filed a petition on the issue related to the non-compliance of free treatment of EWS Patients in Private Hospitals of Delhi. The Petition was countersigned and presented to the Hon'ble Speaker, Delhi Legislative Assembly by Sh. Nitin Tyagi, Hon'ble MLA, and referred to the Committee on Petitions on 04.01.2019.

2. It was alleged in the Petition that even though there has been many court judgements reinforcing the obligation of the Private Hospitals to treat Economically Weaker Section (EWS) category patients under OPD (Out Patient Department)¹ and IPD (In-Patient Department)², most of the Private Hospitals in NCT of Delhi are not complying with the orders of the Government and direction of the Hon'ble Courts. It was alleged that the GNCT of Delhi has also not effectively ensured that penalties are levied on the hospitals which are openly violating the prescribed norms. It was also alleged that penalties were levied on five private hospitals, but the Health Department delayed the proceedings to benefit these hospitals, especially Fortis Escort Hospital, so that it can get a better deal in the market while it was up for sale. In the petition, an article dated 08.06.2018 from the newspaper 'Business Today'³ and another article dated 18.10.2016 from 'The Hindu'⁴ was quoted, which mentioned a violation of land allotment conditions for Private Hospitals in New Delhi and the norms they were supposed to follow. It was also

¹ OPD caters to a population of patients who only need a consultation with a doctor/specialist and/or obtain ongoing medical treatment or services as a result of an earlier visit.

² IPD refers to the areas of the hospital where patients are accommodated after being admitted, based on doctors/specialist's assessment, from the Emergency Services, Ambulatory Care, and Clinical/Specialty Outpatient Departments due to their presenting and emerging medical condition(s).

³Fortis due diligence reveals unpaid vendors' bills of Rs 450 crore: Report, 08.06.2018, Business Today, Accessed on 21.11.2019, <https://www.businesstoday.in/current/corporate/fortis-due-diligence-bids-munjial-burman-manipal-ihh-healthcare/story/278720.html>

⁴Delhi cracks down on private hospitals refusing care for poor, 18.10.2016, The Hindu, Accessed on 21.11.2019, <https://www.thehindu.com/news/cities/Delhi/Delhi-cracks-down-on-private-hospitals-refusing-care-for-poor/article14420272.ece>

alleged in the petition that the then Secretary of Health Department, Mr. Rajiv Yaduvanshi, IAS, had intentionally delayed the penalty proceedings to favour the private hospitals. The five-hospital which were mentioned in the Petition are **Max Super Speciality Hospitals (Saket), Fortis Escorts Heart Institute, Shanti Mukund Hospital, Dharamshila Cancer Hospital, and Pushpawati Singhania Research Institute.**

PROCEEDINGS

1. To ascertain the facts and investigate the allegations levelled in the said Petition, the Committee on Petitions conducted its meetings on 15.01.2019, 21.01.2019, 14.08.2019, 19.08.2019, and 30.08.2019 and deliberated the matter comprehensively with the officers of the Department of Health and Family Welfare, GNCTD. Besides, the Committee also conducted surprise visits to Max Super Speciality Hospital, Shalimar Bagh, on 31.01.2019, Medeor Hospital (Formerly known as Rockland Hospital), Venkateshwar Hospital, and Manipal Hospital, Dwarka on 08.02.2019, and BLK Hospital on 18.02.2019.
2. The Committee Proceedings were primarily aimed to examine the following issues/matters:
 - i. Whether the said, Private Hospitals in NCT of Delhi are treating the EWS patients under OPD and IPD in accordance with the guidelines issued by the GNCT of Delhi?
 - ii. Whether the GNCT of Delhi has ensured collection of Penalties from the defaulting Private Hospitals as per the direction of the Hon'ble High Court of Delhi?
 - iii. Is there any connivance between the said Private Hospitals and the Officers of the Health Department of the GNCTD?
 - iv. Did the officer(s) of the Department of Health and Family Welfare cooperated and provided requisite assistance to the Committee in this case?
3. A copy of the said Petition was forwarded to the Secretary, Department of Health & Family Welfare, GNCTD, along with a questionnaire vide letter dated 08.01.2019 with the request to furnish replies/information by 14.01.2019. The questionnaire sent by the Committee is reproduced below:
 - i. Please elaborate on the action taken by GNCTD against the five hospitals which included Fortis-Escorts Hospital for Non-Compliance concerning the treatment of EWS patients in OPD and IPD services.

- ii. Please provide the entire file Noting/Communication concerning the proceedings against these hospitals.
 - iii. Please provide the action taken by the GNCTD against the two hospitals, namely “PSRI” and “Max Saket,” which were earlier visited by the Petitions Committee along with officers of the Health Department in which widespread irregularities were found.
 - iv. Please provide the occupancy details of EWS patients under IPD for the above two hospitals- PSRI and MAX-Saket, during the period 01.01.2018 to 31.12.2018.
 - v. Please provide the list of Private Hospitals that had the worst record in treating EWS patients in OPD and IPD service during the period 01.01.2018 to 31.12.2018.
4. The Committee held its first meeting in the said matter on 15.01.2019 in which a set of instructions were issued by the Committee to the Department of Health and Family Welfare. The instructions issued by the Committee is being reproduced below:
- i. Order to be issued within a week to all Delhi Government Hospitals regarding keeping a record of the outcome of the referrals of EWS patients sent from their hospital to identified Private Hospitals.
 - ii. Show Cause Notice to be issued to PSRI & Max Smart Super Speciality Hospital, given the deficiencies found during the inspection of the Committee on 09.09.2017.
 - iii. Show Cause Notice to be issued to six worst-performing hospitals in r/o free treatment to EWS patients.
 - iv. Free treatment achievement data (details of all patients treated under free category) to be sought from five hospitals against whom Recovery Orders have been issued and also from Max Smart Super Speciality Hospital.
 - v. Affidavits to be filed before the Hon’ble High Court of Delhi regarding deficient achievement in free treatment during the year 2018 r/o five hospitals against whom recovery orders have been issued, and the matter is pending adjudication before the Hon’ble High Court.

- vi. 03 sets of copies of file noting of recovery of unwarranted profits from the five identified Private Hospitals.
5. The Committee in its meeting dated 15.01.2019 directed the officers of the Department of Health and Family Welfare to maintain a daily round register(s) of the hospital(s) for EWS patients. A further direction was issued by the Committee to maintain a separate register regarding Government Referrals and their outcome. These registers are to be countersigned by the In-charge/SMO, EWS Cell (DGHS-HQ), on the last working day of each month.
6. In its meeting of 15.01.2019, Further the Committee instructed the Department of Health and Family Welfare to ensure that the Special referral centers/desks of the concerned private hospitals is manned and fully functional during normal working hours of the hospital, the list of identified private hospitals and name of the Nodal Officer is updated & boards displaying the same is affixed at conspicuous places, record regarding number of referrals is to be maintained in the hospital and regular monthly reports regarding referrals should be sent to the Directorate of Health Services, GNCTD for onward transmission to the Hon'ble Courts and land owing agencies.
7. The Committee, in its inspection of Venkateshwar Hospital on 08.02.2019, found that the hospital, though have registration of just 102 beds, is running with 251 beds. On inquiry with the Department of Health, Committee was told that the department of health had not granted permission for 251-bed capacity, and the department has received communication from the said hospital on 31.01.2019 for increasing the bed strength to 251.
8. Similarly, several grave anomalies and violation of instructions were found in other hospitals during the inspection visit of the said hospitals by the Committee. The representatives from the Department of Health & Family Welfare, present during the inspection visit, assured the Committee of appropriate action against the erring Hospitals and communicate the Action Taken Report (ATR) to the Committee.

9. The Committee further wrote a reminder letter to the Principal Secretary, Health Department, GNCTD, seeking ATR in the visit of each hospital by 13.08.2019 positively.

10. The questions raised by the Committee to the Department of Health and Family Welfare, GNCTD and the replies thereof received from the Department has been reproduced below in a tabular form:

Table 1		
S. No.	Point/Question raised by the Committee vide letter dated 08.01.2019	Reply by Directorate General of Health Services, GNCTD vide letter dated 14.01.2019
1.	Please elaborate on the action taken by GNCTD against the five hospitals which included Fortis-Escorts Hospital for Non-Compliance concerning the treatment of EWS patients in OPD and IPD services.	<p>The Special Committee constituted by the Hon'ble High Court of Delhi issued Recovery Orders to the following 05 hospitals after granting a personal hearing. Their details are as below:</p> <p>a) Dharamshila Hospital- Rs.17,86,38,900/- (from F.Y. the hospital became functional till FY 2006-07 and personal hearing on 07.06.2016)</p> <p>b) Fortis Escorts Heart Institute- Rs.503,36,52,804/- (from F.Y. the hospital became functional till F.Y. 2006-07 and personal hearing on 09.06.2016)</p> <p>c) Max Devki Devi Hospital- Rs.32,17,82,584/- (from F.Y. 2012-13 and personal hearing on 09.06.2016)</p> <p>d) PSRI- Rs.10,60,80,983/- (from F.Y. the hospital became</p>

		<p>functional till FY 2006-07 and personal hearing on 09.06.2016)</p> <p>e) Shanti Mukand Hospital- Rs.36,30,58,938/- (from F.Y. the hospital became functional till FY 206-07 and personal hearing on 10.06.2016)</p> <p>After that, the Hon'ble High Court of Delhi issued Orders dated 01.08.2016 & 02.08.2016 in WP (C) Nos. 5782/2016 & 5967/2016, respectively and further hearings were given to the following hospitals, and their details are below:</p> <p>a) Dharamshila Hospital- 23.10.2017</p> <p>b) Fortis Escorts Heart Institute- 23.10.2017, 31.10.2017, 14.12.2017 and 11.01.2018</p> <p>c) Max Devki Devi Hospital- 22.09.2017, 31.10.2017, and 14.12.2017.</p> <p>d) Shanti Mukund Hospital- 22.09.2017</p> <p>The final recovery order was issued after these hearings and details are as below:</p> <p>a) Dharamshila Hospital- Rs.17,86,38,900/- vide order dated 28.05.2018</p> <p>b) Fortis Escorts Heart Institute- Rs.503,36,52,804/- vide order dated 28.05.2018</p>
--	--	---

		<p>c) Max Devki Devi Hospital- Rs.17,42,51,308/- vide order dated 28.05.2018</p> <p>d) PSRI- Rs.10,60,80,983/- vide reminder order dated 25.06.2018</p> <p>e) Shanti Mukand Hospital- RS.36,30,58,938/- vide order dated 28.05.2018.</p> <p>All the hospitals have filed writ petitions before the Hon'ble High Court of Delhi challenging the Recovery orders issued by the Department. However, the Hon'ble High Court of Delhi has directed the following hospitals to deposit an interim amount while their petitions are being heard:</p> <p>a) Dharamshila Hospital- Rs 2 crore in the registry of the High Court (order dated 02.07.2018)</p> <p>b) Fortis Escort Heart Institute- R-s 5 crore in the account of DGHS (order dated 01.06.2018)</p> <p>c) Max Devki Devi Hospital- Rs 2 crore in the registry of the High Court (Order dated 06.07.2018)</p> <p>d) PSRI- Rs 1 crore in the registry of the High Court (Order dated 11.07.2018)</p>
2.	Please provide the entire file Noting/Communication concerning the proceedings against these hospitals.	The communication w.r.t. the proceedings against these hospitals are annexed as Annexure A, B, C, D, & E.

3.	Please provide the action taken by the GNCTD against the two hospitals, namely “PSRI” and “Max Saket,” which were earlier visited by the Petitions Committee along with officers of the Health Department in which widespread irregularities were found.	The copy of the letters sent to the hospital authorities of “PSRI” and “Max-Saket” after the visit by petitions Committee is annexed as Annexure J & K, respectively.
4.	Please provide the occupancy details of EWS patients under IPD for the above two hospitals- PSRI and MAX-Saket, during the period 01.01.2018 to 31.12.2018.	Occupancy details of EWS patients under IPD for PSRI and Max-Saket during the period 01.01.2018 to 31.12.2018 are annexed as Annexure L & M, respectively.
5.	Please provide the list of Private Hospitals that had the worst record in treating EWS patients in OPD and IPD service during the period 01.01.2018 to 31.12.2018.	A list of private hospitals that had the worst record in treating EWS patients in OPD & IPD service during the period 01.01.2018 to 31.08.2018 is annexed as Annexure N.

Issues Raised in the Petition

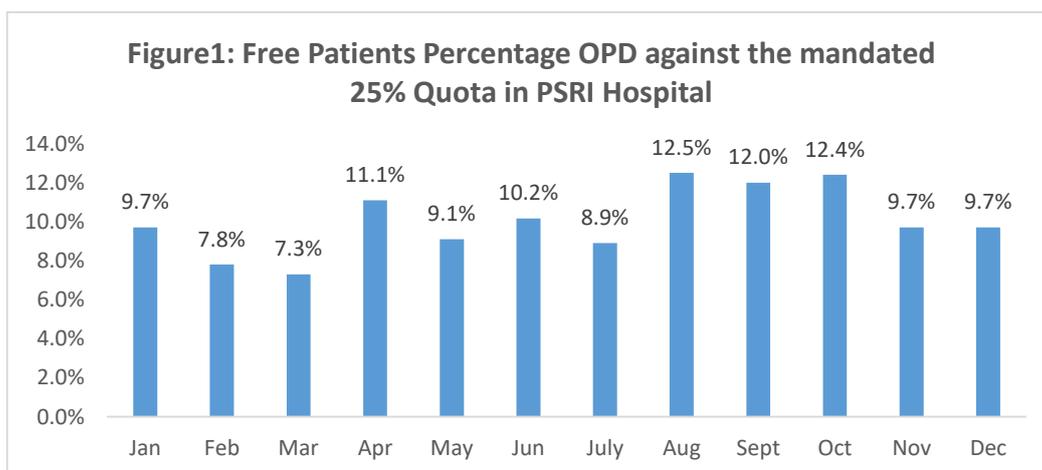
Issue I

Whether the said Private Hospitals in NCT of Delhi are treating the EWS patients under OPD and IPD in accordance with the guidelines issued by the GNCT of Delhi?

The Hon'ble High Court of Delhi vide judgment dated 22.03.2007 in WP (C) 2866/2002 while considering the recommendations of Qureshi Committee report passed a direction that the Private Hospitals which have been built on DDA or L&DO land are bound to fulfil the condition that they keep: i). 10 per cent of their bed capacity and, ii). 25 per cent of the OPD capacity for patients from Economically Weaker Section.

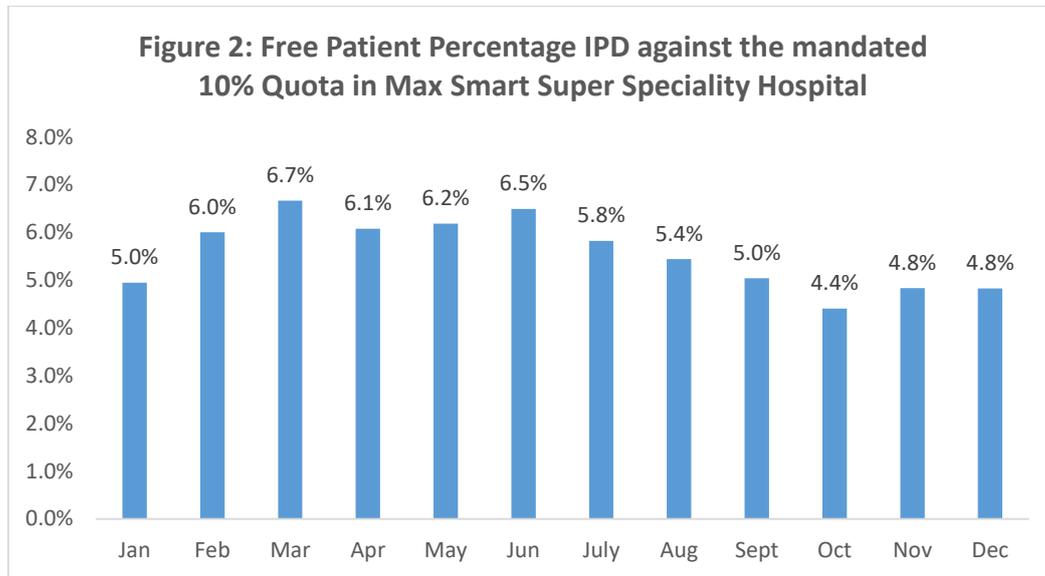
However, the data submitted by the selected hospitals (i.e., PSRI & Max Smart Super Speciality Hospital) for the period 01.01.2018 to 31.12.2018 shows that these hospitals were not providing the earmarked quota of 25 per cent in OPD services and 10 per cent in IPD services to EWS category patients.

Figure 1 highlights that PSRI hospital has failed to provide 25 per cent of its OPD services to EWS category patients by a huge margin. In none of the months during the period 01.01.2018 to 31.12.2018, PSRI hospital filled the mandated 25 per cent quota for EWS patients.



(Source: Reply of Directorate General of Health Services, GNCTD vide letter dated 14.01.2019 to the Petition Committee)

Similarly, Figure 2 highlights that Max Smart Super Speciality Hospital has failed to provide 10 per cent of its IPD services to EWS category patients by a considerable margin. In none of the months during the period 01.01.2018 to 31.12.2018, Max hospital completed filled the mandated 10 per cent quota for EWS patients.



(Source: Directorate General of Health Services, GNCTD vide letter dated 14.01.2019 to the Petition Committee)

Further, the Committee, in its surprise inspection visit to some hospitals, noticed non-compliance with the directives of the Hon'ble High Court of Delhi.

Manipal Hospital, Dwarka

The Committee on Petitions conducted a surprise visit to Manipal Hospital on 08.02.2019 with the officers of the Health Department. The Committee members also interacted with the Government Liaison Officer posted in the hospital. In its scrutiny, the Committee found that 20 beds were reserved for EWS patients out of which just 09 beds were occupied and rest 11 were vacant.

Venkateshwara Hospital, Dwarka

The Committee on Petitions conducted a surprise visit of Venkateshwar Hospital on 08.02.2019 in the presence of Special Secretary (H & FW) and other concerned officers of the Health Department. The Committee members

interacted with the Government Liaison Officer, Mr. Kuldeep Sharma, posted in the hospital. The Committee, in its scrutiny found that as on 08.02.2019, 16 beds were reserved for EWS patients, and in the records of the Hospital, all were shown to be occupied.

Also, the Committee did not found EWS Helpdesk/Registration Counter in the main lobby and also noted that the EWS OPD is located in the Upper Basement. After that, the Committee inspected the free beds situated in the ICU and found that the ICU beds earmarked for EWS patients are Open Ward type. The Committee also inspected the Dialysis Unit and found that though 03 out of the 14 dialysis machines were reserved for the EWS patients out of the 09 free slots merely 1-2 EWS patients were being dialyzed every day, and almost 07 free slots were not being utilised. The Committee was surprised to find high number of IPD patients admitted in Hospital much higher than registered/allowed bed strength.

The Committee further sought from the Department of Health and Family Welfare, GNCTD, a list of Private hospitals which have the worst record in treating EWS patients in OPD and IPD service during the period 01.01.2018 to 31.12.2018. The reply from the Department of Health & Family Welfare highlighted the fact that the bottom five hospitals in terms of providing OPD and IPD services to the EWS patients were not even providing 1 per cent of their services to the EWS patients. Below is a list of such Hospitals:

Table 2: Out of the 53 Functional Identified Private Hospitals in NCT of Delhi, the following 06 Private Hospitals had the worst record in treating EWS patients in OPD and IPD during the period 01.01.2018 to 31.12.2018.

S.No	Name of Hospital	Number of Free Beds	Free Treatment Achievement
1.	Guru Harkishan Hospital, Bala Sahib Gurudwara Complex, Ring Road	05	Average IPD achievement less than 1% (deficit 9%)
2.	Vinayak Hospital, Derawal Nagar	04	Average OPD achievement less

			than 1% (deficit 24%)
3.	Jankidas Kapur Memorial Hospital, Pandav Nagar, Naraina Road	03	Average OPD & IPD achievement less than 5% (deficit 20% in OPD & 5% in IPD)
4.	Jeevan Anmol Hospital, MayurVihar, Phase-I	05	Average IPD achievement less than 5% (deficit 5%)
5.	Red Cross Hospital, Seemapuri	04	Average IPD & OPD achievement less than 1% (deficit 9% in IPD & 24% in OPD)
6.	Delhi ENT Hospital, Jasola	02	Average IPD & OPD achievement less than 1 % (deficit 9% in IPD & 24% in OPD)

(Source: Reply by Directorate General of Health Services, GNCTD vide letter dated 14.01.2019 to the Petition Committee.)

Further, the Committee in its meeting dated 15.01.2019 pointed out to the officers of Department of Health and Family Welfare, GNCTD that some of the Government Liaison Officers posted in identified private hospitals are neither properly monitoring the free indoor & outdoor treatment being provided to eligible patients of EWS category by their respective hospital(s) nor coordinating with the Nodal officers/Liaison Officers of Government Hospitals regarding referral of patients therefrom.

Issue II

Whether the GNCT of Delhi has ensured collection of Penalties from the defaulting Private Hospitals as per the direction of the Hon'ble High Court of Delhi?

The Judgement of the Hon'ble High Court of Delhi dated 22.03.2007 in WP (C) 2866/2002 noted that all the hospitals which were awarded land by DDA or L&DO were expected to immediately start complying with the condition of

free patient treatment after starting of the hospitals. The hospitals which have not complied with or have partially complied with the condition of treating the EWS patients are at fault, and they could not be exempted from complying with the condition in all its strictness. In fact, it should be noticed that the authorities including DDA and L&DO, have failed to perform their public duty and have placed the poor section of the society at a great loss. There is no justification whatsoever on the part of the general, specialty, or super-specialty hospitals not to comply with the mandate of the condition. Thus, they would be asked to make good of the non-compliance of the condition, and **they must repay to the authorities and the society at large for the unwarranted profits, at the cost of the poor, made by them for all these years to the extent of the percentage of free patient treatment (in terms of money) proportionate to the number of patients treated by them during the relevant period and they must pay that money to the authorities who shall create a central corpus/pool which shall be utilized for the welfare, health care and treatment of the poorer section of the society in Government hospitals.”**

The Hon'ble High Court further directed that a special committee shall be constituted which shall carry out these directions in its best wisdom and which shall ensure that the directions of the court are neither diluted nor rendered ineffective by such steps:

- i. The 'Special Committee' shall consist of the Chief Secretary of NCT of Delhi, Finance Secretary, NCT of Delhi, the Director-General of Health Services, and Medical Superintendent of the general public hospital of that area, the case of which is being considered by the authority.
- ii. The Committee shall be entitled to appoint Chartered Accountants or any other officers from the office of the Comptroller General of Accounts for the examination of the records, books of accounts and other material of the concerned private hospital which may have a bearing on the matters which are being considered by the 'Special Committee.'

- iii. The officers so appointed by the committee shall submit a report to the Special Committee, which after providing hearing to the hospital affected by such report, shall pass orders.
- iv. The order of the Special Committee shall determine the amount which is payable by the private hospital (20 of the hospitals stated in the judgment) or such other hospitals that are similarly situated. The amount payable shall be determined in terms of the above observations keeping in view the period commencing from two years after the date when the possession was taken, and the hospital was made functional and expenses of 25% OPD and 10% IPD free patient treatment of the total number of patients treated by the hospital during that period.
- v. This process of determination shall be concluded by the Special Committee within six months from the date of passing of this order.
- vi. Payment of the determined amount shall be made by the hospital concerned within one month from the date on which the order is communicated to them. The order passed by the Committee shall be sent by speed post as well as delivered by the departmental official personally to the in charge of the concerned private hospital. The amount collected shall be deposited in a 'Central Corpus/Pool' to be created by the Director-General of Health Services and shall only be utilized for providing free treatment and up-liftment of health standards of the poorer section of the society in Delhi. There shall be annual auditing of the said accounts by the Government Auditors as per rules.

The Directorate General of Health Services, GNCTD vide its letter dated 14.01.2019, informed the Committee that the Special Committee constituted by the Hon'ble High Court of Delhi issued Recovery Orders to the following 05 hospitals after granting a personal hearing. Their details are as below:

- i. Dharamshila Hospital- Rs.17,86,38,900/- (from F.Y. the hospital became functional till FY 2006-07 and personal hearing on 07.06.2016)
- ii. Fortis Escorts Heart Institute- Rs.503,36,52,804/- (from F.Y. the hospital became functional till F.Y. 2006-07 and personal hearing on 09.06.2016)

- iii. Max Devki Devi Hospital- Rs.32,17,82,584/- (from F.Y. 2012-13 and personal hearing on 09.06.2016)
- iv. PSRI- Rs.10,60,80,983/- (from F.Y. the hospital became functional till FY 2006-07 and personal hearing on 09.06.2016)
- v. Shanti Mukand Hospital- Rs.36,30,58,938/- (from F.Y. the hospital became functional till FY 206-07 and personal hearing on 10.06.2016)

However, all the hospitals filed writ petitions before the Hon'ble High Court of Delhi challenging the Recovery Orders issued by the Department. After that, the Hon'ble High Court of Delhi directed the following hospitals to deposit an interim amount with the registry of the Hon'ble High Court while their petitions are being heard:

- i. Dharamshila Hospital- Rs 2 crore in the registry of the High Court (order dated 02.07.2018)
- ii. Fortis Escort Heart Institute- Rs 5 crore in the account of DGHS (order dated 01.06.2018)
- iii. Max Devki Devi Hospital- Rs 2 crore in the registry of the High Court (Order dated 06.07.2018)
- iv. PSRI- Rs 1 crore in the registry of the High Court (Order dated 11.07.2018)

The Committee further requested the officers of the Department of Health in its meeting dated 15.01.2019 to furnish copies of file noting of recovery of unwarranted profits from 05 Identified Private Hospitals.

The Department, through its reply dated 18.01.2019, assured the Committee that copies of file noting of recovery of unwarranted profits from 05 Identified Private Hospitals are being prepared and would be provided to the Chairman before the commencement of the meeting on 21st January 2019. **However, until this report, no documents have been submitted by the department in this regard.**

The Department of Health has committed that they will direct their advocates to file appeals against the orders of the Hon'ble High Court where Hospitals have been asked to deposit a small amount while order of DGHS is stayed.

Issue III

Is there any connivance between the said Private Hospitals and the Officers of the Health Department of the GNCTD?

The Committee made a surprise inspection visit of Venkateshwar Hospital, Dwarka, on 08.02.2019, where the Committee found that the hospital, though have registration of just 102 beds, is running with 251 beds. During further scrutiny in this matter with the Department of Health in Committee meeting dated 19.08.2019, the Health Department informed the Committee that initially registration for 102 beds was granted to the hospital on 06.09.2016. After that, on 17.02.2017, the hospital communicated the department of health that they are increasing the number of beds to 112. After that, the hospital further gave communication to the department on 23.08.2017 stating that they are increasing the number of beds to 155. Similarly, on 31.08.2018, the hospital communicated the department that they are increasing the number of beds to 201. Further on, the hospital informed the department that they have increase the number of beds to 251 from 201.

Meanwhile, when the hospital was illegally increasing the number of beds, the department of health did not take any action in any instance. Section 4 of the **DELHI NURSING HOMES REGISTRATION ACT, 1953**, *clearly states that any hospital wanting to increase the number of beds will have to seek permission from the Department of Health with a written application. After that, the department will inspect the hospital to assess whether there are adequate infrastructure and staff to take care of the increase number of beds.* The department of health, in none of the cases, conducted an inspection when the hospital filed an application and communicated to the department for increasing the number of beds. Moreover, Mr. S.M. Ali, Special Secretary, Department of Health & Family Welfare, admitted on record during the Committee meeting dated 19.08.2019 that it's a lapse on the part of the department of health that due inspection of the hospital was not done when the hospital increases the number of beds. It was only after the inspection of the Committee on 08.02.2019 of the said hospital, the department of a health

inspected the hospital on 28.06.2019 to assess the application of the hospital to increase the number of beds.

Thus, it is beyond reasoning to believe that the Department of Health being the designated authority to conduct such inspection overseen this lapse. Thus, the Committee believe that this is a clear case of connivance between the hospital management and officers of the health department.

Issue IV

Did the officer(s) of the Department of Health and Family Welfare cooperated and provided requisite assistance to the Committee in this case?

The Committee conducted a surprise inspection visit to selected Private Hospitals along with the officers of the health Department on various dates in February 2019. During the visit, the Committee noticed several grave anomalies and violation of instructions the visited hospitals. The representatives from the Department of Health & Family Welfare, present during the inspection visit, assured the Committee of appropriate action against the erring Hospitals and communicate the Action Taken Report (ATR) to the Committee.

However, until 07.08.2019, no ATR was received from the Department of Health in this regard. So a reminder letter dated 07.08.2019 was sent to the department requesting the ATR to be furnished by 13.08.2019.

The committee also observed that:

- i. Sh. Sanjeev Khirwar, Principal Secretary, H & FW wilfully absented himself from the proceedings of Committee on Petition meeting on 19.08.2019
- ii. Sh Sanjeev Khirwar intentionally did not respond to the letter of Committee on Petitions dated 07.08.2019 addressed to him and duly received in his office via email and hard copy
- iii. Sh Sanjeev Khirwar, furnished false information in his exemption letter dated 19.08.2019 that he had to attend important meetings

with the Hon'ble Chief Minister, Hon'ble Minister for Environment at 2:00 p.m. to 3:00 p.m. and misled the Committee.

- iv. He committed disregard and grave contempt of the Committee and obstructed the proceedings of the Committee by not attending the Committee meeting on 19.08.2019 which deviated the Committee to present its Report in the instant matter in the Second part of Eight Session held from 22.08.2019 to 26.08.2019
- v. He committed wilful negligence of the Committee and dereliction of duties by not forwarding the letter dated 07.08.2019 of Committee on Petitions to the Director (DHS), which was received in his office on 08.08.2019.

The Committee also observed that Dr. Ashok Kumar, Director, DGHS attended the meeting with a completely lax and casual attitude and on oath also gave false and incorrect statement to the Committee that letter no 1820 dated 07.08.2019 was never received in the Department and repeated his statement again and again despite the Committee informing him that this letter was not only served through email but also manually. He did not admit that it was received, but due to some negligence on the part of any employee, it could not be replied timely. The Committee had to produce documentary evidence of email and receipt of that letter to convince him. The Committee considered his behaviour contemptuous, misleading, negligent, and breach of privileges of Committee on Petitions.

Thus the Chairperson, Committee on Petitions wrote to the Hon'ble Speaker, Delhi Legislative Assembly, stating that the Committee in its meeting dated 19.08.2019, after due deliberation, was of the view that contumacious behaviour of (1) Sh. Sanjeev Khirwar, Principal Secretary, H&FW, and (2) Dr. Ashok Kumar, Director, DGHS are deliberate attempts of contempt of the Committee and breach of Privilege and decided to refer their cases to the Committee on Privileges for further examination.

Observations and Conclusions

From the scrutiny of the responses filed by the concerned Government departments, Government records, and the inspection visit made by the Committee of the hospitals, the following observations are brought on record:

1. Most of the Private Hospitals who are duty-bound under the land allotment condition of DDA and L&DO and direction of the Hon'ble High Court in the WP (C) 2866/2002 to earmark 25 per cent of their OPD services and 10 per cent of their IPD services to the EWS category patients are violating the directions of the GNCTD and the Hon'ble High Court in this regard.
2. There are Private Hospitals in Delhi who are not even providing 1 per cent of their IPD and OPD services to the EWS patients.
3. Even some of the Government Liaison Officers posted in identified private hospitals are neither properly monitoring the free indoor & outdoor treatment being provided to eligible patients of EWS category by their respective hospital(s), nor they are coordinating with the Nodal officers/Liaison Officers of Government Hospitals regarding referral of patients from there.
4. Till this report, the Department of Health & Family Welfare did not provide the sought information related to commitment to appeals against High Court orders in favour of 05 Identified Private Hospitals and stay by the Hon'ble High Court in those cases.
5. The conduct of the concerned officers of the Department of Health and Family Welfare in the matter of illegal increasing of the number of beds by Venaketshwar Hospital shows clear connivance between the officers of Department of Health and Family Welfare, GNCTD and the Hospital Management.
6. It was only after inspection by the Committee on 08.02.2019 of the said hospital, the Department of Health inspected the hospital on 28.06.2019 to assess the application of the hospital to increase the number of beds.

7. The Department of Health and Family Welfare did not cooperate actively with the Committee in various proceedings of this matter. The department did not provide the committed ATR to the Committee on the anomalies found in the said hospital, even after 06 months of the request.
8. Moreover, Dr. Ashok Kumar, Director DGHS, on oath was untruthful to the Committee and tried to mislead the Committee in the meeting of the Committee dated 19.08.2019 and also showed a completely lax and casual attitude
9. Similarly, the Committee noted that Sh. Sanjeev Khirwar, Principal Secretary, F&HW, GNCTD committed disregard, breach of privilege and contempt of the Committee and obstructed the proceedings of the Committee by not attending the Committee meeting on 19.08.2019 which delayed the Committee Report in the instant matter in the Second part of Eight Session held from 22.08.2019 to 26.08.2019
10. Also, Sh. Sanjeev Khirwar is guilty of wilful negligence and dereliction of duties by not forwarding the letter dated 07.08.2019 of Committee on Petitions to the Director (DHS), which was received in his office on 08.08.2019.

Recommendations

1. The Department of Health and Family Welfare should take stringent action against the defaulting Private Hospitals that are not adequately catering to the EWS Patients as per the land allotment conditions of the DDA and L&DO and the directive of the Hon'ble High Court of Delhi in the WP (C) 2866/2002.
2. A daily report should be submitted to the Department of Health and Family Welfare by each of the Government Liaison Officers posted in concerned private hospitals regarding free indoor & outdoor treatment being provided to eligible patients of the EWS category.
3. Similarly, the Nodal Officers/Liaison Officers posted in Government Hospitals should also submit a daily report to the Department of Health regarding the referral of patients from there.
4. There should be an automatic mechanism (using software) where patients referred from Government Hospitals to the EWS beds of the Private Hospitals are tracked and a daily report is generated across the Hospitals of Delhi. A Nodal officer at the level of DGHS should ensure that there are no gaps in the process.
5. Strictest departmental action should be taken against Mr. Ashok Kumar, Director DGHS, who misled the Committee members on oath in the meeting of the Committee dated 19.08.2019.
6. Strictest Departmental action should be taken against the officers who were responsible for checking the illegal increase in the number of beds in Venkateshwar Hospital.
7. Further, the Department of Health & Family Welfare should do a thorough audit of all the Private Hospitals in the NCT of Delhi to check whether they have illegally increased the number of beds in their hospital.
8. Proceedings for Breach of Privilege of the House Committee should be initiated against Sh. Sanjeev Khirwar, Principle Secretary, Department of Family and Health Welfare, GNCTD.

9. Pension benefits of Mr. Ashok Kumar should be stopped and departmental enquiry should be initiated against him.
10. Observations regarding Mr. Sanjeev Khirwar, IAS as mentioned in Issue IV Page 23 & Page 24 of this report should be incorporated in the ACR of the officer.
11. The “Special Committee” mentioned under Issue II of this report should appoint Chartered Accountant to prepare report for six defaulting hospitals mentioned in Table 2 on page 17 & 18.
12. The Committee requests worthy Chief Secretary of GNCT of Delhi should submit Action Taken Report on the recommendation of the Committee, to Delhi Legislative Assembly within 30 days of adoption of this report.

Date: 30.11.2019
Place: Delhi



SAURABH BHARDWAJ
CHAIRMAN
COMMITTEE ON PETITIONS