

ALL INDIA INSTITUTE OF MEDICAL SCIENCES

Ansari Nagar, New Delhi-29

No.F.35-21/98/2020 (PNM/Committee)-Estt. I

Dated the:

28 MAY 2021

OFFICE MEMORANDUM

Sub: Re-Constitution of PERMANENT NEGOTIATING MACHINERY (PNM) COMMITTEE at the AIIMS, New Delhi - Reg.

In supersession of all previous orders of even number on the subject mentioned above the Director, AIIMS has been pleased to re-constituted "PERMANENT NEGOTIATING MACHINERY (PNM) COMMITTEE" at the AIIMS, New Delhi. The composition of the committee as under :

- | | | | |
|-------|-------------------------------|---|------------------|
| (i) | Dean (Academic) | - | Chairman |
| (ii) | Medical Superintendent (H) | - | Member |
| (iii) | Chief of Centres | - | Member |
| (iv) | Representatives of Employees- | | Member |
| (v) | Dy. Director (Admn.) | - | Member Secretary |

This Committee will follow the observation and directions mentioned in the Hon'ble High Court of Delhi Judgement dated 20.05.2002 in the matter Court On its Own Motion Vs AIIMS (copy enclosed)


(KUSHAL KUMAR)
ADMINISTRATIVE OFFICER

Encl. As above

Distribution: All concerned

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- 1) All Chief of Centres/Head of Departments/Units/Sections
- 2) The PPS to Director/PS to Dean (Research/Acad/Exam)/MS/DD(A)/Sr. FA/CAO/Dy. Secy / Superintending Engineer, AIIMS, New Delhi.
- 3) All Sr. Admn. Officer/ Administrative Officer of Establishment Section (Hospital /CNC/Dr.RPC / CDER/JPNATC/Dr.BRA, IRCH/CRHS Ballabgarh/NCI, Jhajjar /NDDTC/ESD/ Faculty Cell/ Rectt. Cell/Estate Section/Legal Cell/Co-ordination Cell/SC-ST-OBC-Women Cell/Hindi Section / Academic Section/Examination Section/Hostel Section/ Computer Facility/Research Section
- 4) All F & CAO/Accounts Officers (Cash Section/Audit Section/GPF/Pension Cell/Budget Section)
- 5) All Association (FAIMS, Officers' Association/Karamchari Union/Nurses Union/RDA/Student Union & SYS, AIIMS, New Delhi.
- 6) The Computer Facility - with a request to upload this on official website of the Institute
- 7) The Sr. Hindi Officer - with a request to provide the Hindi version of the same for uploading on AIIMS website.

Delhi High Court

Court On Its Own Motion vs All India Institute Of Medical ... on 20 May, 2002

Equivalent citations: 2002 (64) DRJ 418, 2002 (94) FLR 408, (2002) IILLJ 424 Del

Author: D Gupta

Bench: D Gupta, S Mukerjee

JUDGMENT Devinder Gupta, J.

1. This matter arose pursuant to suo motu notice taken by us in relation to the then on going strike by the Residents Doctors Association of AIIMS in the month of August, 2001.
2. Taking note of the observations of the Apex Court in Surjeet Singh v. State of Punjab and Ors. 1996(2) Supreme 11, it was felt that the right to life enshrined under Article 21 of the Constitution of India, would include the right against denial of treatment or even from being presented from availing the services of any doctor or any other member of the staff from attending to patients and rendering medical assistance to them. In doing so, we also relied upon the judgment in Vincent v. Union of India ; Consumer Education and Research Centre and Ors. v. Union of India and Ors. 1995 SCC (3) 42 ; and Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr. . Learned Additional Solicitor General Sh. R.N. Trivedi was also requested to assist the Court in this matter being one of social importance and relevance.
3. On 29.8.2001, we were informed that the strike in AIIMS had been called off, but that the grievances of staff remained, and therefore certain permanent measures were required to tackle the problem.
4. We directed the management of AIIMS to indicate the progress in the enquiry stated to have been initiated and also to indicate the measures which can be taken for expeditiously looking into and resolving the grievances of the employees and the doctors working in the hospital, in order to avoid frequent resort by the aggrieved staff to strikes. Thereafter the matter was adjourned from time to time, and on 1.2.2002 we were informed that certain suggestions of the learned Addl. Solicitor General were being considered by the General Body of the AIIMS.
5. Lately an affidavit dated May 2002 has also been filed in this Court. We have heard the submissions of learned counsel for the parties, including learned Additional Solicitor General assisting this Court, and we consider it appropriate to dispose of this matter, with the consent of all parties by making the following observations and directions:-
 - (i). A permanent negotiating machinery (PNM) be set up by the AIIMS as per their affidavit dated 6.5.2002, subject to the modification which we are indicating hereunder:-
 - (a) That the Dean AIIMS shall be the Chairman;
 - (b) The Dy. Director (Admn.) will be the Member Secretary;
 - (c) The Medical Superintendent, AIIMS will be a member;

(d) The Chief of the Centre in question or the available next senior-most Professor of that Centre shall be a member; and

(e) One representative of the employees will be a Member.

Provided that the Director of the Institute may, in the interests of having a more broad-based representation, co-opt any two more members from amongst the categories mentioned in Annexure R-1 to the affidavit dated 6.5.2002, wherever the same be deemed by him to be required in the exigencies of the situation.

(ii). The said Committee will stand duly authorised to resolve any sudden incident which either disrupts or has the potential of disrupting the smooth functioning of the AIIMS.

(iii) The above said Committee will take a decision one way or the other, in any matter brought to its knowledge or coming before it in any manner whatsoever, within a maximum period of fifteen days of the matter coming up before it or coming to its knowledge. This period of thirty days is the outer limit indicted by us and within the said period of fifteen days also, the Committee shall always remain cognizant of relative urgency of each matter, and the exigency of each situation and the matter will be processed most expeditiously and if required on day to day basis.

(iv) Unless the period of thirty days is extended with the consent of all the parties, or a substantial number of them (in the meaningful sense of the term 'substantial' used by us in the previous phrase), those disputes which are not resolved by the PNM within fifteen days, would be referred to the adjudication of an Arbitration Tribunal comprising of the Health Secretary (Central Government), Director General of Health Services, Director AIIMS and Additional Secretary Labour or any other officer of equal rank from the Ministry deputed for the said purposes by the Labour Secretary, Government of India. This will however be subject to the condition that in the event of the dispute being one concerning any class of employees or any subject matter which is also subject to the jurisdiction of a statutory Tribunal under any Act of Parliament or under Government Rules, then unless they consent to decision by the Arbitration Tribunal, the party/parties will be entitled to avail the benefit of the statutory remedies.

It is however clarified that PNM/Arbitral Tribunal would not be empowered to entertain, decide or adjudicate any issue relating to policy matters, including those involving recruitment, promotion, pay scales and service conditions etc. of all employees/doctors and others working in the Institute.

(v). In case any party or parties are not prepared to submit themselves to the jurisdiction of the Arbitral Tribunal and opt/elect for other statutory remedies, they shall be subject to the condition that they will ventilate their grievances only by way of in those proceedings, and not by way of any direct action against the Institution or any other employee or category of employees, or any other person or persons.

(vi) The Arbitral Tribunal shall take a decision one way or the other in the matter within a period of three months which period shall only be extended with the consent of the parties. In case any of the

parties does not cooperate, the Arbitral Tribunal will be entitled to proceed to decide the matter on the available records within the stipulated period.

(vii) The AIIMS will modify its Service Rules and terms and conditions to incorporate the above directions within the said Rules, and shall take all steps necessary to make the same applicable and binding upon all categories of employees.

There shall be the following Code of Conduct applicable to all employees of AIIMS:-

- (i) No employee of staff of faculty member will cease work for any reason whatsoever or disrupt the work, or aid, or abet such disruption or cessation;
- (ii) No use of loud speakers or shouting of slogans, demonstrations, Dharna within the campus.
- (iii) No gate meetings or protest meetings of any kind whatsoever are to be held within the radius of 500 Mtrs. from the boundary of the Institute;
- (iv) No interference in any official work.
- (v) No resort to any disruptive activity.
- (vi) All Trade Union activities will be carried outside the campus;
- (vii) Any violation will result into disciplinary and other actions;

6. We are conscious of the fact that employees ordinarily also have a right to agitate their grievances by way of peaceful action including collective bargaining and collective action. However, considering the special circumstances of the AIIMS as an Institution and particularly the sensitive nature of such a super-speciality referral hospital requiring the uninterrupted and smooth functioning of each and every sphere of activity as also the space and locational constraints such as ICU/Emergency/Trauma Centre being all located close to the entrance and exist areas, and also Blood Bank facilities, life-saving medicines and devices being required at short notice, as well as unimpeded movement of medical and para-medical personnel having to be ensured at all times, it would be appropriate and in the interest of justice and also in public interest, that there should be no activity in the nature of strike, dharna or demonstration or gherao at, or in, or around the AIIMS at all.

7. The impact of a strike in a hospital is totally different from that in the case of a factory or trading establishment. Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as required constant and incessant attending and care and therefore unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking staff. Unlike financial losses, the loss of life or limb cannot be recouped. Reference may be made to the judgment of Single Judge of Bombay High Court in *Baratiya Arogya Nidhi Sheth Kantilal C. Parikh General Hospital v. Bombay Labour Union* 2001

LLR 587 (Bom HC).

8. Hospitals are also public utility service within the meaning of Industrial Disputes Act. It was also the intention of Parliament, as is envisaged by the 1982 amendment to the definition of 'industry' under the Industrial Disputes Act, that hospitals have been excluded from the scope of definition of industry and from the purview of the Industrial Disputes Act, 1947. Even though the said amendment has not been brought into force but it does reinforce the position that "hospitals" have to be treated as a class apart from "industry".

9. We also draw upon the ratio of the Apex Court decision reported as Communist Party of India(M) v. Bharat Kumar and Ors. taking note of the heightened applicability in the case of a hospital. We may also note that though learned counsel for Respondent No. 4 at one stage did not try to make certain submissions regarding the right to resort to what he described to be milder forms of protest such as "go slow" etc, but on our pointing out that even such type of protest is an anathema to activities involving matter of life and death such as administering of oxygen or transfusion of blood or reviving the heart etc, thereupon learned counsel did not press further that contention.

10. We however direct that any authority be it Police or the Labour Department or Civil or Delhi Administration or Health or Ministry of Health, to which any representation, or complaint or request for taking action for resolving any dispute, is referred or brought to their notice, or otherwise comes to their notice in a manner warranting action, then keeping in view the special circumstances of an Institution such as AIIMS, and our present orders, the necessary action by all the authorities referred to above and any other departments before whom such matters come up, shall be always dealt with and carried on utmost priority basis, and if possible out-of-turn, and at all times will be so conducted so as to give no occasion for any dispute or any disruption or prejudice to the smooth functioning of the hospital.