

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. We have heard Sri S.V. Raju, learned Additional Solicitor General of India assisted by Sri Abhishek Sharma, learned Standing Counsel, Sri Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Goyal, learned Additional Chief Standing Counsel, both representing the State of U.P., Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Purnendu Kumar, learned Advocate, Sri Tarun Agrawal, learned counsel appearing for the State Election Commission, Sri Amrendra Nath Singh, learned Senior Counsel and President of Allahabad High Court Bar Association, Sri Anuj Singh, Sri Rajat Rajan Singh and Sri A.P. Paul, learned Advocates. Sri Amrendra Nath Tripathi, learned counsel appearing on behalf of Sun Hospital, Lucknow was also heard. All the learned Advocates appeared through video conferencing.

2. Having carefully examined the affidavit of Sri Badugu Deva Paulson, Secretary (Home), Government of U.P., Lucknow filed in compliance of our order dated 27th April, 2021, we find that neither

required information as mandated by our order has been given nor, otherwise compliance has been made to our various directions contained in paragraph 19 of the order. So far issue of health bulletin to be issued by the Covid hospital both government and private through the district based portal is concerned, these portals seem to have not been updated. Similarly, the proper procurement and supply of the life savings drugs/ life support systems like BiPaP machines and High Flow Nasal Cannula Masks have not been made available to the various hospitals, though supply of availability of life saving drugs like Remdesivir and Tocilizumap has been shown to have been made. Even the statistics which has been given in the affidavit *qua* testing in State surprisingly discloses that a number of testing has been reduced gradually. Even the details regarding oxygen production in the State *qua* 22 hospitals have not been given. The availability of ambulances with advance life support system is also very less considering the number of districts in the State. No details have been given regarding food supplied to the hospitals of Level-1, Level-2 and Level-3 category. Only fact stated is that Rs.100 is allocated per patient in Level-1 category hospital. It is well known fact that the Covid patient needs highly nutritious food that should include fruits and milk in his daily diet and we fail to understand as to how with Rs.100 per capita budget the Government is managing three times meal in Level-1 category hospital with 2100 required calories. No details have been given regarding Level-2 and Level-3 hospitals. We want food details with calories count of each item in respect of the hospitals of all the category. We further find that figures of death have not been shown date wise between 19th April, 2021 and 2nd May, 2021. If we consider the report of Nodal Officers of Gorakhpur, Lucknow, Prayagraj, Gautambudh Nagar and Kanpur the scene emerges otherwise than the picture shown with figures of deaths. We will deal with the details after considering our Nodal Officer's report on the next date.

3. Today, District Magistrate, Meerut appeared again through video conferencing in compliance of our last order and supplied the enquiry report that he got conducted by a two member Committee. We have gone through report but on not being satisfied we put certain queries that District Magistrate Meerut could not reply and requested us to immediately enquire the technical details from Dr. Gyanendra Kumar, the Principal of Medical College, Meerut who was also present through video conferencing. The principal informed the Court that prior to the date of death, 20 persons were admitted to the hospital while three of them were having Covid positive report, the others had been put to antigen test which turned out to be negative. According to him, 20 deaths cannot be attributed to the Covid infection as those were only suspected cases. We were not able to accept the explanation submitted and, therefore, we put a query as to why he did not conduct a True Natt test in which the report usually came much earlier than the RTPCR. He submitted in reply that Medical College Hospital did not have any True Natt machine. It is strange that Medical College, Meerut does not have any True Natt machine whereas Government claimed to have made it available in all government hospitals and directed all private hospitals to have it compulsorily. In the circumstances, if no True Natt is there and if antigen turned out negative of a patient, such patient's case is taken as suspected one only and so no Covid protocol is followed and if he dies, his dead body is handed over to the members of family of the deceased without Covid protocol. It is quite a serious issue.

4. Even if it is the case of suspected death of Covid patients for antigen testing, we are of the view that all such cases of death should be taken as Covid deaths and no hospital can be permitted to hold these cases as non- Covid cases so as to reduce number of Covid deaths in that particular hospital.

5. In our considered opinion in these days of Covid surge, if a person is admitted to the hospital with ILI (Influenza like infection) and where only antigen testing has taken place or in the event RTPCR is delayed and in the meanwhile patient dies and if such deceased persons had no history of having cardiac or kidney problem then presumption should be raised that such death was caused by Covid infection only for the limited purpose of maintaining records and also following Covid protocol for the disposal of dead body.

6. Government officials and the hospitals cannot be permitted to shirk away from their responsibility in ensuring that dead body of such deceased persons is disposed of strictly as per the Covid Protocol. Nobody is admitted to a hospital unless he has landed himself in a condition where the SPO2 level has gone down i.e. below 94 and, therefore, to take such deaths as non- Covid deaths would be a blunder.

7. Sri S.V. Raju, learned Additional Solicitor General has submitted that he would come up with a fresh affidavit in 2 days in compliance of our order dated 27th April, 2021 and on the above issue. He also assured that in the matter of district Meerut he would gather such other necessary information also. Principal of Medical College, Meerut is also directed to come with exact reports of those 20 deaths that had taken place from the time of their admission and also Covid testing and SpO2 status at the time of admission had been recorded by the hospital i.e. noted in the record of the hospital.

8. Accordingly, we direct Sri S.V. Raju, learned Additional Solicitor General to file necessary affidavit within the time prayed for.

9. Regarding various news items viralled *qua* complaints of the people in various district regarding non-cooperation of the government and private hospital staffs and the district administration whether for making available life saving drugs like Remdesivir and Tocilizumap or

providing oxygen etc., suggestions came from learned Advocates appearing in this PIL that the Government should be directed to open a Public Grievance Cell in every district of the State so that grievance of the people could be addressed locally.

10. Sri S.V. Raju, learned Additional Solicitor General and Sri Manish Goyal, learned Additional Advocate General also submitted that they had no objection in case if Public Grievance Cell at every district level is formed where people can directly approach and get their complaints registered and examined.

11. **We, accordingly, direct that in every district of the State three member Pandemic Public Grievance Committee shall be formed and that would include Chief Judicial Magistrate or a judicial officer of similar rank to be nominated by the District Judge, Professor of a Medical College to be nominated by the Principal of Medical College and if there is no medical college then a level-3/4 doctor of district hospital to be nominated by Chief Medical Superintendent of that district hospital and an administrative officer of the rank of Additional District Magistrate to be nominated by the District Magistrate. This three member Pandemic Public Grievance Committee shall come into existence within 48 hours of passing of this order and necessary directives to this effect shall be issued by the Chief Secretary (Home), U.P. to all the District Magistrates. Similarly in rural areas complaint can be made directly to SDM of concerned Tehsil who shall transmit the same to Pandemic Public Grievance Committee. The Pandemic Public Grievance Committee shall also take the trouble of looking into all the viral news itself.**

12. Sri Anuj Singh, Sri Amar Pal Yadav as well as Sri Ratan Rajan Singh, learned Advocates have shown their concern regarding recent spike of Covid infections in rural areas or sub-urban areas. In our last

order we had noticed it and had directed the State Government to file an affidavit showing the plan for rural areas and smaller cities. In the affidavit filed by Sri Badugu Deva Paulson, Secretary (Home), Government of U.P., Lucknow vide paragraph 7 it has been stated that in rural areas Community Health Centres and Primary Health Centres were being monitored and proper treatment was being administered to the patients even from the stage of Covid ILI symptoms were shown. It is stated that under the Covid campaign that started on 5th May, 2021 recently a survey was conducted of around 2,92,41,314 houses in the entire State, out of which 4,24,631 persons were found with certain symptoms which were enough to place them to be suspected covid cases and they were, accordingly, distributed medicine kits.

13. On a pointed query *qua* the availability of oxygen, the statistics of 12,381 persons who were found having breathing problem, Sri Manish Goyal, learned Additional Advocate General informed the Court that sufficient number of oxygen concentrators, BiPAP machines and High Flow Nasal Cannula Masks had been provided to the Community Health Centres and in this regard directives had also been issued by the Additional Chief Secretary (Medical Health and Family Welfare) on 10th May, 2021. However, when we put a query as how much these gadgets were provided to the Community Health Centre, Soraon at Prayagraj, Sri Goyal sought time to verify the facts.

14. We are of the considered view that may be the directives have been issued for providing life saving gadgets to various community health centres of different tehsils of the districts of the State but the issue is that how many of them have really been installed in the community health centres. Such details are required to be known because in rural areas by and large the facilities are not available and the villagers are dying of Covid for want of proper care. Similar is the situation in the smaller cities.

15. **We, accordingly, direct that in respect of the districts of Bahraich, Barabanki, Bijnor, Jaunpur and Shravasti, following details of City and Rural areas be submitted to this Court on affidavit: (1) Number of city population; (2) Number of level-1 and level-3 hospitals with details of beds; (3) Number of doctors, anesthetists in level-2 level-3 hospital; (4) medical and paramedical staffs (5) Number of BiPAP machines and High Flow Nasal Cannula Masks (6) Number of rural population tehsil-wise, (7) Number of community health centres,(8) availability of beds in community health centres (9) number of life saving gadgets like High Flow Nasal Cannula Masks, BiPAP Machines; (10) Number of oxygen concentrators with capacity details in community health centres, (11) Number of medical and para-medical staffs.**

16. **The State shall also disclose in its affidavit about number of testing done in these places (urban and rural) and laboratory from where the testing is being performed. The data has to be given from 31st March, 2021 to till date.**

17. Regarding certain news viralled of the Meerut and Varanasi districts wherein apathy has been shown at the end of doctors towards the patients and news that one Santosh Kumar was missing from the hospital and concealment of the information by the hospitals from the attendants of the patients regarding condition of patients etc., Sri Goyal submitted that he has already directed District Magistrates of the concerned districts to get the news verified and he submitted that he would file an affidavit in that regard also.

18. Sri Amrendra Nath Tripathi, learned Advocate has filed an intervention application on behalf of Sun Hospital, Lucknow taking a plea that in response to the show cause notice issued by the authorities, a reply was immediately submitted on 5th May, 2021 before 5:00 pm but no receiving was given to them by the authorities. He further

submitted that on 1st and 2nd May, 2021 there was no supply of oxygen cylinders to the hospital by the District Administration and totally false statements had been given about the supply of oxygen to the hospital by the District Magistrate. He submitted that instead of considering the reply and verifying the facts, the District Magistrate, Lucknow rushed to lodge the first information report against the hospital to show compliance of Court's order. He submitted that he was ready to show the inventory/ stock register of the hospital where the oxygen cylinder receiving was entered and submitted that in the wake of first information report hospital management was being subjected to harassment and was not able to treat Covid patients who were admitted in the hospital.

19. We are of the view that since an intervention application has been filed along with reply, we direct the State to consider the same and get the necessary information from the District Magistrate concerned and file an affidavit of the District Magistrate, Lucknow in reply to the said intervention application by the next date fixed. In the meanwhile, however, we direct that until we finally decide the matter on the question of show cause notice and its reply and the action pursuant thereto taken against the hospital, no coercive measures shall be taken against the Sun Hospital and its staff pursuant to the first information report lodged.

20. Coming to the issue of purchase of vaccine and vaccination programme, Sri Ratan Rajan Singh, learned Advocate has questioned the policy with which the State Government has floated the tender in the global market for purchase of Covid-19 vaccine. We are of the view that no judicial intervention is required at this stage.

21. However, we are of the considered view that looking to the recent surge of the Covid-19 pandemic in the State which is engulfing in it the remote rural areas and smaller city and town areas of almost all

the districts of U.P., it would be in the fitness of the things that purchase of vaccine is not only expedited but vaccination programme is launched at a war footing. Even in our last order we had made clear that unless and until everyone was vaccinated, nobody was safe. We hope and trust that the State Government would try to purchase as many vials of desired vaccine as possible to vaccinate maximum number and at least more than 2/3 of the population in 2-3 months time.

22. Coming to the issue of action of State Election Commission in holding elections during surge of Covid-19 pandemic and then violation of Covid-19 guidelines during counting, Sri Tarun Agrawal, learned counsel submitted that he would file a detailed affidavit giving the names of those Nodal Officers who were entrusted with task to ensure that Covid-19 guidelines were duly followed during counting.

23. On the issue of death of Polling officers during election while polling was being done or organized, Sri Tarun Agrawal seeks further time to bring in details. However, on the issue of compensation the lawyers have submitted that the amount decided by Government was too meager an amount looking to the threat of pandemic which was well known to the State Government as well as State Election Commission and yet the teachers, investigators and Shiksha Mitras were forced to take risk. It is not a case that somebody volunteered to render his/ her services during election but it was all made obligatory to those assigned with election duty to perform their duties during election even while they showed their reluctance. The amount of the compensation, in our considered opinion, is very less. To compensate the loss of life of the bread earner of the family and that too because of the deliberate act on the part of the State and State Election Commission to force them to perform duties in the absence of RTPCR support, the compensation must be at least to the tune of Rs.1,00,00,000/-. We hope that the State Election Commission and

Government will rethink over the amount of the compensation and come back to us on the next date fixed.

24. **In our last order we had also directed the State Government to come with vaccination programme specific to the physically challenged persons. In the affidavit filed today, it has been stated that the State Government was following the Central Government guidelines and it has not adopted or opted for any guidelines which may differ from that of the Central Government and the vaccination was being done on walk-in-basis for those who were above 45 years of age. Below that age one required to be registered online. We are not able to accept the explanation. Firstly, we direct the Central Government to place before us as to how it proposes to inoculate those physically challenged persons who cannot be brought to the vaccination centres and then those who cannot make online registration and secondly, we direct the State Government to explain as to what is the difficulty with it if it opts to a guideline to inoculate physically challenged persons even in the absence of the Central Government guidelines, on the next date fixed. We may further observe that a large number of our population still resides in villages and there are people who are only labours between the age group of 18 and 45 and cannot themselves register online for vaccination. The Central Government and State Government are directed to place before this Court the programme by which they would vaccinate those illiterate labours and other villagers between the age group of 18 and 45 years if they are not able to register online for vaccination.**

25. Now coming to the issue of medical treatment given to late Justice V.K. Srivastava from the night of 22nd April, 2021 until he was shifted to Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow at 12:50 am of 25th April, 2021. Documents have been filed. The records show that while he was admitted to the hospital he was

having fever for the last five days and breathlessness for one day with no co-morbidity. The documents show that he was advised life saving drugs Remdesivir, however, the papers do not show whether actually he was administered Remdesivir or not on the first day and subsequent two days. The documents show that until 7:20 pm of 24th April, 2021 he had no complications and it was thereafter that his situation started deteriorating. The document that has been filed at page 92 of the affidavit is not legible and entries made thereupon are also undated. It is admitted to Sri S.V. Raju, learned Additional Solicitor General that there was no pulmonologist posted in Dr. Ram Manohar Lohia Institution of Science, Lucknow. There is no doubt that antiviral drug Remdesivir has shown quite in vitro activity against SARS-CoV-2 but the issue is whether in the absence of any advice and presence of pulmonologist who could have made assessment of requirement of Remdesivir to late Justice V.K. Srivastava, it could have been and whether he was administered with complete doses of Remdesivir. It is also required to be known as to whether the injection was administered without putting a note to that effect in the medical file. *Prima facie*, we are of the opinion that since the records are not a complete guide in this case and page No.- 92 seems to have some interpolations besides being not very legible, the matter should be examined by a committee to be constituted by the Government. Sri S.V. Raju, learned Additional Solicitor General submitted that State has no objection in holding a fact finding enquiry into the medical treatment given to late Justice V.K. Srivastava at Dr. Ram Manohar Lohia Institute of Medical Sciences, Lucknow.

26. Accordingly, we direct the State Government to constitute a Committee that shall have a Secretary level officer as its convener with a senior Pulmonologist from SGPGI, Lucknow and a Senior Advocate to be nominated by the President/ Elders Committee of Awadh Bar Association as its members. The Senior Registrar of Lucknow Bench, shall coordinate with Government, SGPGI,

Lucknow and Awadh Bar Association in forming the Committee to conduct a fact finding enquiry into the treatment administered to late Justice V.K. Srivastava and submit the report to this Court within two weeks. The Committee shall be constituted within three days from today by the State Government.

27. Put up this matter on 17th May, 2021 at 11:00 am.

28. Let a copy of this order be sent within 24 hours to the Chief Secretary, Government of U.P., Lucknow for necessary compliance and the order may also be communicated to the Senior Registrar, Lucknow Bench within 24 hours.

Order Date :- 11.5.2021

Atmesh

(Ajit Kumar,J.)

(Siddhartha Varma,J.)