

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH
CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

Writ Petition (PIL) No. 58 of 2020
Writ Petition (PIL) No. 50 of 2020
Writ Petition (PIL) No. 51 of 2020
Writ Petition (PIL) No. 67 of 2020
Writ Petition (PIL) No. 70 of 2020

10TH MAY, 2021

Mr. Shiv Bhatt, the learned counsel for the petitioner in WPPIL No. 58 of 2020.

Mr. Dushyant Mainali, the learned counsel for the petitioner in WPPIL No. 50 of 2020.

Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand.

Mr. Rakesh Thapliyal, the learned Assistant Solicitor General for the Union of India.

COMMON ORDER: (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

In compliance of the orders dated 20.04.2021 and 28.04.2021, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, has submitted an affidavit dated 07.05.2021. The same shall be taken on record.

2. Mr. Amit Negi claims that this is a detailed affidavit. But a bare perusal of the affidavit clearly reveals that the affidavit is not only vague, but has been drafted very cleverly so as to scuttle the very issues raised by this Court in its previous orders. Moreover, the most fundamental and basic facts, which should have been brought on record, have not even been mentioned in the affidavit. Therefore, the affidavit is highly vague and unclear. For example on Page No. 6, in Paragraph No. 4(a)(i), although it is claimed that there are twenty-six private labs, but neither the names of the private labs, nor their locations have been submitted by way of a list, or an annexure with the affidavit.

3. Moreover, although the affidavit claims that there are ten government labs, surprisingly, not even a single government lab exists in Haridwar district, despite the fact that Haridwar happens to be the epicenter of the COVID-19 pandemic in the State.

4. Moreover, on Page No. 8, in Paragraph No. 4(a)(iii), it is claimed that the State Government has

issued an order on 20.01.2021 empanelling the private laboratories, and fixing their rates. But neither the Government Order, nor the number of private laboratories, so empanelled has been revealed in the affidavit.

5. By order dated 20.04.2021, this Court had suggested to the State Government to explore the possibility of creating COVID-19 Mobile Testing Vans. In reply to the said direction, the affidavit claims that expression of interest from ICMR and NABL accredited labs has been invited on 03.05.2021. However, it is unclear as to how soon the work orders would be issued by the Government for utilization of such Mobile Testing Vans? And how many Mobile Testing Vans would be utilized by the State Government?

6. On Page No. 14, in Paragraph No. 4(e)(iii), it is claimed that the DRDO will be establishing two 500 bed temporary hospitals, one at Rishikesh, and another at Haldwani. However, no timeline has been given for the completion of these two temporary hospitals. Moreover, since the Government has recently

announced that summer vacations in the educational institutions would commence immediately, it is unclear whether the Government is planning of turning the Colleges into isolation/quarantine centers, or into temporary hospitals or not?

7. Although on Page No. 14, in Paragraph No. 4(e)(iv), it is claimed that the temporary hospitals constructed for the benefit of the Kumbh Mela would be retained, its capacity and its location has not been mentioned in the affidavit.

8. The shortcomings in the affidavit have been pointed out by this Court to Mr. Amit Negi, page by page, paragraph by paragraph, and line by line. To some of the shortcomings, Mr. Amit Negi submits that there is a limit to the number of samples, which can be tested by the government testing labs, and by the twenty-six private testing labs, which have been engaged by the Government for testing the samples. According to him, there is a capacity constraint of manpower, especially lab technicians, and of the specialized machines, which are required for analyzing

the samples. According to him, the largest labs, which are functioning in Gurgaon and Noida, have been engaged by the Government. But despite their capacities, all the samples collected cannot be analyzed on a daily basis. Therefore, there is bound to be a gap between the taking of the samples and its analysis, and declaration of the results. It is for this reason that as on 08.05.2021 in Dehradun results of 4367 samples are yet to be declared, in Haridwar results of 2456 samples are yet to be declared, and in Nainital results of 3280 samples are yet to be declared.

9. As far as COVID-19 Mobile Testing Vans are concerned, according to Mr. Amit Negi, such Mobile Testing Vans can only be floated by the labs which have been accredited by the ICMR. Already the Government has invited such labs to undertake the project. However, the final selection and the final list is yet to be formalized. According to him it will still take at least two to three months' time for the Government to start releasing these Mobile Testing Vans.

10. Dealing with the shortage of oxygen tanks, Mr. Amit Negi submits that there are three production units for producing oxygen tanks in the State of Uttarakhand. However, the distribution of the oxygen tanks is presently being supervised by the Central Government. The Central Government has earmarked certain quota of supply of oxygen tanks to the State of Uttarakhand. According to Mr. Amit Negi, ironically, while Uttarakhand produces oxygen tanks, which are sent to other States, the Central Government has directed the State of Uttarakhand to procure its quota of oxygen tanks from Jamshedpur in Jharkhand, and from West Bengal. Since transporting the oxygen tanks from Jamshedpur and from West Bengal requires time, according to Mr. Amit Negi, there are moments when there is lack of availability of oxygen tanks. Furthermore, the State Government is trying its level best to convince the Central Government to permit the State to retain its quota from the oxygen tanks produced within the State, rather than forcing the State to lift its quota of oxygen from Jharkhand and West Bengal. However, so far the Central Government has

not agreed to the proposal submitted by the State Government.

11. With regard to the direction issued by this Court on 20.04.2021 concerning the installation of CT Scan machines, Mr. Amit Negi submits that presently there are five CT Scan machines, which are available and three more will be installed at Rudrapur, Pithoragarh and Dehradun. It will take about two to three months to install these machines, as one CT Scan machine costs about Rupees Ten Crores. Moreover, the State Government has sought proposal from the CMOs in order to decide the requirement of CT Scan machines. Therefore, according to Mr. Amit Negi, atleast three months' time is required, if not more, for equipping the Government Hospitals with CT Scan machines. Another difficulty pointed out by Mr. Amit Negi is the lack of specialized radiologists, who would be manning these machines. According to him, sufficient numbers of radiologists are not available in the State. Thus, even if the CT Scan machines were installed, they may not become operational due to lack of manpower.

12. Mr. Amit Negi further submits that so far 15,00,000 Golden Cards have been issued, which is far more than the Golden Cards issued under the different Ayushman Schemes.

13. As far as the holding of the Char Dham Yatra is concerned, Mr. Amit Negi informs this Court that the Yatra has been suspended by the Government keeping in mind the spike in COVID-19 cases in the State. However, he is not in a position to inform this Court with regard to the SOP issued by the Management of the Char Dham.

14. He further informs this Court that although 74,000 injections of Remdesivir have been allotted to the State, so far only 33,321 have been received. Both according to Mr. Amit Negi, and according to Mr. Sachin Kurve, the learned Secretary, Industrial Development, and the Nodal Officer, there are four companies which have been directed to supply, and to fulfill the quota allotted to the State. However, Cipla is far behind the schedule. Therefore, although by 09.05.2021, the

State was to receive 41,500 Remdesivir Injections, it has merely received 33,321 injections. Thus, there is a glaring gap of 8179 Remdesivir Injections.

15. This Court has asked Mr. Sachin Kurve, the learned Secretary, Industrial Development and the Nodal Officer, as to what action can be taken against the erring companies, who are defaulting in supplying the Remdesivir Injections to the State? To this query, he submits that he is unaware of the procedure to be adopted; he is unaware whether the necessary action needs to be taken by the Central Government against the erring companies, or by the State Government. At best, Mr. Amit Negi assures this Court that by 16.05.2021, the State will receive 74,000 Remdesivir Injections, which are allotted to the State.

16. As far as declaring a Dedicated Covid Hospital/Health Care/Care Center at Ramnagar is concerned, Mr. Amit Negi submits that there are eight Dedicated Covid Centers notified for the Nainital district. However, none of them exists at Ramnagar. According to him, it is not necessary that Health

Center/Care Center should be constructed at the very place where people are falling ill. Since Ramnagar is only thirty kilometers away from Haldwani, he claims that it should not be difficult for the people to be transported thirty kilometers away to Haldwani; it is for Haldwani to take care of the influx of patients from Ramnagar.

17. Mr. Amit Negi further assures this Court that sufficient number of PPE kits have been supplied to the Government. But he is not in a position to give the details of how many PPE kits have been supplied to each hospital, and how many PPE kits are in stock at each hospital. He is furthermore unable to inform this Court whether sufficient number of PPE kits do exist in the hospitals for the use of MBBS pass out students, and the B.Sc. Nursing final year students, who have been directed to undergo COVID-19 duties in different hospitals.

18. As far as blackmarketing, hoarding and manufacturing of adulterated and spurious drugs is concerned, Mr. Amit Kumar Sinha, the learned

Inspector General and the Nodal Officer, informs this Court that action is being taken against the black-marketers, hoarders and manufacturers of adulterated and spurious drugs. According to him, so far at least 110 FIRs have been lodged, and a concerted effort is being made to control blackmarketing, hoarding and manufacturing of adulterated and spurious drugs.

19. Mr. Amit Negi further claims that temporary cremation grounds are being increased in the different parts of the State. However, he is not in a position to give a list of the towns and cities where such temporary cremation grounds have been created for the use of the people.

20. On the other hand, Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No. 58 of 2020, has questioned the stand being taken by Mr. Amit Negi. He submits that according to the data released by the State Government, and by the Health Department in particular, the position of availability of beds in hospitals in Nainital district is alarming. Out of the thirteen hospitals functioning in

Nainital district, only three of them have oxygen beds available with them. The other ten hospitals, including Sushila Tiwari Government Hospital at Haldwani, have no oxygen beds available as of 09.05.2021. More importantly, none of these hospitals have any ICU bed available with them. Thus, even the Sushila Tiwari Government Hospital at Haldwani, which is supposed to cater to the entire Kumaun Region, is devoid of both oxygen beds and beds in ICU.

21. Similarly, according to the Health Bulletin issued on 10.05.2021 i.e. today, the main Hospital at Dehradun, namely the Doon Medical College, neither has any oxygen bed available, nor any bed available in its ICU. Even the Kailash Hospital in Dehradun has 128 oxygen beds, but none of them are available to the public at large. Similarly, although the Kailash Hospital does have 56 beds in its ICU, none of them are available. According to Mr. Shiv Bhatt, this clearly brings out the pathetic condition of the people when major hospitals no longer have oxygen beds or beds available in ICU.

22. Therefore, according to Mr. Shiv Bhatt, the learned counsel, even if the DRDO were to complete the construction of two temporary hospitals of 500 beds each, it may still be insufficient number of hospital beds especially considering that the COVID-19 cases continue to rise in the State.

23. Mr. Shiv Bhatt, the learned counsel, further submits that, under the Disaster Management Act, 2005, Section 50 deals with "emergency procurement and accounting". Under Section 50 of the Act, where the State Authority or the District Authority is satisfied that immediate procurement of materials is required, it may authorise the concerned department or authority to make the emergency procurement, and, in such case, the standard procedure requiring inviting of tenders shall be deemed to be waived. According to the learned counsel, the said provision of law may be invoked for procuring COVID-19 Mobile Testing Vans. Therefore, there is no need to go through a tendering process since the requirement of COVID-19 Mobile Testing Vans is an urgent one. The said provision can certainly be invoked by the State Government.

24. Mr. Shiv Bhatt, the learned counsel, further submits that, while dealing with the bio-medical waste generated by the people, a notification has been issued by the State Government on 27.04.2021. Although the notification claims that people should dispose of their bio-medical waste in the "red boxes", even in public spaces, no such red boxes have been provided by the State Government. Consequently, people have started littering the streets and public spaces with bio-medical waste such as masks and gloves. Such masks and gloves pose further hazard, and may become the source for spread of the COVID-19. Therefore, the said notification is a toothless one, and has been issued only to satisfy the requirement of law, but without any force.

25. Mr. Shiv Bhatt, the learned counsel, further submits that, although the Government claims that it has acquired hotels in Haldwani for accommodating the contractual employees, the contractual employees have yet to be accommodated in these hotels. Therefore, the statement made by Mr. Amit Negi, that the

contractual employees have been accommodated, is an incorrect one.

26. Mr. Shiv Bhatt, the learned counsel, further submits that there is a T.B. Sanatorium located at Bhowali, District Nainital, which is functional. Despite the fact that it is a multi-speciality hospital, the same has not been declared as a Dedicated COVID-19 Hospital. Therefore, he prays that the State Government should be directed to consider declaring the said hospital as a Dedicated COVID-19 Hospital.

27. Mr. Dushyant Mainali, the learned counsel for the petitioner in Writ Petition (PIL) No. 50 of 2020, further submits that there are only two vaccination centers in Haldwani. Unfortunately, both the vaccination centers are functioning in the very hospitals, which have been earmarked as Dedicated COVID-19 Hospitals. Therefore, the public at large is reluctant to go to these two hospitals for vaccination. Thus, he suggests that perhaps the vaccination centers should be moved away from these hospitals to other hospitals/clinics available in Haldwani. The learned

counsel further submits that there are reports that there are unused ventilators lying in Ramnagar and Almora, which according to the learned counsel, should be taken out of stock and should be put to use.

28. Heard Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, Mr. Shiv Bhatt and Mr. Dushyant Mainali, the learned counsel for the petitioners, and Mr. S.N. Babulkar, the learned Advocate General for the State of Uttarakhand.

29. Undoubtedly, not only the country, but also this State is facing an uphill task of containing the COVID-19 pandemic. Unfortunately, for certain mistakes committed, for certain negligence shown, the COVID-19 pandemic has taken a gargantuan proportion both in the State, and in the entire nation. Admittedly, both the State Government in general, and the medical fraternity in particular, is waging a relentless war against the COVID-19 pandemic. As last year, so this year also, the people are grateful for the bravery and dedication, efficiency and hard work shown by the medical fraternity in trying to control the spread and

impact of COVID-19 pandemic. Although, the Government is trying its level best to fight the pandemic, but being the guardian of the people, it has more onerous duties to discharge vis-à-vis its people both under the constitutional mandate, and political exigencies.

30. Under Article 21 of the Constitution of India, it is the foremost duty of the State to protect the lives of the people. Therefore, the State Government has to extricate every single drop of its strength, and every single penny of its finances, and to dedicate itself to the protection of its own people. Until and unless the health and the well-being of the people is guaranteed by the State, no State can progress. Good governance, needless to say, requires imagination, planning and implementation of the plan. Therefore, the State Government is required to anticipate the future dangers, and to deal with the present difficulties being faced by the people.

31. Despite the fact that in January, 2021, the scientific community warned the country about the

onslaught of the second wave of the pandemic, unfortunately the State Government did not pay heed to the warning. Surprisingly, despite the fact that the State is reeling under COVID-19 pandemic for the last one and a half year, there seems to be lack of planning on how to tackle the pandemic. Most importantly, the scientific community has recently warned the country that the second phase is yet to enter its most severe period. Moreover, India is bound to face a third wave, which, according to the Scientists, would adversely affect the health of the children in the country. There are already reports that the new mutants, which are emerging both within and without the country, may not be eliminated by the present vaccines. Therefore, it is trite to state that we are in the grip of the COVID-19 pandemic, and the grip is only going to be tightened by an unknown and ever changing virus. Hence, the State Government, and our people would have to tread very carefully while dealing with the pandemic. Of course, the people will have to follow the SOPs scrupulously, which are being issued by the Central Government and the State Government. For, without the cooperation of the people, we cannot succeed against the pandemic.

Similarly, it is for the State Government to take concrete steps for tackling the menace of the pandemic. Therefore, this Court issues the following specific and general directions to the State Government:-

(i) The State Government shall increase the number of COVID-19 testing labs, especially in Hardiwar district. In case the number of testing labs cannot be increased, the State Government should immediately take steps for releasing COVID-19 Mobile Testing Vans throughout the State. According to the press reports, twenty seven percent of cases are coming from the hilly regions of the State. Thus, it is imperative that the people living in the hilly regions of the State should be tested as expeditiously as possible in order to understand the extent of the pandemic, and its dangers.

(ii) Since the number of COVID-19 cases is skyrocketing, the State should also consider whether the time has come for turning the

colleges and hotels into isolation/quarantine centers. Moreover, the number of hospitals needs to be increased. Although the DRDO is dedicated to establish two temporary hospitals of 500 beds each, but considering the fact that the third wave is also on its way, the State Government should plan the establishment of more temporary hospitals, especially in big towns like Dehradun, Haridwar and Haldwani. Even in middle sized towns, like Ramnagar and others, Dedicated Covid Health Centers/Care Centers need to be established on war footing.

(iii) Since there is, indeed, shortage of oxygen tanks, the State Government should correspond with the Central Government, and seek the permission of the Central Government to retain the oxygen tanks being produced within the State, as per its quota, rather than being asked to transport oxygen tanks from Jamshedpur in Jharkhand, and from West Bengal.

(iv) The State Government should also consider the possibility of importing oxygen concentrators with the cooperation of the Central Government. For, oxygen concentrators may be the answer for supplying oxygen to the remote parts of the State. For, according to the internet, an oxygen concentrator can be used for four patients simultaneously, and tends to function for almost 295 days in a year.

(v) In Writ Petition (PIL) No. 12 of 2009, by order dated 20.07.2018, a Coordinate Bench of this Court had issued number of directions to the State Government especially with regard to filling up of the vacancies of doctors, nurses, paramedical staff, administrators etc. Since there is a manpower shortage, the State Government should endeavor to fill up as many vacancies of these cadres as expeditiously as possible. Considering the fact that CT Scan machines need to be installed in all Government Hospitals, the Government should also endeavor to fill up the

manpower requirement for making these machines operational.

(vi) Considering the fact that recently the Government has ordered the MBBS pass out students, and the B.Sc. Nursing final year students, to join Covid duties, the State should endeavor that sufficient number of protective gears are available for the use of such young Doctors and Nurses.

(vii) Under the Drugs and Cosmetics Act, 1940, Section 17A defines the word "adulterated drugs", and Section 17B defines the word "spurious drugs". Section 27 of the Act contains the penal provisions, and prescribes a minimum punishment of ten years, and a maximum punishment of life imprisonment for those, who indulge in manufacture, sale, etc. of adulterated drugs and spurious drugs. Therefore, the State Government should ensure that those, who are manufacturing adulterated and spurious drugs, are charge-sheeted for offences under Section 27 of

the Drugs and Cosmetics Act, 1940. The number of cases of black marketing, hoarding and manufacturing of adulterated, and spurious drugs should be informed to this Court by Mr. Amit Kumar Sinha, the learned Inspector General and the Nodal Officer.

(viii) The Drug Controller of the State is directed to ensure that the Drug Inspectors inspect the drug stores, and try to discover those, who are hoarding such vital drugs such as "Remdesivir Injection", and those who are black marketing this vital anti-viral injection.

(ix) Although the Char Dham Yatra has been suspended by the Government, the Government must ensure that the SOP issued by the Char Dham Management is adhered to strictly. Moreover, the steps required for implementing the said SOP should be worked out immediately by the Government in association with the Management of the Char Dham.

(x) The Government should also issue an SOP dealing with the bio-medical waste which is being generated both within the household, and in public places.

(xi) According to the media reports, the private hospitals are exorbitantly charging the COVID-19 patients, that too in violation of the notification dated 02.09.2020, whereby the State Government had issued a schedule with regard to the rates chargeable by the private hospitals. Therefore, the State Government is directed to take strict action against such erring hospitals. The steps taken against such erring hospitals should be informed to this Court by the next date.

(xii) Since it has been brought to the notice of this Court that the vaccination centers at Haldwani are functioning in the two Covid Dedicated Hospitals, the State is directed to consider the possibility of establishing other vaccination centers away from the two Covid

Dedicated Hospitals for the benefit of the people of Haldwani.

(xiii) Since the High Level Expert Committee, which was constituted to provide technical inputs regarding COVID-19 case management, has made certain recommendations on 18.04.2021, the State Government is directed to implement these recommendations made by the High Level Expert Committee as expeditiously as possible.

(xiv) The State Government is directed to explore the possibility of declaring the T.B. Sanatorium located at Bhowali, District Nainital as a Dedicated Covid-19 Hospital within a period of two weeks.

(xv) The lacunae pointed out by this Court in the affidavit submitted by Mr. Amit Negi should be fulfilled. It is hoped that on the next occasion Mr. Amit Negi would, indeed, submit a detailed affidavit along with the supporting evidence in the

form of data, and list of the subject matter covered by the affidavit.

32. Mr. Om Prakash, the learned Chief Secretary, and Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, are directed to appear before this Court on the next date i.e. 20.05.2021.

33. List this case on 20.05.2021.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 10th May, 2021
RAHUL