

In Residence

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 574 of 2020

Petitioner :- In-Re Inhuman Condition At Quarantine Centres And For Providing Better Treatment To Corona Positive

Respondent :- State of U.P.

Counsel for Petitioner :- Gaurav Kumar Gaur, Abhinav Gaur, Aditya Singh Parihar, Amitanshu Gour, Arvind Kumar Goswami, Bhagwan Dutt Pandey, Ishir Sripat, Jamil Ahamad Azmi, Jitendra Kumar, Katyayini, Pradeep Kumar Srinette, R.K. Shahi, Rahul Sahai, Rajeev Kumar Singh, Rishu Mishra, S.P.S. Chauhan, Sarveshwari Prasad, Satyaveer Singh, Shailendra Garg, Siddharth Shukla, Sunita Sharma, Suo Moto, Sushil Kumar Mishra, Swetashwa Agarwal, Uttar Kumar Goswami, Vibhu Rai

Counsel for Respondent :- C.S.C., Arun Kumar, Ashish Mishra, Dhiraj Singh, Hari Nath Tripathi, Purnendu Kumar Singh, Satyavrat Sahai, Sunil Dutt Kautilya, Suresh Chandra Dwivedi, Tahir Husain, Vishakha Pande

Hon'ble Siddhartha Varma, J.

Hon'ble Ajit Kumar, J.

Bar & Bench (www.barandbench.com)

1. In conducting hearing of this PIL in online mode, we have heard Sri Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Goyal, learned Additional Chief Standing Counsel, Sri Tarun Agarwal, learned counsel for U.P. State Election Commission, Sri S.P. Singh, learned Additional Solicitor General of India, Sri Ashutosh Mishra, learned counsel appearing for the High Court and on behalf of the Nodal officers appointed by the District Judges, Sri Amrendra Nath Singh, learned Senior Advocate and President of Allahabad High Court Bar Association, Sri S.C. Pandey, Sri Anuj Singh, Sri Raghav Dwivedi, learned Advocates and Sri Utsav Mishra, 3rd Year B.A. L.L.B. Student of Law, Sharda University, Greater Noida.

2. Reports sent by respective Nodal officers appointed by District Judges under our last order, are taken on record. Affidavit filed on behalf of the State Election Commission UP is also taken on record. An application addressed to the Chief Justice and sent on our official mail ID by one Utsav Mishra is also treated as a miscellaneous application in

the present PIL and, accordingly, is taken on record. An intervener application filed by one Pal Singh Yadav is granted. Office is directed to allot regular number to both the above applications.

3. Sri Manish Goyal, learned Additional Advocate General appearing on behalf of the State prayed for two days further time by means of a miscellaneous application to comply with our last order dated 27th April, 2021. He submitted that a comprehensive affidavit was under preparation to bring about the desired informations and action taken on what had been directed vide paragraph 26 and 16 respectively of our last order.

4. Notwithstanding the above request made for adjournment to bring on record a compliance affidavit, Sri Goyal submitted that Government was quite conscious and worried for the current Covid surge and accordingly had not only decided for two days weekend curfew but even extended it until the coming Wednesday. He submitted that the government would not leave any stone unturned to curb the present surge of pandemic as it was quite alive to the alarming situation, but is even committed to wipe off the Corona virus i.e. Covid-19 from the State by carrying out massive vaccination drive on a war footing in the days to come. He admitted that the weekend curfews fetched encouraging results as Covid graph was flattened now and further extension of curfew to week days would possibly be able to break the chain. Besides that it was argued that government was seriously working on the modalities to raise the currently existing public health infrastructure in the state to meet the demand in the days to come. He submitted that the police was also doing commendable job in ensuring compliance of social distancing and masking up of faces by the people and the results according to him were also very encouraging.

5. We do appreciate that the government ultimately realised the importance of putting in lock down to the public movements in general

and decided to impose full day and night long curfew for consecutively five days (Saturday to Wednesday) as we had also directed in our earlier order dated 19th April 2021 for five days long restrictions on public movements. We are of the view that government would take such further steps in future also so that not only people but our day and night toiling front Frontline Corona warriors and workers both in medical lines and civil and police administration get some respite from this current surge of pandemic to serve people in a better way.

6. Since Sri Goyal has sought time to file a detailed affidavit, we are not referring to various reports submitted by the Nodal Officers in this order and will deal with those reports in the next hearing that will be held on 7th May, 2021.

7. Sri Amrendra Nath Singh, learned Senior Advocate and President of Allahabad High Court Bar Association, Sri Raghav Dwivedi, learned Advocate and Sri Utsav Mishra have again questioned the preparedness of Government to deal with the current surge of pandemic in the face of the lacking public health infrastructure to meet the requirement.

8. Sri Anuj Singh, learned Advocate has submitted that though the Government has created a portal to show availability of Level-2 and Level-3 beds in Covid wards and ICUs in various hospitals, both Private and Government but the data fed for display in the portal was not correct. He gave an instant example of one Hari Prasad Institution of Medical Sciences, Lucknow, where the portal in morning at around 9:00 a.m. showed 190 beds as vacant in Level-2 category but on being contacted through mobile number provided, the hospital informed Sri Anuj Singh that there was no bed available. On a pointed query being made as to why the portal was showing vacant position in the hospital, he received a reply that the data was not updated.

9. During the course of hearing, we asked Sri Anuj Singh to dial the number again of Hari Prasad Institute of Medical Sciences, Lucknow, to know exactly as to whether the data was correct or not and as to whether the reply as was received earlier by Sri Anuj Singh remained same, Sri Anuj Singh, dialed the number again and again and the line was showing busy, however, ultimately he had been able to connect and reply was that there was no Level-2 & Level-3 bed available, whereas on the online portal, during the course of hearing of the case, was showing that there were vacant positions of beds in both Level-2 and Level-3 category.

10. This state of affairs that we have come to know about the management of online portal created by the Government today casts shadow upon the Covid Hospital Management moroso, in the face of the fact that the Government although had been claiming that there were sufficient beds in various hospitals and even in the last affidavit, they showed that there were about 17614 isolation beds and 5510 ICU/ SDU beds in the various private hospitals in the State and there was no scarcity.

11. We have also been apprised of the fact that the various private hospitals and even in Ram Manohar Lohia Hospital, Lucknow the patients who were being admitted were not taken good care of. It was argued that though the Government had rushed to engage private hospitals to meet the requirement of the people in this pandemic but it had not been able to ensure that these private hospitals treated the people appropriately who were admitted as Covid patients. Similarly, Sri Anuj Singh, learned Advocate placed a case of Kings George Medical University Hospital where portal showed 3 ICU beds to be vacant 2 days before and when hospital was contacted, it was informed that there was no vacant ICU beds.

12. We have been informed that late Justice V.K. Srivastava, was admitted initially in the morning of 23rd April, 2021 in Ram Manohar

Lohia Hospital, Lucknow but he was not taken care of till evening and it was only around 7:30 pm when his condition deteriorated, he was placed on ventilator. It was in the same night he was shifted to Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow, where he was in ICU for five days and ultimately succumbed to the Covid- 19 infection.

13. Sri Manish Goyal is directed to file an affidavit bringing on record the treatment given to late Justice V.K. Srivastava at Ram Manohar Lohia Hospital and it will also be explained why he was not taken immediately to Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow, immediately in the morning on 23rd April, 2021.

14. Stories of hoarding of oxygen cylinders and harassment meted out to those poor citizens who were begging for an oxygen cylinder to save the life of their near and dear ones, both at the end of district administration and police administration are being viralled in social media. The news was also viralled that five patients had died in ICU of a new trauma centre of Medical College, Meerut on Sunday last. Similarly, news were also being viralled that one Sun Hospital, Gomti Nagar, Lucknow and another private hospital at Meerut had taken their hands off the admitted Covid patients only for the reason that oxygen supply was not made even after demand. We find these news items showing a quite contrary picture to one claimed by the Government that there was sufficient supply of oxygen.

15. We are at pain in observing that death of Covid patients just for non supplying of oxygen to the hospitals is a criminal act and not less than a genocide by those who have been entrusted the task to ensure continuous procurement and supply chain of the liquid medical oxygen. How can we let our people die in this way when science is so advanced that even heart transplantation and brain surgery are taking place these days. Normally, we would have not directed the State and district administration to enquire

into such news that have been viralled on social media but since the Advocates who were appearing in this PIL supported such news and even submitted that more or less situations in other districts of State are the same, we find it necessary to direct for immediate remedial measures to be taken by the Government. The District Magistrate, Lucknow and District Magistrate, Meerut are directed to enquire into the matter of such news items within 48 hours and submit their reports on the next date fixed respectively. They are also directed to appear before the Court online on the next date fixed.

16. Sri Raghav Dwivedi, learned Advocate has submitted that there was acute shortage of Remdesivir not only in Government hospitals but also in the private hospitals and the referral letter system to be obtained from the Chief Medical Officer and the District Magistrate of the concerned district so as to make available Remdesivir had further complicated the things and since there was no supply of Remdesivir to the private hospitals except on a reference being made through Chief Medical Officer in the District and those admitted in the private hospitals were not being administered Remdesivir.

17. Since Sri Goyal has to file an affidavit by the next date fixed and this issue is very much part of our last direction, we need not to reiterate this further and the State shall deal with extensively in the affidavit by the next date fixed. The State shall in the meanwhile ensure sufficient supply of Remdesivir and Tocilizumab drugs to all the hospitals.

18. Sri Utsav Mishra in his application raised the issue of Police keeping the oxygen cylinder, Remdesivir Injection and Oximeter confiscated from illegal possessions, in the Malkhana of various districts, whereas Remdesivir Injection and Oxygen cylinder which were widely in demand could have been released to the district administration and should not have been waisted in the name of case property. He submitted that

Remdesivir Injection was to be kept on a definite temperature so that it did not get expired and if it is kept at Malkhana, it would certainly expire.

19. Similarly, oxygen cylinder can also be put to use as it is in great demand. Oximeters that were confiscated, could also be distributed to the poor people and keeping all these articles in Malkhana would not be at all in public interest as it will all go wastage.

20. Sri Goyal has submitted that he will take up the issue with the State Government so that proper disposal of the articles like oxygen cylinder, Remdesivir Injection and oximeter is done and is not wasted.

21. Sri Utkarsh Mishra, has also submitted that RTPCR reports were being given after much delay i.e. 3-4 days after the sample was collected which was not a happy situation in public interest because those who samples were collected if they were let free and roamed about in society they might infect others also and also they might infect family members at home. It was submitted that in cities of Lucknow, Prayagraj, Varanasi and Meerut the report was being given between 3- 4 days except in Varanasi where the reports were being given between 2-3 days.

22. We were also informed that in the district of Prayagraj there were two RTPCR machines having capacity of 3000-4000 testing samples at one point of time. Currently, the sample collected in district Prayagraj was around 5000/- as was also admitted by Sri Goyal, in such a situation we fail to understand why the respondents were taking time of 3 to 4 days in giving RTPCR reports.

23. We, accordingly, direct Sri Goyal to look into the matter and come up with an affidavit showing the testing capacity of RTPCR Lab for the districts Lucknow and Prayagraj, Varanasi, Kanpur Nagar, Meerut, Gorakhpur, Ghaziabad, Gautambudh Nagar, Agra and Jhansi by the next date fixed.

24. Sri Amrendra Nath Singh, learned Senior Advocate and President of Allahabad High Court Bar Association submitted that situation was quite alarming since lawyers had to render assistance in dispensation of justice by the High Court, some specific centres should be assigned to vaccinate every member of the Bar Association. He has suggested that K.P. Community Centre Hall could be requisitioned for this limited purpose for sometime.

25. We, accordingly, direct Sri Goyal to study the feasibility to set up a vaccination centre specifically where lawyers of the Bar Association and employees of the High Court at Allahabad. Similar facility may also be provided to the lawyers of the Lucknow Bench of the High Court. The endeavour should be to vaccinate maximum number of lawyers as early as possible and the employees of the High Court both at Allahabad and its Lucknow Bench.

26. It has also been brought to our notice that a number of gadgets that could have been put to use for treatment of Covid patients, were lying idle in Government hospitals. Sri Goyal has assured that he would get the matter enquired and would apprise the Court of the same on the next date of hearing.

27. Sri Amrendra Nath Singh, learned Senior Advocate has further argued that merely because the Covid graph has flattened, the administration should not feel relaxed. He argued that if this restriction of public movement in the name of curfew that had been introduced for weakened days and Monday and now has been further extended for Tuesday and Wednesday, it had been imposed two weeks back, the current situation would have been avoided. He argued that restrictions on public movements whether in the name of curfew or lockdown was the only way to check the spread of Covid and break the chain thereof. He submitted that what Government had done today, could have done two

weeks back. We find substance in the argument advanced by Sri Amrendra Nath Singh, learned Senior Advocate.

28. Now, coming to the affidavit filed on behalf of State Election Commission in response to our order dated 27th April, 2021 in which we had asked for explanation from it in respect of deaths of the polling agents and officers that had taken place due to their getting infected by this deadly virus Covid-19, we find that except seeking a verification from the District Magistrates/ District Election Officers of all the districts vide letter dated 28th April, 2021, nothing more has been done. Sri Tarun Agrawal, while defending the action of the State Election Commission submitted that the State Election Commission was not shirking away from its responsibility to comply with the order and sought time as the response to the letter dated 28th April, 2021 was still awaited.

29. From the recitals as have come up in the letter dated 28th April, 2021, we find that emphasis was more upon the correctness of the news item of which we had taken judicial notice than verifying the number of deaths. We make it clear that any slackness on the part of the Election Commission on this issue will not be tolerated.

30. We have been informed that even during the counting of polls of Gram Panchayat Elections of the State that had taken place on 29th April, 2021 and onwards, the Covid protocol and guidelines were definitely flouted. People gathered in huge numbers at the counting centres and both the Election Officers and Police administration had completely failed to ensure the compliance of Covid guidelines.

31. We find that in the order of the Supreme Court dated 7th April, 2021 passed in Special Leave Petition (Civil) Diary No.- 10698 of 2021 it is recorded that the undertaking was given before the Supreme Court by the State Election Commission through its Counsel that counting will be supervised through CCTV cameras to be installed at the designated

counting centres and those who were in charge of the counting centres would be held responsible for any lapse regarding compliance of Covid-19 guidelines.

32. We, accordingly, direct the State Election Commission to produce before us the CCTV footage of the designated counting areas and centres both in the form the footage print and also Pen Drive by the next date fixed , in the first instance relating District Lucknow, Prayagraj, Varanasi, Gorakhpur, Ghaziabad, Meerut, Gautambudh Nagar and Agra.

33. We make it clear at the same time that in case if the Commission itself finds from the CCTV footage that there has been clear violation of the Covid- 19 protocol and guidelines, it would come up with action plan in that regard.

34. The matter is adjourned and is directed to come up again on 7th May, 2021 at 11:00 am. It is expected that both Sri Manish Goyal, learned Additional Advocate General and Sri Tarun Agrawal, learned counsel for the State Election Commission shall come up with comprehensive compliance affidavit in respect of our order passed on 27th April, 2021 as well as this order passed today.

35. We also find that due to inadvertence District Judge, Meerut was not directed to appoint Nodal Officer. Therefore, we direct the District Judge, Meerut also to appoint any Judicial officer as Nodal officer in his district in compliance of our order dated 27th April, 2021 and place the report before us by the next date fixed.

36. The Registry is directed to communicate this order to the District Magistrate, Lucknow, District Magistrate, Meerut, District Judge, Meerut, today itself.

Order Date :- 4.5.2021

Atmesh

(Justice Ajit Kumar)

(Justice Siddhartha Varma)