
(2021) 12 DEL CK 0130

Delhi High Court

Case No: Civil Writ Petition No. 9627, 12377, 13299, 13408 Of 2021, Civil Miscellaneous
Application No. 29753, 38913, 39442, 41925, 42264 Of 2021

Association Of
Wellness Ayurveda And
Spa

APPELLANT

Vs

Government Of Nct Of
Delhi & Or

RESPONDENT

Date of Decision: Dec. 16, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 14, 15, 19(1)(g), 19(6), 21
- Delhi Municipal Corporation Act, 1957 - Section 417

Citation: (2021) 12 DEL CK 0130

Hon'ble Judges: Rekha Palli, J

Bench: Single Bench

Advocate: Indu Kaul, Mani Kaul, Rahul Mehra, Satyakam, Rajshekhar Rao, Zehra Khan, Sonal Sarda, Shubhika Saluja, Shreya Choudhary, Mini Pushkarna, Khushboo Nahar, Latika Malhotra, Tushar Sannu, Hima Bhardwaj, Devendra Kumar

Judgement

Rekha Palli, J

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

MassageÃ¢â¬â¢ 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 Ã¢â¬â¢Cross Gender MassageÃ¢â¬â¢.

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 petitionersÃ¢â¬â¢ 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

Ã¢â¬ÅCross Gender MassageÃ¢â¬Å 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.