

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.353 of 2021

Shivani Kaushik

... .. Petitioner/s

Versus

Union of India

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17398 of 2018

Rohit Kumar

... .. Petitioner/s

Versus

The State of Bihar and Ors.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9639 of 2021

Gaurav Kumar Singh

... .. Petitioner/s

Versus

The Union of India

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 353 of 2021)

For the Petitioner/s : Mr. Shivani Kaushik (In Person)

For the UOI : Mr. Dr. K. N. Singh (ASG)

For the State : Mr. Anjani Kumar, AAG-4

For Respondent No. 5 : Mrs. Binita Singh

For Respondent No. 6 : Mr. Shivender Kishore, Sr. Adv.

For PMC : Mr. Prasoon Sinha

(In Civil Writ Jurisdiction Case No. 17398 of 2018)

For the Petitioner/s : Mr. Manish Kumar No 13

For the Respondent/s : Mr. Subhash Prasad Singh -Ga3

(In Civil Writ Jurisdiction Case No. 9639 of 2021)

For the Petitioner/s : Mr. Sumeet Kumar Singh

For the Respondent/s : Mr. Dr. K. N. Singh (Asg)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH



ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

5 15-04-2021

Re : I.A. No.1 of 2021

In CWJC No. 353 of 2021

Noticing alarming surge in COVID-19 cases in the State of Bihar in its second wave and the lack of facilities and healthcare system to meet the challenges arising out of the surge, as reported in print media, I.A. No.1 of 2021 has been registered under the orders of Hon'ble the Chief Justice and it has been placed before us in the present Public Interest Litigation. Considering gravity of the prevailing situation, the matter has been posted for hearing on urgent basis.

The news paper reports, clippings of which are there on record, portray a gloomy picture which reflects that on the one hand the number of COVID cases are rising every day to alarming proportions and on the other hand, the patients are reportedly running helter-skelter to find beds in government and private hospitals. Reportedly, COVID beds in government hospitals are full in Patna. One of the newspapers (The Indian Express), which we had occasion to notice, reports, based on experience of an individual that the patients without contact face umpteen difficulties in getting admission even into private



hospitals authorised to treat COVID patients. Newspaper reports, though depict a very alarming and scary picture of the entire situation, having potential to expose the ground realities of health care system in the State, nonetheless, such reports cannot be made the sole basis for this Court to interfere and issue directions, exercising powers of judicial review under Article 226 of the Constitution of India. The reports, however, certainly raise serious issues of immense public interest touching fundamental rights of the citizens, cognizance of which has been taken by Hon'ble the Chief Justice.

We are mindful of the fact that providing healthcare facilities and meeting challenges arising out of spike of COVID cases in the State is primarily executive function of the State and the Constitutional Courts ordinarily do not step in, in such matters. Nonetheless, the Constitutional Courts are duty bound to invoke the powers of judicial review and cannot afford to overlook palpable violation of fundamental rights of life and equality of citizens enshrined under Articles 21 and 14 respectively of the Constitution of India.

In the wake of facts as noted above, during the course of online hearing of the present proceedings, based on some newspaper reports, we had expressed our desire for the Principal



Secretary, Health Department, Government of Bihar to join the present court proceedings online.

We have heard Mr. Anjani Kumar, learned Additional Advocate General No. 4 for the State of Bihar in the presence of Mr. Pratyaya Amrit, the Principal Secretary, Health Department, Government of Bihar, who has joined the present proceedings online, Dr. K.N. Singh, learned Additional Solicitor General of India, appearing for the Union of India, Mr. Sumit Kumar Singh, Advocate on behalf of the petitioner in CWJC No. 9639 of 2021, Mr. Bindhyachal Rai, Advocate for the Darbhanga Medical College and Hospital, Mrs. Binita Singh, Advocate for the Central Pollution Control Board, Mr. Ravindra Kumar Priyadarshi, Advocate for Gaya Municipal Corporation and Ms. Shivani Kaushik, Advocate for the petitioner in CWJC No. 353 of 2021.

Mr. Amrit has presented before us certain data and statistics showing availability of infrastructure in various parts of the State of Bihar to take care of COVID patients at various stations up to district headquarter level. The data so presented give a different picture altogether. If the said data and statistics, as presented, are taken to be correct, the number of beds available in the State of Bihar is much more than the number of



patients who require admission in COVID Care Centres (CCC), Dedicated COVID Health Centres (DCHS) and Dedicated COVID Hospitals (DCH), except for Patna. *Prima facie* we are not satisfied with the said depiction. In any event, it has transpired during the hearing of the present proceedings that CCCs and DCHS are ill equipped. Be that as it may, let Mr. Amrit transmit the said data, which he has shown to us with the use of slides, to the Court Master, for us to examine and pass appropriate orders on the next date.

There is no gainsaying, however, that the people at large do not have the requisite information about the availability of the aforesaid facilities which the State Government is said to have provided. The Court, in such circumstance, has considered it appropriate, at this stage, to direct the Principal Secretary, Health Department to bring the aforesaid information in public domain through media and ensure that at-least once every day at a fixed time, a press briefing on behalf of the Government is made disclosing facts, illustratively, the number of COVID cases, the infrastructure which are available at various places in the State to admit and treat COVID patients and other cogent information which are required to be disseminated to the general public in public interest. It has emerged during course of hearing



that there is some scarcity of oxygen in various hospitals in the State of Bihar which has resulted into a kind of rush among the people of the State to procure oxygen cylinders which has the consequence of creating a situation for black-marketing of oxygen cylinders.

Mr. Amrit has informed this Court that a High Level Committee is already looking into this aspect of the matter and this problem is likely to be resolved soon and in any case, by Saturday (17.04.2021).

In response to a query made by this Court Mr. Amrit has informed this Court that once a person is tested positive after RT-PCR test, the State Government provides such patient a COVID kit. It is within our knowledge that some of the officers and staff of the High Court had/ have tested COVID positive.

Let the Registrar General submit a report by 17.04.2021 as to whether such officers/ staff have been provided with COVID kits or not.

Mr. Amrit has further informed this Court that earlier the State Government laboratories were not furnishing "*Ct*" value in the RT-PCR test reports. He has assured this Court that henceforth the RT-PCR test reports supplied by the government laboratories shall disclose the *Ct* value also. Mr. Amrit has



informed the Court that roughly 1,01,236 Tests were conducted on 14.04.2021 and approximately 53% of them had undergone RT-PCR tests while the rest had undergone Rapid Antigen Tests. In response to another query made by this Court, he has informed that CT Scan Machines/facilities and Pulmonologist are available in Dedicated COVID Hospitals only, which are 11 in number. He has also informed this Court that steps are being taken to optimise the healthcare facilities to meet the recent challenges.

The matter will again be taken up on 17.04.2021 at 4.30 p.m. when the Principal Secretary, Health Department will be required to inform this Court regarding the steps taken, in the meanwhile, to improve healthcare facilities, the comprehensive action plan prepared by the State government to tackle the second wave of Covid-19 and to make aware public in general about the availability of such facilities to obviate avoidable prevalence of unnecessary sense of panic among the people. The Health Secretary will be also required to inform this Court about the facilities which the State Government provides for such persons who test positive but who do not have any serious symptoms for the purpose of hospitalisation.

It is indicated that the State Government may also



consider utilising facilities available in the premises of newly established Medanta Hospital in PPE mode at Kankarbagh to meet the emergent situation.

This Court would request Dr. K.N. Singh, learned Additional Solicitor General of India to seek instructions from the Central Government regarding the issues which have emerged, particularly in relation to providing facilities at ESIC Hospital, Bhita, Patna and enhancing facilities at All India Institute of Medical Sciences, Patna as also the mode and manner in which the Central Government is willing to help and assist the State Government to enable it to tide over the prevailing situation on account of the alarming surge in COVID-19 cases in the State of Bihar.

It has emerged during course of hearing that Dedicated COVID Health Centres do not even have X-ray facilities and they depend on such facilities available with Sadar Hospitals of the area. The State Government is directed to ensure that all Dedicated COVID Health Centres are equipped with portable X-ray machines as quickly as possible. If required, we will consider passing specific orders in this regard on Saturday (17.04.2021). The State Government should also consider initiating process for acquiring CT Scan machines for



Sadar Hospitals/ Dedicated COVID Health Centres in each
District of the State of Bihar.

Let a copy of this order be communicated to the
Additional Solicitor General of India, learned Additional
Advocate General No. 4 and Mr. Pratyaya Amrit, the Principal
Secretary, Health Department.

(Chakradhari Sharan Singh, J)

(Mohit Kumar Shah, J)

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